



# **BAY CITY MATAGORDA COUNTY AIRPORT ZONING BOARD**

## **CITY OF BAY CITY**

**Tuesday, March 23, 2021 at 4:00 PM  
COUNCIL CHAMBERS | 1901 5th Street**

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*Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.*

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## **AGENDA**

### **CALL TO ORDER**

### **APPROVAL OF AGENDA**

### **APPROVAL OF MINUTES**

1. Meeting minutes of Airport Zoning Board meeting on March 4, 2021

### **REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL:**

2. Review and discuss public comments and concerns from the March 18th, 2021 Public Hearing regarding the proposed Airport Zoning ordinance.
3. Review, discuss, and/or approve the amended Bay City Airport Zoning ordinance.

### **PUBLIC COMMENTS**

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

### **ADJOURNMENT**

### **CERTIFICATION OF NOTICE**

This is to certify that the above notice of a Special Called Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on **Friday, MONTH DAY, 2020 before 3:30 p.m.** Any questions concerning the above items, please contact Mayor Robert K. Nelson at (979) 245-2137.

**AGENDA NOTICES:**Bay City Bay City Matagorda County Airport Zoning Board:

The Bay City Bay City Matagorda County Airport Zoning Board serves as an advisory body to City Council and the Mayor. Therefore, although the Board does not fall under the purview of the Texas Open Meetings Act, its meetings shall be open to members of the public.

Attendance by Other Elected or Appointed Officials:

It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

The facility is wheelchair accessible and accessible parking spaces available. Request for accommodations or interpretive services must be made 48 hours prior to the meeting. Please contact the City Secretary's Office at 979-245-5311 or email, [jthompson@cityofbaycity.org](mailto:jthompson@cityofbaycity.org) for further information.

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Jeanna Thompson

*City Secretary*

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# AIRPORT ZONING BOARD

## MINUTES • MARCH 4, 2021

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**COUNCIL  
CHAMBERS | 1901  
5th Street**

**6:00 PM**

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### CALL TO ORDER

Meeting was called to order by Chairman Bill Cornman at 6:00 pm.

Board members in attendance was Bill Cornman, Board Chairman, Julie Estlinbaum, Gary Faris, Wayne Neal and Steven Johnson.

Quorum certified.

Also in attendance:

James Mason, Airport Manager

Jeanna Thompson, City Secretary

Kent Pollard, County Commissioner Pct. 2

### APPROVAL OF AGENDA

Steven Johnson made a motion to approve the agenda, Julie Estlinbaum second. Voting yea: Chairman Cornman, Julie Estlinbaum, Gary Faris, Wayne Neal, Steven Johnson. Motion carried.

### APPROVAL OF MINUTES

#### 1. Minutes of January 13, 2021

Motion made by Steven Johnson to approve the minutes of meeting on January 13, 2021. Second by Julie Estlinbaum. Voting yea: Chairman Cornman, Julie Estlinbaum, Gary Faris, Wayne Neal and Steven Johnson. Motion carried.

### REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL:

#### 2. Discuss the need for a Public Hearing.

Bill Cornman, Board Chairman, discussed the letter from the attorney and the need for a Public Hearing. The hearing has been scheduled for March 18<sup>th</sup> at Schulman's and invitations have been sent out to officials. Not many have responded to the r.s.v.p. Mr. Cornman advised James Mason, Airport Manager, to get with Crystal at Schulman's to work out technical kinks before the hearing. Julie Estlinbaum stated that Bay City Community Development has made the arrangements to stream live.

**3. Discuss the process for “flagging” owners whose property lie within the Airport Zone, as defined by the revised Ordinance.**

James Mason stated that the Attorney recommended that a letter be sent to all property owners withing the zone and record each one in the property records with the county. Mr. Cornman recommended adding a copy of the letter and a transmittal of property owners to the City files.

**4. Discuss and need for permit fee for new construction within the Airport Zone, as defined by the revised Ordinance.**

The Board discussed the need for a fee to secure a permit for construction in the Airport Zone. All agreed that no fee would be levied, except in cases where outside assistance may be required to conduct a study to determine if the proposed construction might adversely affect aviation safety. In this case, the cost of the study is to be borne by the property owner. James noted that Legal Council advised that this must be included in the Ordinance, and James will see that it's properly included.

**5. Set meeting date to approve the revised Airport Zoning Ordinance.**

Board agreed to hold a meeting on March 23, 2021 at 4:00 pm to approve the ordinance. The ordinance will be placed on the March 23, 2021 Regular City Council Meeting for approval.

**PUBLIC COMMENTS**

none

**ADJOURNMENT**

Motion made by Julie Estlinbaum to adjourn the meeting. Second by Gary Faris. Voting yea: Chairman Cornman, Julie Estlinbaum, Gary Faris, Wayne Neal, and Steven Johnson. Motion carried and the meeting adjourned at 6:30 pm.

**PASSED AND APPROVED**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
William Cornman, Chairman

**Hazard Area and Compatible Land Use Zoning Regulations for Bay City Regional Airport**  
**Revised 1-14-21**

**DIVISION I – GENERALLY.**

**SEC. 18-35. – PURPOSE-SHORT TITLE.**

This section is adopted pursuant to the authority conferred by the Airport Zoning Act, as amended, Texas Local Government Code (hereinafter “TLGC”) Chapter 241,

It is hereby found that Airport Hazards and Obstructions have the potential for endangering the lives and property of users of Bay City Regional Airport and property or occupants of land in its vicinity; that an Obstruction may affect existing and future instrument approach minimums of Bay City Regional Airport; and that an Obstruction may reduce the size of areas available for the landing, taking off and maneuvering of aircraft. Accordingly, it is declared that:

- (1) The establishment of an Obstruction or development near an airport that is incompatible with the safe operation of that airport has the potential of being a public nuisance and may injure the region served by Bay City Regional Airport;
- (2) The encroachment of noise-sensitive or otherwise incompatible land uses within certain areas set forth hereinbelow may endanger the health, safety and welfare of the owners, occupants or users of the land;
- (3) It is necessary in the interest of the public health, public safety and general welfare that the creation or establishment of Obstructions that are a Hazard to Air Navigation or potential incompatible land uses be prevented;
- (4) The prevention of these Obstructions and land use conflicts should be accomplished, to the extent legally possible, by the exercise of the police power without compensation;
- (5) The Bay City Regional Airport fulfills an essential community purpose. It is further declared that the prevention of the establishment of Hazards to Air Navigation; the elimination, removal, alteration or mitigation of Hazards to Air Navigation; the marking and lighting of Obstructions; and the prevention of the establishment of incompatible land use on properties adjacent to the Airport are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

This Article shall be known and may be cited as the Consolidated Hazard Area and Compatible Land Use Zoning Regulations for Bay City Regional Airport.

State Law Reference – Power to adopt zoning ordinances for height hazard and compatible use, TLGC §§ 241.011, 241.012.

**Sec. 18-36. – DEFINITIONS.**

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

**ADMINISTRATIVE AGENCY:** means the appropriate person or office of a political subdivision which is responsible for the administration and enforcement of this Article. It shall be the duty of the office of the Bay City Regional Airport Manager to administer and enforce the regulations prescribed herein and is hereby designated as the Administrative Agency.

**AIRPORT:** means that area of land located within Matagorda County, Texas, currently referred to as the Bay City Regional Airport which is designed and set aside for the landing and taking off of aircraft, in the past, present, and future, used and to be used in the interest of the public for such purpose. The term includes an area with installations relating to flights, including installations, facilities, cargo handling, and bases of operations for tracking flights or requiring data concerning flights.

**AIRPORT ELEVATION:** means the established elevation of the highest point on the runway, either existing or planned, at the airport measured in feet above mean sea level (MSL), based on the North American Datum of 1983 (NAD 83). The airport elevation of Bay City Regional Airport is 45 feet above mean sea level (MSL). This elevation is defined in the current Airport Layout Plan, which is incorporated herein by reference.

**AIRPORT HAZARD:** means any structure or tree or use of land which obstructs that 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 any 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 LAYOUT PLAN:** means a planning document, required by the Federal Aviation Administration (FAA), for the identification of airport facilities, appurtenances, and proposed improvements associated with the airport. The current Airport Layout Plan for Bay City Regional Airport was approved on August 17, 2018. The official copy of the Airport Layout Plan is on file in the Airport Managers office.

**AIRPORT ZONING ACT:** means the Airport Zoning Act, TLGC Chapter 241.

**APPROACH SURFACE:** 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 18-40. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

**APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES:** These zones are set forth and further detailed in Section 18.40 of this Article.

**BOARD OF ADJUSTMENT:** The Bay City-Matagorda County Joint Airport Zoning Board for Bay City Regional Airport hereby appoints the Bay City City Council to act as the Board of Adjustment for this Article.

**COMPATIBLE LAND USE:** means a use of land in the vicinity of the Airport within the development zone that does not endanger that 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.

**COMPATIBLE LAND USE AREA:** meaning an area of land located in the vicinity of the airport as indicated on “Exhibit 3” attached hereto and made a part hereof.

**CONICAL SURFACE:** A surface extending outward and upward from the periphery of the horizontal surface for a horizontal distance of 4,000 feet.

**HAZARD TO AIR NAVIGATION:** An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

**HEIGHT:** For the purpose of determining the height limits in all zones set forth in this Article and shown on the map(s) herein, the datum shall be mean sea level elevation based on NAD 83 unless otherwise specified.

**HORIZONTAL SURFACE:** A horizontal plane above the airport, the perimeter of which is an oval constructed by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of Runway 13/31 and connecting the arcs by tangent lines.

**JOINT AIRPORT ZONING BOARD:** Means the Bay City-Matagorda County Joint Airport Zoning Board consisting of five members, two members appointed by the Commissioners’ Court of Matagorda County and two members appointed by the City Council of the City of Bay City with the fifth member elected by a majority of the members so appointed with the fifth member so elected to serve as chairman of said Joint Airport Zoning Board.

**LANDING AREA:** The surface area of the Airport used for the landing, take-off or taxiing of aircraft.

**NONCONFORMING USE:** Any preexisting structure, object of natural growth, or use of land which is inconsistent with the provisions of this Article or an amendment thereto.

**NON-PRECISION INSTRUMENT RUNWAY:** 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 non-precision instrument approach procedure has been approved or planned. Runway 13/31 is defined for this Article as a non-precision instrument runway.

**OBJECT OF NATURAL GROWTH:** Means any tree, shrub or other vegetation.

**OBSTRUCTION:** Any structure, growth, or other object, including a mobile object which exceeds a limiting height set forth in Section 18-40.

**PERSON:** 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.

**PRIMARY RUNWAY:** Existing or planned paved runway greater than 3200 feet in length on which a majority of the approaches to and departures from the airport occur. Runway 13/31 is the primary runway at the Bay City Regional Airport.

**PRIMARY SURFACE:** A surface longitudinally centered on a runway and extending 200 feet beyond each end of the 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 width of the primary surface for Runway 13/31 is 500 feet. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

**RUNWAY:** A defined area on an airport prepared for landing and take-off of aircraft along its length. The length of Runway 13/31 at Bay City Regional Airport is 5,107 feet.

**STRUCTURE:** An object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

**TRANSITIONAL SURFACES:** A surface extending outward at 90-degree angles to the primary and approach surfaces until they intersect the horizontal surface.

### **Sec. 18-37 Conflicting Regulations**

Other ordinances, articles in this ordinance and any other regulations applicable to the same subject matter, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

State Law Reference – Conflict of an airport hazard area and compatible land use zoning regulation with another regulation TLGC §241.901 and §241.902.

### **Sec. 18-38 – APPEALS.**

(1) Any person aggrieved, any taxpayer affected, or the Joint Airport Zoning Board that believes the decision of the Administrative Agency, made in administration of this Article, is an improper application of these regulations, may appeal to the Board of Adjustment.

(2) All appeals hereunder must be taken within a reasonable time, but no later than four (4) weeks after a decision is reached by the Administrative Agency, as provided by the rules of the Board of Adjustment, by filing with the Administrative Agency a notice of appeal specifying



the grounds thereof. The Administrative Agency, as shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Administrative Agency certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate, a stay would, in the opinion of the Administrative Agency, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by Order of the Board of Adjustment on notice to the Administrative Agency and on due cause shown.

(4) The Board of Adjustment shall fix a reasonable time for hearing appeals, 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 attorney.

(5) The Board of Adjustment may in conformity with the provisions of this Article, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination, as may be appropriate under the circumstances.

State Law Reference – Appeal to board, TLGC § 241.036

**Sec. 18-39. – JUDICIAL REVIEW.**

Any person aggrieved, any taxpayer affected, or the Joint Airport Zoning Board that believes the decision of the Board of Adjustment is illegal, may appeal to a court of competent jurisdiction, as provided by the Airport Zoning Act.

State Law Reference – Judicial review of board position, TLGC § 241.041

**SEC. 18-40. – ZONES.**

In order to carry out the provisions of this Article, there are hereby created and established certain zones which include all of the land lying beneath the Approach Surface, Transition Surface, Horizontal Surface, Conical Surface, and Wildlife Protection Control – as defined in **SEC. 18-36 Definitions** - as they apply to the Bay City Regional Airport. Such zones are shown on the Joint Airport Zoning Maps consisting of Exhibits 1 through 5, prepared by Professional Engineers (PEs) and dated December 2019, which are attached to this Article and made a part hereof. 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. The various zones are hereby established and defined as follows:

**(1) APPROACH ZONES**

(a) Runway 13 Approach Zone is established beneath the approach surface at the end of Runway 13 (northwest threshold) on Bay City Regional Airport for landings and take-offs. The inner edge of the approach zone shall have a width of 500 feet which coincides with the width of the primary surface at a distance of 200 feet beyond the end of the

runway, widening thereafter uniformly to a width of 2,035 feet at a horizontal distance of 5,317 feet beyond the end of the runway, its centerline being the continuation of the centerline of the runway.

(b) Runway 31 Approach Zone is established beneath the approach surface at the end of Runway 31 (southeast threshold) on Bay City Regional Airport for landings and take-offs. The inner edge of the approach zone shall have a width of 500 feet which coincides with the width of the primary surface at a distance of 200 feet beyond the end of the runway, widening thereafter uniformly to a width of 2,081 feet at a horizontal distance of 5,470 feet beyond the end of the runway, its centerline being the continuation of the centerline of the runway.

**(2) TRANSITION ZONES:** Transition Zones are hereby established beneath the transition surface adjacent to each runway and approach surface as indicated on the attached exhibits. Transition surfaces, symmetrically located on either side of runways, have variable widths as shown on the attached exhibits.

**(3) HORIZONTAL ZONE:** The volume beneath a horizontal plane 150 feet above the established airport elevation defined in the Airport Layout Plan.

**(4) CONICAL ZONE:** The volume beneath the conical surface extending outward and upward from the periphery of the horizontal surface sloping upward and outward twenty (20) feet horizontally for each foot vertically, for a horizontal distance of 4,000 feet.

**(5) WILDLIFE PROTECTION CONTROL ZONE:** The area located within 10,000 feet of the airport operations area and further defined in Section 18-44(2).

**Sec. 18-41. – HEIGHT LIMITATIONS.**

Except as otherwise provided in this Article, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Article to a height in excess of the applicable height limit herein established for each zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

**(1) HORIZONTAL ZONE:** Within the Horizontal Surface, one hundred and fifty (150) feet above the airport elevation or a height of 195 feet above mean sea level.

**(2) CONICAL ZONE:** Within the Conical Surface, sloping upward and outward twenty (20) feet horizontally for each foot vertically to a height of three hundred and fifty (350) feet above the airport elevation or a height of 395 feet above mean seal level.

*The Horizontal and Conical Zones with height limitation elevations are depicted in Exhibit 1.*

Beneath the Horizontal Zone lie the Approach and Transition Zones.

### **(3) APPROACH ZONES**

(a) Runway 13: Slopes upward and outward thirty-four (34) feet horizontally for each foot vertically, beginning at the end of and at the elevation of the primary surface and extending to its intersection with the Horizontal Zone 5,317 feet from the end of the runway.

(b) Runway 31: Slopes upward and outward thirty-four (34) feet horizontally for each foot vertically, beginning at the end of and at the elevation of the primary surface and extending to its intersection with the Horizontal Zone 5,470 feet from the end of the runway.

### **(4) TRANSITION ZONES**

(a) Runway 13/31: Slopes upward and outward seven (7) feet horizontally for each foot vertically, upward beginning at the sides of and at the same elevation as the primary surface and the approach surface and extending to its intersection with the Horizontal Zone.

*The Approach and Transition Zones with height limitation elevations are depicted in Exhibit 2. Height limitations within the Approach and Transition Zones supersede the Horizontal Zone limit.*

### **SEC. 18-42 – COMPATIBLE LAND USE AREA.**

The area within which land use compatibility zoning may take place shall be known as the “Compatible Land Use Area.” (Exhibit 3 of this Article.) The compatible land use area means that land located within and outside airport boundaries and within a rectangle bounded by lines located no farther than one and one-half (1.5) statute miles from the centerline of the primary runway and lines no farther than five (5) statute miles from each end of the runway. This land will be separated into tiers indicated below.

**(1) Tier 1.** Is the area within the airport boundaries as currently depicted on Exhibit 3, but is subject to change as the airport acquires land.

(a) Development on this land is prohibited without consent of the Administrative Agency.

**(2) Tier 2.** Is the area outside airport boundaries and within a rectangle bounded by lines located no farther than one and one-half (1.5) statute miles from the centerline of the primary runway and lines no farther than five (5) statute miles from each end of the runway.

(a) Within the jurisdiction of City of Bay City Public Works Department and Matagorda County Environmental Health Department, applications for building permit(s) within the limits of Tier 2 will require notification to the permittee by permit application that

property and improvements are located within Tier 2. The contents of the notice are in (b) below.

- (b) NOTICE: The land you are acquiring is located within The Compatible Land Use Area of the Bay City Regional Airport. The property may be subject to noise levels of DNL 65dB or higher because of aircraft take-off and landing patterns that may affect the enjoyment of your land and/or restrict the purposes for which you intend to use your land.
- (c) This notice is required to be disclosed by the seller, real estate agent, and/or title company to any potential buyer of land in Tier 1 or Tier 2 of the Bay City Regional Airport.
- (d) This notice must be recorded with the deed in the deed records of Matagorda County when a new deed is recorded.

State Law Reference – Controlled compatible land use area, TLGC § 241.003 (7)

**Sec. 18-43.- RESERVED (AIRPORT DEVELOPMENT)**

**Sec. 18-44. – OTHER USE RESTRICTIONS.**

**(1) Airport Safety.** Except as provided in this Section, no use may be made of land or water within the entirety of Matagorda County in such a manner as to create electrical interference with navigational signals or radio communications between the Airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the airport.

**(2) Wildlife Protection Control.** Except as provided in this Section, no use may be made of land or water within the Wildlife Protection Control Zone as established by this Article in such a manner as to create potential bird strike hazards to aircraft intending to use the airport. Such activities include but are not limited to: waste disposal (landfills), water management facilities (storm- and wastewater), water drainage retention ponds, wetlands, dredge spoil areas, incompatible agricultural uses, golf courses, and landscaped areas as shown in Exhibit 4, which is attached and incorporated herein.

State Law Reference – Reasonableness of airport zoning regulations, Local Government Code § 241.018

**Sec. 18-45. – NONCONFORMING USES.**

**(1) Regulations Not Retroactive.** The regulations prescribed by this Article shall not be construed to require changes in land use or the removal or other change or alteration of any structure not conforming to the regulations as of the effective date of this Article, or

otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in 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 whose completion is diligently pursued. For purposes of this Article, permitted non-conforming structures shall include all phases or elements of a multi-phase structure, regardless of whether actual construction has commenced, which has received a determination of no hazard by the Federal Aviation Administration under Part 77 of the Federal Aviation Regulation (14 Code of Federal Regulations, part 77) before the airport zoning regulations were adopted or amended under the Airport Zoning Act.

**(2) Marking and Lighting.** Notwithstanding the preceding provision of this section, the owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Administrative Agency to indicate to the operators of aircraft in the vicinity of the Airport, the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the Airport. If in the future the nonconforming structure is altered by eighty (80) percent or more, it will be the responsibility of the owner to provide the markers and lights at their expense.

State Law Reference – Nonconforming uses and structures, TLGC § 241.019

**Secs. 18-46 ---18-66. -- RESERVED**

**DIVISION 2: ADMINISTRATION.**

**Sec. 18-67. – PERMITS.**

**Application:** Within the jurisdiction of City of Bay City Public Works Department and Matagorda County Environmental Health Department, applications for building permit(s) within the Zones as noted in Sec. 18-40 above, will require a “Airport Hazard and Land Use Permit”. The Airport Hazard and Land Use Permit could restrict some aspects of the potential use, size, height, lighting, glare potential or construction of your building. Airport Hazard and Land Use Permit applications must be approved before any building permit will be issued. If an Airport Hazard and Land Use Permit is disapproved, a variance may be requested, see paragraph 4 below. The Airport Hazard and Land Use Permit will be given at the time of the building permit request and must be returned to the Administrative Agency in person, mail or email. The manner and address to return the application is described at the bottom of the permit. A copy of the approved or disapproved permit will be returned to the city or county before a building permit could be issued by either agency.

State Law Reference – Controlled compatible land use area, TLGC § 241.003(7)

**(1) Future Uses:** Except as specifically provided in a, b, c, d, and e hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefor shall have been applied for following Sec. 18-67 above and granted. Along with the permit application, those improvements that exceed height limitations under Section (e) below, a separate determination of application to the FAA for airspace study of the proposed change shall be made. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined 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 Section 18.67(4).

**(a)** In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree 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 tree or structure would extend above the height limits prescribed for such zones.

**(b)** In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree 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.

**(c)** 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 tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

**(d)** In areas lying within the limits of the Wildlife Protection Control Area, no permit shall be required for improvements that do not create an attractant for wildlife, particularly birds.

*The Wildlife Protection Control Zone is depicted in Exhibit 4.*

**(e)** In areas where the proposed structure or tree does not exceed a height based on a slope of one hundred (100) feet outward horizontally for each foot vertically, for a horizontal distance of 20,000 feet from the nearest point of the nearest runway, no permit shall be required for any tree or structure except when such tree or structure would extend above the height limit of any of the above subsections.

*The FAA Notification limits are depicted in Exhibit 5.*

**(2) Existing Uses:** No permit shall be granted that would allow the establishment or

creation of any airport hazard or permit a non-conforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of this Article 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.

**(3) Non-conforming Uses Abandoned or Destroyed:** Whenever the Administrative Agency determines that a non-conforming structure or tree has been abandoned or 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 this Article.

**(4) Variances:** Any person denied an Airport Hazard permit following Section 18-67 by the Administrative Agency may request a variance, by applying to the City Council of the City of Bay City sitting as the Board of Adjustment, following Section 18-38 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. 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 Administrative Agency for advice as to the aeronautical effects of the variance.

The Board of Adjustment shall allow a variance from an airport zoning regulation if:

- (a) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and
- (b) the granting of the relief would:
  - (i) result in substantial justice being done;
  - (ii) not be contrary to the public interest; and
  - (iii) be in accordance with the spirit of the regulation and this Article.
- (c) The Board of Adjustment may impose any reasonable conditions on the variance that it considers necessary to accomplish the purposes of this Article.

If the Administrative Agency 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 said application.

**(5) Obstruction Marking and Lighting:** Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Article and be reasonable in the circumstances, be so conditioned as to require the Permittee, to allow the Bay City Airport to install, operate, and maintain the necessary markings and lights.

State Law Reference – Permits, TLGC § 241.020; Board of Adjustment, TLGC §§ 241.032, .033 and .034

**Sec. 18-68 – ENFORCEMENT.**

It shall be the duty of the Administrative Agency to administer and enforce the regulations prescribed herein. Applications for permits shall be made to the Administrative Agency upon a form published for that purpose. Applications required by this Article to be submitted to the Administrative Agency shall be considered and granted or denied within a reasonable period of time. Applications for variances shall be made to the Board of Adjustment by first filing said application for variance with the Administrative Agency, who shall forthwith transmit said application to the Board of Adjustment for determination.

State Law Reference – Administrative agency, TLGC § 241.031

**Sec. 18-69 – BOARD OF ADJUSTMENT.**

As provided for under the authority of the laws of the State of Texas, including but not limited to the Airport Zoning Act, the Joint Airport Zoning Board for Bay City Regional Airport hereby appoints the Bay City City Council to act as the Board of Adjustment for this Chapter with all rules, membership, voting and findings to be in compliance with the procedures set forth in TLGC §§ 241.032, .033, .034, and this Section.

State Law Reference – Board of Adjustment, TLGC §§ 241.032, .033 and .034

**Sec. 18.70 – ENFORCEMENT AND REMEDIES.**

The Administrative Agency may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this Article or of any order or ruling made in connection with its administration or enforcement including, but not limited to, an action for injunctive relief as provided by the Airport Zoning Act.

State Law Reference – Additional remedies, TLGC § 241.044

**Sec. 18-71. – PENALTIES.**

Each violation of this Article or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than \$500.00 and each day a violation continues to exist shall constitute a separate offense.



**Section 18-81.- SEVERABILITY.**

If any of the provisions of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section 18-82. EFFECTIVE DATE.**

WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the Bay City – Matagorda County Joint Airport Zoning Board and publication and posting as required by law. Adopted by the Bay City-Matagorda County Joint Airport Zoning Board this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

<b>X</b>	<b>X</b>
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Chairman

Member

<b>X</b>	<b>X</b>
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Member

Member

<b>X</b>
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Member