

(O-92-51)

ORDINANCE NUMBER O-17756 (NEW SERIES)

ADOPTED ON APR 07 1992

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1,
DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE
BY AMENDING SECTION 101.0445 RELATING TO THE
AIRPORT OVERLAY ZONE.

WHEREAS, in 1985, The City of San Diego adopted an airport approach overlay zone to protect the approaches to Lindbergh Field; and

WHEREAS, since the enactment of the airport approach overlay zone several projects have been constructed in and around Lindbergh Field which have raised safety concerns for both the occupants of the projects and the occupants of the approaching aircraft; and

WHEREAS, the FAA regulations regarding the determination of hazard only address it as a problem when there is an actual penetration of the air space designated for aircraft approaches by a structure; and

WHEREAS, there is a need to further protect the health, safety and welfare of the citizens of San Diego from aircraft noise and the risk of impact by high speed aircraft; and

WHEREAS, the Council finds that a vertical building setback limitation of 50' from the established travelled way for aircraft would enhance the safety and comfort of persons residing or using buildings located in the aircraft approach overlay zone; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter X, Article 1, Division 4, Section 101.0445 of the San Diego Municipal Code be and the same is hereby amended to read as follows:

SEC. 101.0445 AIRPORT APPROACH OVERLAY ZONE

A. PURPOSE AND INTENT.

1. and 2. [No change.]

3. The San Diego Unified Port District (Port District), as the proprietor of the San Diego International Airport, Lindbergh Field, is provided the opportunity to participate in the evaluation process conducted by the FAA and CALTRANS.

4. Minimum vertical buffers are provided between FAA designated air corridors as identified on Map No. 842 and structures constructed within the airport approach overlay zone.

B. APPLICATION OF THE AIRPORT APPROACH OVERLAY ZONE

After a public hearing conducted pursuant to Chapter X, Article 1, Division 2 of the San Diego Municipal Code, and upon finding that the public health, safety, general welfare and sound zoning practice will be served thereby, the Airport Approach Overlay Zone shall be applied to all property located within the boundaries as described and shown on Map No. C-842, filed in the office of the City Clerk as Document No. 00-17756.

C. - D [No change.]

E. BUILDING PERMIT PROCESSING PROCEDURES

Within an Airport Approach Overlay Zone, no building permit shall be issued for a building, improvement or portion thereof to be erected, constructed, converted, established, altered, enlarged, or moved to the site until the following are received by the Building Inspection Department:

1. and 2. [No change.]
3. An acknowledgement from the Port District stating that it is aware of the proposed construction; and
4. A letter from the Port District stating that it concurs with the determination made by the Regional Office of the FAA. The Building Inspection Department shall give written notice to the Port District upon its receipt of the determination by the Regional Office of the FAA, and will include with such notice a copy of the FAA's determination. If the Port District's letter stating concurrence is not received within forty (40) calendar days from the issuance date of the mailing of the Building Inspection Department's notice to the Port District, the Building Inspection Department will assume concurrence, and may issue the building permit.
5. If a letter is received from the Port District stating that it does not concur with the Regional Office's determination and if the Port District has filed an appeal from the Western Pacific Regional

Office's decision, a building permit shall not be issued until all of the following occur:

(a) A letter of determination is received by the City from the Air Traffic Administrator of the FAA National Headquarters stating that the proposed construction does not constitute a hazard to air navigation;

(b) The Air Traffic Administrator's determination has become final;

(c) Sixty (60) calendar days have elapsed from the date on which the Air Traffic Administrator's determination became final; and

(d) The building is found to be in conformity with the provisions of Section 101.0445(G).

6. If the letter of determination from either the Regional Office or the National Headquarters of the FAA states that the proposed construction will constitute a hazard to safe and efficient use of airspace, a permit from CALTRANS is required to be obtained by the property owner in accordance with Section 21659 of the California Public Utilities Code before a building permit may be issued. The Building Inspection Department shall notify the Port District of the FAA's hazard determination and provide it with a copy of the determination.

7. If CALTRANS issues a permit for proposed construction which is determined to be a hazard by

either the Regional Office or the National Headquarters of the FAA, before issuance of a building permit, the City Council shall conduct a public hearing and provide notice of the hearing in accordance with Section 101.0220 of the San Diego Municipal Code. Notice of any such hearing shall be given to the Port District.

F. CITY COUNCIL HEARING PROCEDURE

1. In reviewing the application for the building permit for proposed construction, the City Council shall consider the following:

a. - c. [No change.]

d. The consistency or inconsistency of the building proposed in the application with the regulatory goals and objectives of the Airport Approach Overlay Zone.

e. [No change.]

2. At the conclusion of the public hearing, the City Council may either approve, deny or delay issuance of the building permit until one hundred twenty (120) calendar days following the conclusion of the public hearing, provided the City Council finds, based on the information provided, that the delayed issuance is in the public interest.

G. BUFFER ZONES ESTABLISHED

In addition to the standards and procedures in Section 101.0445(A) through (F), and except as provided in

Section 101.0445(G), no person shall construct any building or structure and no person shall cause any new use that results in any permanent encroachment within fifty (50) feet of the established FAA approach paths as set forth in Drawing No. C-842. Section 101.0445(G) is not intended to limit the construction of any building, structure or use that does not extend more than forty (40) feet above the existing grade of the property. Existing grade shall be the grades as established by Map No C-842 or by the City Engineer.

H. SEVERABILITY. Nothing in this section is intended to cause an unlawful taking of any of the affected properties. In the event that a court of competent jurisdiction enters a final judgement that the application of this section to any property has caused an inverse condemnation to occur or that this section is an invalid exercise of the City's police powers then this section shall be void and of no further force and effect.

Section 2. Exemptions

a. In areas of The City of San Diego other than the Coastal Zone, any project or any subsequently modified project meeting the criteria set forth in paragraphs b and c below, which was originally submitted for approval prior to the date of introduction of the ordinance shall be exempt from the provisions of this ordinance.

b. The provisions of this amended ordinance shall not be applicable to previously submitted projects within the 7:1

side slopes which have received both a "no hazard" determination from the Federal Aviation Administration and a determination of compliance from the San Diego Airport Land Use Commission prior to August 1, 1991.

c. The exceptions created pursuant to paragraph b shall be applicable only if the building permit applications for the buildings to be constructed (i) propose the construction of buildings substantially identical in height, volume, and location to those projects which received approval from the Federal Aviation Administration and the San Diego Airport Land Use Commission pursuant to paragraph b; and (ii) such applications are submitted for the exempted projects prior to January 28, 1995.

d. Exceptions shall only be applicable to projects within the 7:1 side slopes meeting the above criteria and shall not be applicable to any projects within the trapezoidal surface as shown on Drawing No. C-842.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage, however, the provisions of this ordinance shall not be applicable within the Coastal Zone until the thirtieth day following the date the California Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment. If this ordinance is not certified, or is certified with suggested modifications by the California Coastal Commission, the provisions of this ordinance shall be null and void within the Coastal Zone.

Section 4. Within the Coastal Zone, no permits for development inconsistent with the provisions of this ordinance shall be issued after the date on which this ordinance becomes effective within the Coastal Zone, as specified in Section 3 of this ordinance, unless an application for a Coastal Development Permit was made prior to the date of introduction of this ordinance.

APPROVED: JOHN W. WITT, City Attorney

By



John K. Riess
Deputy City Attorney

JKR:pev
10/25/91
02/04/92
Or.Dept:E&D
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Form=o.code

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APR 07 1992

Passed and adopted by the Council of The City of San Diego on.....
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Behr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By *Blonde L. Barnes* Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **FEB 04 1992**, and on **APR 07 1992**.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Blonde L. Barnes* Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number **0-17756** Adopted **APR 07 1992**