

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 001-043

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION) OF THE CODE OF ORDINANCES OF THE CITY BY ADDING A NEW DIVISION 3 TO ARTICLE III (MUNICIPAL AIRPORT) RELATING TO ACCESS FROM PROPERTY ADJACENT TO ADDISON AIRPORT AND PROVIDING FOR FEES AND CHARGES FOR SUCH ACCESS; ESTABLISHING A PROCESS FOR THE ISSUANCE OF AN ACCESS PERMIT AGREEMENT; PROVIDING THAT THE UNLAWFUL ACCESS TO OR FROM THE AIRPORT FROM AN OFF-AIRPORT PARCEL SHALL BE A MISDEMEANOR PUNISHABLE BY FINE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:


**Section 1. Amendment.** Chapter 14 (Aviation) of the Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by adding a new Division 3 to Article III (Municipal Airport) of Chapter 14 to read as set forth in Exhibit A attached hereto and incorporated herein for all purposes. The Amendment set forth herein shall supersede and replace any policy of the City heretofore adopted relating to the subject matter of the new Division 3.

**Section 2. Savings.** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

**Section 3 Severability.** The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 4. Effective Date.** This Ordinance shall become effective from and after its date of passage and publication as may be required by law.

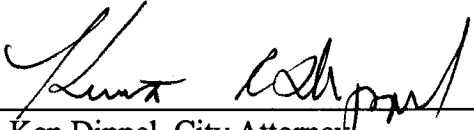
**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this  
the 11<sup>th</sup> day of December, 2001.

  
\_\_\_\_\_  
R. Scott Wheeler, Mayor

ATTEST:

By:   
\_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Ken Dippel, City Attorney

PUBLISHED ON: \_\_\_\_\_

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# **EXHIBIT A**

## **DIVISION 3. OFF-PREMISE ACCESS TO AIRPORT**

### **Section 14-100. Definitions.**

The following words, terms and phrases, when used in this Division 3 shall have the meanings ascribed to them in this Division, except where the context clearly indicates a different meaning:

*Access Taxiway* means an aircraft taxiway located either on the Airport or on property other than the Airport that connects into a taxiway on the Airport and that is constructed for the principal purpose of allowing aircraft to taxi between the Airport and an Off-Airport Parcel and is approved as an access taxiway by the Town of Addison by plat approval, easement dedication or approval on the Airport layout plan.

*Access Area* means that portion of an Off-Airport Parcel that is designated by the Off-Airport User of that Parcel as the area of such Off-Airport Parcel in which aeronautical services are directly or indirectly supported, including the area in which aircraft may be maneuvered, stored, repaired, operated or otherwise permitted, and/or is associated with the aeronautical activity. The Access Area will include the part of an Access Taxiway that is on off Airport land.

*Affiliate* means a person or entity owning a majority interest in an Off-Airport Parcel or a family member of an owner of an Off-Airport Parcel.

*Airport* means the area of land known as the Addison Airport which is now or hereafter designated and set aside for the landing and taking off of aircraft and for accessory uses thereto and used or to be used in the interest of the public for such purpose.

*Airport Manager* means the Manager of the Airport (whether designated pursuant to a contract between the City and a third party or otherwise) or the Airport Manager's designee.

*City* means the Town of Addison, Texas.

*City Manager* means the City Manager of the City or the City Manager's designee.

*DCAD* means the Dallas Central Appraisal District.

*FAA* means the Federal Aviation Administration or successor entity.

*Off-Airport Parcel* means any tract of land not located on the Airport that abuts or will abut an Access Taxiway as such may exist from time to time.

*Off-Airport User* means an owner or user (or its Affiliate) of an Off-Airport Parcel who desires to operate aircraft directly between the Off-Airport Parcel and the Airport.

*TxDOT* means the Texas Department of Transportation or successor entity.

**Section 14-101. Access to Airport by Off-Airport User.**

(a) Access to the Airport may be granted to an Off-Airport User from an Access Area subject to the terms and conditions of this Division and of an Access Permit Agreement issued to an Off-Airport User, as provided in Section 14-105 of this Division (the "Access Permit Agreement"). The access given shall be for the purpose of allowing an Off-Airport User to conduct aviation-related activities and aircraft operations on the Access Area of its Off-Airport Parcel in accordance with the terms of this Division and the Access Permit Agreement, so that an Off-Airport User will have the unobstructed access to Airport taxiways, leading to runways, for the purpose of maneuvering, taking off, and landing of aircraft. Such a right to access the Airport is granted for the term specified in the Access Permit Agreement and shall be in force and effect so long as the Airport is used for airport purposes and the Off-Airport User complies with and fulfills all the terms, conditions, provisions and regulations of this Division and the Access Permit Agreement. The actual access to the Airport is subject to the provisions of this Division and as specifically provided for in the Access Permit Agreement.

(b) An Access Permit Agreement, if issued, is subject to the initial and ongoing approval and consent by the FAA and by TxDOT, and is subject to the terms, conditions and requirements of any existing or future grant agreement(s) at or in connection with the Airport (and may be revoked, terminated or canceled if any such agreement(s) is in violation of any such grant agreement(s) or any FAA or TxDOT policy, rule, permit, standard, or regulation, or any local, state or federal law, policy, rule, permit, standard, or regulation, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded). In addition, the use of the Airport by an Off-Airport User pursuant to an Access Permit is subject to the provisions of this Division, all other applicable ordinances, rules, regulations, policies, standards, and permits of the City, all applicable laws, rules regulations, policies, standards, and permits (whether federal, state or local), and the Access Permit Agreement.

(c) The City, by and through the City Manager, may enter into an Access Permit Agreement in the form approved by the City Manager, provided that such form shall comply with the terms of this Division (but may include additional terms and conditions as approved by the City Manager).

(d) An Off-Airport User shall comply at all times with and abide by all environmental laws, rules, regulations, standards, and policies of any governmental authority (whether federal, state or local, and including, without limitation, the Environmental Protection Agency (or its successor entity), the Texas Natural Resources Conservation Commission (or its successor entity) and the City), and shall file any and all reports and provide any such information as may be required by any such governmental authority in connection therewith.

(e) An Off-Airport User shall annually submit (on a date set by the Airport Manager) an emergency plan for review and approval by the Airport Manager.

(f) An Off-Airport User shall submit to the Airport Manager the aircraft registration number, make, model and name of owner for all aircraft stored on the Access Area and the type or nature of aeronautical service(s) on the Access Area.

(g) All laws, ordinances, rules and regulations regarding signs and signage applicable to the Airport shall be applicable to each Access Area.

**Section 14-102. Access Area.**

(a) The extent or size of an Access Area shall be determined in accordance with the Access Permit Agreement process and requirements set forth in Section 14-105.

(b) An Access Area shall be separated from the remainder of the Off-Airport Parcel of which it is a part by a wall, fence or other physical barrier approved by the City Manager. The City Manager, the Airport Manager, or any other authority responsible for operation and safety of the Airport shall have the right to enter an Access Area from time to time and at any time to inspect the Access Area for conformance with this Division and/or the Access Permit Agreement or to perform any other regulatory requirements.

(c) All safety and operational rules and regulations established by the FAA or TxDOT, by any City ordinance, rule, regulation, policy, standard, or permit, or by any other regulatory authority with jurisdiction over the Airport, shall be applicable to each Access Area.

**Section 14-103. Access Taxiways.**

(a) An Off-Airport User may, with the City Manager's approval and with any approval as may be required of the FAA, TxDOT or any other regulatory authority having jurisdiction over the Airport, construct an Access Taxiway located off of the Airport in order to connect its Off-Airport Parcel with a taxiway located on the Airport. The number, exact location and configuration of an Access Taxiway requested by an Off-Airport User shall be subject to the approval of the City Manager, the FAA, TxDOT, and any other regulatory authority having jurisdiction over the Airport, taking into consideration, among other things, operational safety and efficiency considerations and compatibility with the Addison Airport Master Plan as approved by the City. Access Taxiways will be available for use by Off-Airport Users on Off-Airport Parcels abutting any portion of such Taxiways, it being the intent of the City to optimize the number of Off-Airport Users that can take advantage of the use of an Access Taxiway. Plans and specifications for Access Taxiways shall be approved by the City Manager prior to construction, and Access Taxiways shall be designed and constructed to meet the requirements of the projected use for said Access Taxiways. An Off-Airport User may be required by the City Manager to plat an Access Taxiway in accordance with law.

(b) After completion of construction of an Access Taxiway and inspection and approval by the City, the Access Taxiway shall be maintained by the owner(s) of the Off-Airport Parcel for whose benefit the Access Taxiway was constructed in a manner that meets the standards of the City, FAA, TxDOT or any other regulatory authority having jurisdiction over Addison Airport. City maintenance responsibility shall be limited to Airport runways, taxiways, ramps, and related Airport facilities owned by the City.

**Section 14-104. Prohibited Uses.**

(a) The sale of fuel for aviation or other purposes and activities in connection therewith on, from, or in connection with the use of an Access Area and Off-Airport Parcel is prohibited, and the sale of fuel for aviation purposes shall occur only on the Airport. No business offering to the general public the sale of fuel will operate on an Off-Airport Parcel and Access Area. No person, including an Off-Airport User, shall be permitted or allowed to self-fuel or sell fuel (whether on or off the Airport) for aviation or any other purpose at or in connection with any Off-Airport Parcel or Access Area. Notwithstanding the above, a person or entity authorized to sell fuel at Addison Airport to the public may be permitted to sell fuel and dispense such fuel into an aircraft located on an Access Area.

(b) Any use on an Access Area other than a use specified in the applicable Access Permit Agreement shall be prohibited.

**Section 14-105. Access Permit Agreement.**

(a) *Application.* An Off-Airport User who desires access to the Airport from an Off-Airport Parcel shall apply to the Airport Manager for a permit to receive such access, which access shall be reflected and the terms and conditions of which shall be set forth in an Access Permit Agreement. The Off-Airport User shall provide to the Airport Manager such information regarding the Off-Airport Parcel as the Airport Manager may request, and shall deliver to the Airport Manager a survey plat (prepared by an engineer registered in or architect licensed by the State of Texas) and which shall include, among other things, a depiction and legal description of the Off-Airport Parcel and the proposed or requested Access Area, as the case may be, including a depiction and computation of the size of the Access Area in square footage.

(b) *Application Review and Approval.* The Airport Manager shall provide a complete and completed copy of the application for an Access Permit Agreement to the City Manager along with the Airport Manager's recommendation as to the application. The City Manager shall either approve or disapprove the application. If the application is approved, the City Manager is authorized to issue and execute an Access Permit Agreement.

(c) *Conditions for Issuing; Issuance.* If the application for an Access Permit Agreement has been fully completed, and if the survey plat and Access Area comply with terms and conditions of this Division and the terms and conditions of any applicable laws, ordinances, rules, regulations, policies, or permits, and if the applicant has provided all information or materials as may be required by an Access Permit Agreement, and if the Applicant is current on any and all City taxes, fees, charges, assessments, or fines and in compliance with all ordinances, rules, and regulations of the City, then the City Manager may issue and execute an Access Permit Agreement.

(d) *Contents of Access Permit Agreement; Amendment.* The Access Permit Agreement shall specify the size of the Access Area and the fee to be charged as provided for herein, shall include the fee to be paid in connection with the access to the Airport, and shall contain such other terms, conditions, and requirements as the City Manager may deem appropriate (including, without limitation, insurance and indemnity requirements, no assignment or other transfer without the City's prior consent, default, termination and remedies therefor,

standards regarding environmental matters, authorized uses, standards and requirements regarding Addison special events, late charges and interest, and compliance with the terms and conditions of this Division). An Off-Airport User shall have the right, subject to the review and approval by the Airport Manager, to modify the Access Area on its Off-Airport Parcel from time to time, provided that such user notifies the Airport Manager of such modification, provides a new survey plat of the revised Access Area which complies with the provisions of this Division and any and all applicable laws, rules or regulations, and receives approval for such modification in the form of an amendment to the Access Permit Agreement. The fee shall be adjusted as a result of any such modification.

(e) *Revocation; Reinstatement.* The Airport Manager may revoke, cancel or terminate the Access Permit Agreement of any off-Airport User who either (1) fails to pay the applicable fee or otherwise fails to comply with any provision of the Access Permit Agreement (in accordance with that Agreement), this Division, and any applicable laws, rules, regulations, policies, or permits, or (2) fails to pay prior to delinquency the lawfully assessed and levied City ad valorem taxes on its Off-Airport Parcel, or (3) as otherwise set forth in the Access Permit Agreement. Any revoked, canceled, or terminated Access Permit Agreement may be reinstated only after the Airport Manager has determined that sufficient extenuating circumstances exist to merit consideration for reinstatement, and upon payment of any outstanding fees plus interest as may be required by the said Agreement, the correction of any non-compliance, and/or the payment of any such taxes plus all penalties and interest, as applicable.

(f) *Renewals/Extensions of Access Permit.* A renewal and/or extension of an Access Permit Agreement shall be considered as long as the City owns the Airport, subject to the City's determination that continuation of the Access Permit Agreement and any access in connection therewith is desirable for the City or the Airport, is consistent with the City's and/or Airport purposes and objectives, and is in compliance and accordance with the terms, conditions, and standards set forth in this Division. All renewals and/or extensions shall be subject to the same conditions provided herein for issuance of an Access Permit Agreement.

(g) *Term.* The length of the term for a new Access Permit Agreement is as follows:

1. For an Access Area, on which a hangar facility is existing or is proposed to be constructed which is 5,000 square feet in size or less, a term not to exceed fifteen (15) years.

2. For an Access Area, on which a hangar facility is existing or is proposed to be constructed which is greater than 5,000 square feet and equal to or less than 10,000 square feet in size, a term not to exceed twenty (20) years.

3. For an Access Area, on which a hangar facility is existing or is proposed to be constructed which is greater than 10,000 square feet in size, an additional five (5) years may be added to the term so that the term given will not exceed twenty-five (25) years.

(h) *Renewals and/or Extensions.* One year or year to year renewals of an Access Permit Agreement are discouraged. A renewal term between five (5) years and ten (10)



years shall be considered standard, but a renewal shall not exceed a ten (10) year period of time. A renewal and/or extension may be granted under the conditions and according to the requirements for an Access Permit Agreement as set forth in this Division.

(i) *Prohibition Against Unpermitted Access; Penalty.* It shall be unlawful for any person to access the Airport from an Off-Airport Parcel unless such person holds and is a party to a valid Access Permit Agreement or is accessing the Airport or the Off-Airport Parcel for a purpose which is authorized by the Access Permit Agreement for the said Off-Airport Parcel. A violation of this provision constitutes a misdemeanor punishable by fine or State or Federal law, and/or may result in revocation, cancellation or termination of the Access Permit Agreement.

**Section 14-106. Fee Calculation; Time Of Payment; Penalty For Late Payment.**

(a) The annual fee to be charged for an Airport Access Permit Agreement shall be calculated according to the following formula:

Annual Fee = (i) Average fair market value (as set by DCAD) of real property adjacent to the Airport (the "Average Fair Market Value"), x (times) (ii) .08 (being 8% of the fair market value of real property and being a reasonable amount that real property will generate annually in lease income) x (times) (iii) .82 (the said 82% being a reasonable adjustment for debt incurred in connection with the acquisition and improvement of real property (eg, 10% to 15% of fair market value) plus a percentage of annual ad valorem property taxes (2.5%)) (the product of the said (i), (ii), and (iii) being the "Access Rate"), x (times) (iv) the square foot size of the Access Area.

The Average Fair Market Value and Access Rate shall be determined annually by the Airport Manager and approved by the City Manager. The annual fee for each Access Permit Agreement shall be adjusted every two years based on the then current Average Fair Market Value and Access Rate.

This Division is being adopted in calendar year 2001. The average fair market value (as set by DCAD) of real property adjacent to the Airport is \$4.00 per square foot. Applying that number (\$4.00 per square foot), the formula set forth above results in an Access Rate in the amount of \$0.26 ( $\$4.00 \times .08 \times .82$ ), which may be used for calendar year 2002.

Example: Access Area contains 29,190 sq. ft; Average Assessed Value is \$4.00 per square foot; Annual Fee =  $\$4.00 \times .08 \times .82 = \$0.26 \times 29,190 \text{ sq. ft} = \$7,659.46$  annual fee or \$638.29 per month.

(b) Notwithstanding paragraph (a) of this Section, the minimum annual fee shall be \$1,000.

(c) The initial annual access fee shall be due and payable upon issuance of the Access Permit Agreement; no access shall be permitted until the said fee is paid. Thereafter, the access fee shall be paid on the payment date(s) prescribed in the Access Permit Agreement in not fewer than: semi-annual payments for fees less than \$1,000.00 annually; not fewer than quarterly payments for fees greater than \$1,000.00 but less than \$3,500.00 annually; and not fewer than

monthly payments for fees greater than \$3,500.00 annually. A penalty may be assessed for a late payment.