

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 06-054

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION) OF THE CODE OF ORDINANCES OF THE CITY BY AMENDING DIVISION 3 OF ARTICLE III (MUNICIPAL AIRPORT) THEREOF IN ITS ENTIRETY 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; PROVIDING THAT THE UNLAWFUL ACCESS TO OR FROM THE AIRPORT FROM AN OFF-AIRPORT PROPERTY 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 (the "Code") of the Town of Addison, Texas (the "City") is hereby amended by amending Division 3 to Article III (Municipal Airport) of Chapter 14 in its entirety to read as set forth in Exhibit A attached hereto and incorporated herein for all purposes.

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; provided, however, that notwithstanding the amendment to Division 3, Article III, Chapter 14 of the Code as provided for in this Ordinance, Division 3, Article III, Chapter 14 of the Code as it existed prior to the adoption and the effective date of this Ordinance shall continue in effect for purposes of all matters concerning access to Addison Airport prior to the effective date of this Ordinance, including, without limitation, matters concerning payment of fees for access to Addison Airport and matters concerning any complaint, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen.

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.

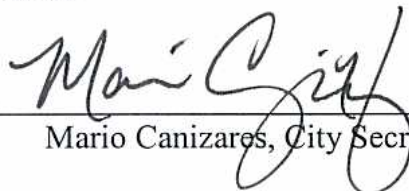
Section 4. Effective Date. This Ordinance shall become effective from and after its date of passage and publication as may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 28th day of November, 2006.



Joe Chow, Mayor

ATTEST:

By: 

Mario Canizares, City Secretary

APPROVED AS TO FORM:

By: 

Ken Dippel, City Attorney

Published:
02/26/07

EXHIBIT A

DIVISION 3. OFF-AIRPORT 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 Permit means a permit issued by the Town of Addison to an Off-Airport User permitting the Off-Airport User the unique privilege of using the Airport Public Area directly from the Off-Airport Property for either a Recreational/Incidental Business Use or Commercial Aviation Use.

Access Taxiway means an aircraft taxiway located on Off-Airport Property that connects or feeds into a taxiway on the Airport and that is constructed for or intended to be used for the principal purpose of allowing aircraft to taxi between the Airport and one or more Off-Airport Properties and is approved as an access taxiway by the City as evidenced by plat approval, easement dedication or as reflected in the Airport Layout Plan.

Airport Public Area Expenses means an amount of money equal to all known expenses and costs incurred or expended by the City to operate the Airport Public Area for the benefit, use and privilege of the general aviation public during the most recently completed fiscal year as accounted for by the City, and being an amount equal to Total Airport Expenses adjusted by (i) a reduction for any expenses and costs directly attributed to the operation and maintenance of Non-Public Airport Facilities, (ii) a reduction using a commercially reasonable allocation of Airport related expenses and costs that cannot be specifically attributed to either the expense and cost of operating the Airport Public Area or Non-Public Airport Facilities of the Airport (e.g., without limitation, the pro-rated costs of City staff overhead related to Airport operation and maintenance, Airport management fee, and certain maintenance tools and material used while maintaining the Airport without distinction to its public and non-public use), (iii) a reduction as a result of Public Revenue actually collected, and (iv) an allowance for the City's five (5) year Airport capital improvements plan reserve.

Airport Public Area Maintenance Rate means a dollar amount calculated on a per square foot basis of the Airport Public Area Expenses by dividing the Airport Public Area Expenses by the total land area (in gross square feet) of all Non-Public Airport Facilities and Total Off-Airport Properties.

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

Aircraft Owner means anyone who owns or leases a specific aircraft and holds the exclusive right to fly or sell the aircraft (including but not limited to an individual, corporation, chief pilot, leasing company, or aircraft manager).

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

Airport Director means the director or manager of the Airport (whether designated pursuant to a contract between the City and a third party or otherwise).

Air Navigation Facility means: (a) a facility, other than one owned and operated by the United States, used in or available or designed for use in aid of air navigation, including a structure, mechanism, light, beacon, marker, communications system, or other instrumentality; (b) a device used or useful as an aid in the safe landing, navigation, or takeoff of aircraft or the safe and efficient operation or maintenance of an airport; or (c) a combination of those facilities or devices.

Airport Public Area means that portion of the Airport, which is now or hereafter considered by the FAA, TxDOT, the City, or any other regulatory agency with oversight of the Airport to be the obligation and responsibility of the City to operate and maintain for the common use and benefit of the general aviation public. The Airport Public Area includes, without limitation, any Air Navigation Facility or structure designed and intended to serve the general public not specifically subject to a lease agreement; all runways, taxiways and other common-use paved, graveled or turfed areas and their respective protection zones, safety areas and/or object free areas; any other facility or facilities at the Airport that are eligible for federal or state grants or subsidies awarded on the basis of their serving the benefit of the public (including runways, taxiways, vehicle streets and alleys, public aircraft aprons/tarmac, vehicle parking areas, and drainage structures); field lighting and associated beacon and lighted wind and landing direction indicators; security, fire, and emergency medical protection; protection of aerial approaches to the Airport; directional signs; and perimeter or restricted access fences. Generally, the Airport Public Area is the total area and facilities of the Airport exclusive of all Non-Public Airport Facilities, and may vary from time to time depending on the total land comprising the Airport and the change of land use at the Airport. (the Airport less Non-Public Airport Facilities equals the Airport Public Area).

Access Fee means the fee to be paid annually to the City for access to the Airport from an Off-Airport Property as described in this Division.

City means the Town of Addison, Texas, a home-rule municipality.

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

Commercial Aviation Use means the operation of a business enterprise providing aviation-related goods, services, or facilities for a commercial purpose (including, without limitation, any activity by the operator securing earnings, income, compensation (including exchange or barter of goods and services), and/or profit from said activities, whether or not such objectives are accomplished) to users of the Airport.

FAA means the Federal Aviation Administration or its successor entity.

Non-Public Airport Facilities means generally any land, building, or other facility or improvement on the Airport that is subject to or otherwise intended to be subject to an arrangement that prohibits or restricts access or use by the general aviation public. By way of example, a portion of Airport land leased to a third person, together with any improvements thereon constructed by the third person pursuant to the lease, would be Non-Public Airport Facilities.

Off-Airport Access means access to the Airport for aviation purposes from Off-Airport Property in accordance with this Division, an Access Permit, and applicable law, rule, or regulation. Off-Airport Access is frequently referred to as a "through-the-fence" operation, even though an airport's perimeter fence may be imaginary.

Off-Airport Property means the gross land area of a lot or tract of land which abuts the Airport or an Airport Taxiway and may be used or intended to be used in whole or in part for aviation-related purposes.

Off-Airport User means an owner of the fee simple title of an Off-Airport Property who is issued and holds an Access Permit to conduct Off-Airport Access operations as either a Recreational/Incidental Business User or as a Commercial Aeronautical User directly between the Off-Airport Property and the Airport in accordance with the Access Permit issued by the City.

Public Revenue means a sum of revenue collected (or a commercially reasonable allocation thereof) by the City available for the offset of the cost to operate and provide airport services and benefits used by the general aviation public. Examples of Public Revenue include, but are not necessarily limited to, an allocated portion of fuel flowage revenue, fund account interest income, U. S. Department of Agriculture trash disposal revenue, and revenue received from the processing and clearing of U. S. Customs operations.

Recreational/Incidental Business Use means the use of an Off-Airport Property for aviation operations which is either recreational in nature or is incidental to a non-aviation business conducted on the Off-Airport Property (i.e. a business that uses an aircraft as an incidental use in support of the business, such as, for example, an architect, technology company, or an oil company using an aircraft to transport people, not product).

Total Airport Expenses means an amount of money equal to the all known expenses and costs incurred and expended by the City to operate the Airport during the most recently completed fiscal year.

Total Off-Airport Properties means the aggregate of all properties, each of which is or may become an Off-Airport Property, as determined by the City.

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

Section 14-101. Findings.

In enacting this Division, the Town finds that:

(a) Off-Airport Access is a unique class of aviation operation at Addison Airport, which is neither itinerant in nature nor based from any aviation facility located within the Airport. Within this class there are two distinct sub-classes: (i) the Recreational/Incidental Business Use, and (ii) the Commercial Aviation Use.

(b) The Airport Public Area constitutes the property and improvements on and within the Airport that are maintained by the City for the public's common use and are available to and used by Off-Airport Users.

(c) The Airport Public Area Expenses constitute the expenses and costs of operation to the City of the Airport Public Area.

(d) Where the aviation use of an Off-Airport Property is a Commercial Aviation Use, such use may compete directly with the operation of commercial aviation enterprises located within the Airport. Accordingly, it is fair, reasonable, and equitable, for the purpose of setting a fee for access to the Airport from an Off-Airport Property, to distinguish between those Off-Airport Users who use their Off-Airport Property primarily for a Commercial Aviation Use, and those who use their Off-Airport Property primarily for a Recreational/Incidental Business Use.

(e) Off-Airport Commercial Aviation Users can be expected to use the Airport in proportion to the gross land area or parcel size of their Off-Airport Property. It is fair, reasonable and equitable to use the gross land area or parcel size of an Off-Airport Commercial Aviation User to allocate and charge each such user for Airport Public Area Expenses as set forth herein.

(f) Off-Airport Recreational/Incidental Business Users can be expected to use the Airport significantly less than Commercial Aviation Users. It is fair, reasonable and equitable to allocate and charge all such users for Airport Public Area Expenses through a flat fee.

(g) Airport Public Area Expenses can be expected to rise with inflation. It is fair, reasonable and equitable to redetermine the Airport Public Area Maintenance Rate and to adjust Access Fees for inflation as set forth herein. Other methods for estimating or measuring the changes in Airport Public Area Expenses over time would be impracticable and unreasonable under the circumstances.

(h) Off-Airport Users provide indirect benefits to the Airport and enhance opportunities for future aeronautical growth and development for the benefit of the Airport, the public and on-Airport operations. It is fair, reasonable and equitable to adjust the Airport Public Area Maintenance Rate as set forth herein to recognize these indirect benefits and to promote the further economic development and use of the Airport and aeronautical properties adjacent to the Airport while ensuring fair and equitable competitive operation as between on-Airport and off-Airport operations.

(i) The fees set forth in this Division for access to the Airport from an Off-Airport Property are reasonable and uniform for the same class of privilege or service, and are established with due regard to the property and improvements used and the expenses of operation to the City.

(j) The terms of this Division satisfy and comply with both Federal law, rules and regulations and State law, including, without limitation, FAA grants and assurances and, to the extent that it applies, the Texas Transportation Code.

Section 14-102. Access to Airport by Off-Airport User; Lien.

(a) Any unauthorized access to the Airport Property either by foot, vehicle or aircraft is expressly prohibited. Except for authorized access, including authorized access from an Off-Airport Property as set forth in this Division, the City Manager is charged with the responsibility to safeguard the Airport by constructing and maintaining at all times a fence or other form of barrier sufficient to restrict unauthorized pedestrian, vehicle or aircraft access to and from the Airport Property. If access to the Airport from an Off-Airport Property is not authorized by the City for any reason (including, without limitation, for breach by an Off-Airport User of an Access Permit) and the City constructs or places a fence or other barrier to prevent access to the Airport from an Off-Airport Property, the Off-Airport User shall, as a condition precedent to obtaining access to the Airport, reimburse the City for all costs incurred by the City in constructing or placing and in removing the fence or other barrier.

(b) Use and access to the Airport from an Off-Airport Property may be permitted to an Off-Airport User subject to the terms and conditions of an Access Permit issued by the City as provided for in Section 14-105 of this Division (the "Access Permit"). The Access Permit allows an Off-Airport User the unique privilege of accessing the Airport from an Off-Airport Property for either ca Recreational/Incidental Business Use or a Commercial Aviation Use. Such privilege is granted for the term specified in and is subject to all of the terms and conditions of this Division, the Access Permit, and all other applicable laws, ordinances, rules, codes, standards, policies, regulations, grant assurances, and grant agreements, whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded, and subject to the use of the Airport for airport purposes and the Off-Airport User's compliance with and fulfillment of all of the terms, conditions, provisions and regulations of this Division, all other applicable laws, rules, and regulations, and the Access Permit.

(c) Any Access Permit, if issued in the Town's sole discretion, 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) or grant assurance(s) at or in connection with the Airport (and may be revoked, terminated or canceled immediately if any such Access Permit(s) is in violation of any such grant agreement(s) or grant assurance(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).

(d) The City, by and through the City Manager, may issue an Access Permit 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).

(e) 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 Commission on Environmental Quality (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.

(f) An Off-Airport User shall annually submit (on a date set by the Airport Director) a property security plan in form and content acceptable to the Airport Director.

(g) An Off-Airport User shall register and periodically affirm the appropriate contact information of the Off-Airport User as required by the Airport Director. The Off-Airport User shall also register or periodically affirm with the Airport Director all aircraft stored or based at the Off-Airport Property by providing the Airport Director each aircraft's registration number ("N" number), make, model, and the Aircraft owner's name and contact information.

(h) Access gates placed by an Off-Airport User which restrict access from the Off-Airport Property to the Airport shall include a sign stating no-trespassing, emergency contact information, the building address for City emergency personnel, and such other information as the City may require. The form and content of such sign shall be subject to the approval of the City.

(i)(1) *Lien.* The City shall have a continuing lien against each Off-Airport Property to secure payment of any delinquent annual Off-Airport Access fee (or portion thereof), as well as interest thereon, late fees, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the City may, as further evidence and notice of the lien, execute and record a document setting forth as to any Off-Airport Property, the amount of delinquent sums due the City at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the City to execute and record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

(2) *Enforcement of Lien.* The lien may be enforced by judicial or non-judicial foreclosure. Each owner of an Off-Airport Property, by accepting an Access Permit, grants to the City, whether or not it is so expressed in the Access Permit, a private power of non-judicial sale to be exercised in accordance with Chapter 51, Texas Property Code, as amended. The City may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee or attorney, to exercise the City's lien rights on behalf of the City, including the power of sale.

(3) *Subordination of Lien.* The lien provided for herein is subordinate to the lien of any recorded mortgage or deed of trust against an Off-Airport Property.

(4) *Effect of Conveyance.* An owner that conveys title to an Off-Airport Property shall not be liable for any delinquent annual Off-Airport Access fee that is attributable to the period after the conveyance of the Off-Airport Property. However, a conveyance of

title to an Off-Airport Property shall not affect the lien or relieve the owner that conveys the Off-Airport Property from personal liability for any delinquent annual Off-Airport Access fee attributable to the period prior to the date of the conveyance.

(5) *Effect of Foreclosure.* The foreclosure of a mortgage, trustee's sale of a deed of trust or a deed in lieu thereof will extinguish the lien described herein as to annual Off-Airport Access fee payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof; such foreclosure shall also cause the immediate termination of the Access Permit. However, a foreclosure of a mortgage, trustee's sale of a deed of trust or a deed in lieu thereof will not relieve such Off-Airport Property or owner thereof from liability for any annual Off-Airport Access fee payment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a mortgage deed of trust or a deed in lieu thereof shall not release the owner whose Off-Airport Property is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the owner's obligation to pay annual Off-Airport Access fees attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof.

(vi) *Cumulative Remedies.* This subsection is cumulative of any other remedies, methods of collection or security available to the City under this Division, the City Charter, or any other ordinances, laws, rules, regulations, standards, or permits of the City, the State, or the United States. This subsection does not affect the City's authority to refuse to furnish access to the Airport, to terminate an Access Permit, or to take any other action, when any delinquent annual Off-Airport Access fees exist.

Section 14-103. Security.

(a) The City Manager may at any time require all pedestrian, vehicular and aviation access between the Off-Airport Property and the Airport to be controlled at all times using automated controlled-access devices, gate operators, closers with automatic locks or other such reliable devices, or any other means of affirmative control acceptable to the City Manager, that serves to continually safeguard the Airport from unauthorized access from the Off-Airport Property. The City Manager, the Airport Director, or any other authority responsible for operation and safety of the Airport shall have the right to inspect the Off-Airport Property from time to time for conformance with this Division and/or the Access Permit.

(b) The City Manager, the Airport Director, or any other authority responsible for operation and safety of the Airport is authorized by this Division to take appropriate action to ensure the Airport is safeguarded at all times, including the temporary override of gates, closers and locks of damaged or otherwise found inoperable gates and/or doors, or the placement of blockades or other types of barriers or fencing material as needed. Such safeguards, when taken, shall be clearly posted and not removed except as authorized by the City Manager or Airport Director.

(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 (whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded), shall be applicable to each Off-Airport Property.

Section 14-104. 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 and subject to any and all laws, ordinances, rules, codes, regulations, policies, and standards of the City (whether currently in effect, hereafter adopted, or as may be amended, modified, changed, or superseded), construct, at the sole cost and expense of the Off-Airport User, an Access Taxiway to connect the Off-Airport Property to a nearby taxiway located within the Airport Public Area. The number, exact location and design specification of an Access Taxiway requested or constructed by an Off-Airport User shall be subject to the prior review and approval of the City Manager (and the FAA, TxDOT, and any other regulatory authority having jurisdiction over the Airport if so required), taking into consideration, among other things, operational safety and efficiency considerations and compatibility with the Addison Airport Master Plan as finally approved by the City from time to time. 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 or exceed the requirements of the projected use for said Access Taxiways. An Off-Airport User may be required by the City to plat an Access Taxiway within the Off-Airport Property in accordance with law.

(b) Once constructed, inspected and accepted by the City, that portion of the Access Taxiway that lies within the Airport shall become the sole property of the City and shall immediately become a part of the Airport Public Area unless, at the sole discretion of the City Manager or Airport Director, public use and access is restricted for safety or operational reasons. Upon acceptance by the City, that portion of the Access Taxiway that lies within the Airport shall thereafter be policed, maintained and repaired by the City at the City's sole cost and expense, save and except any abnormal wear and tear or abuse of the Access Taxiway on the Airport evidenced by one or more Off-Airport Access Users who may, under said circumstances, be assessed by the City for all or a reasonable portion of the City's actual cost of repair(s).

(c) It shall be the responsibility of the Off-Airport User to maintain, repair or replace any portion of the Access Taxiway situated within the legal boundary of the respective Off-Airport Property including but not limited to the taxiway surface and subsurface, storm drainage, directional signs, lighting or other navigational aids, fencing, gates/doors and locking devices. If in the opinion of the City Manager or Airport Director, the portion of the Access Taxiway situated on the Off-Airport Property is unsafe or presents an operational or safety hazard to the Airport or any user of the Airport, the City Manager or Airport Director may, at their respective sole discretion, (i) take whatever commercially reasonable actions deems necessary to remedy the unsafe condition, and any and all costs thereof shall be reimbursed to the City by the Off-Airport User, or (ii) after giving written notice to the Off-Airport User of not less than fifteen (15) days, the City Manager may suspend Off-Airport Access from the Off-Airport Property until the unsafe condition is corrected to the satisfaction of the City.

Section 14-105. 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 Off-Airport Property is strictly prohibited unless conducted directly by a licensed fueler holding a valid and current Addison Airport fuel-dispensing license issued by the City. No person, including, without limitation, an Off-Airport User, any person or entity related thereto, and any tenant, subtenant, or licensee thereof, 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 Property.

(b) The use of an Off-Airport Property is subject to applicable zoning regulations and all other applicable laws, ordinances, codes, rules, regulations, and standards of the City and any other governmental entity having jurisdiction over the Off-Airport Property.

Section 14-106. Access Permit.

(a) *Application.* An Off-Airport User who desires access to the Airport from an Off-Airport Property shall make application (the "Application") to the Airport Director. In connection with the Application, an applicant shall provide to the Airport Director all such information regarding the Off-Airport Property as may be required by the Airport Director including, without limitation:

(1) a legal description of the Off-Airport Property and the total area of the Off-Airport Property calculated in square feet;

(2) a description of the desired or intended use of the Access Area (being either Recreational/Incidental Business Use or Commercial Aviation Use);

(3) if for Commercial Aviation Use, the applicant shall provide a description of the business services to be offered and details of any FAA certifications it will be operating under;

(4) a schedule of all aircraft to be stored or based at the Off-Airport Property by providing Airport Director each aircraft's registration number ("N" number), make, model and the Aircraft Owner's name and contact information (or any other information required by the Airport Director time from time);

(5) the names of all Affiliates and other individuals to be authorized under the Access Permit;

(6) evidence of financial responsibility as required under the Access Permit;
and

(7) a security plan in form and content acceptable to the Airport Director.

(b) *Application Review and Approval.* The Airport Director shall review each Application for Off-Airport Access for its sufficiency under this Division. If the Application is complete (as determined by the Airport Director) and is consistent with this Division, the Airport Director shall deliver to the City Manager: (i) a copy of the Application, (ii) an Access Permit signed by the proposed Off-Airport User, (iii) acknowledgement of receipt of any fees due to the City in accordance with this Division or an Access Permit, and (iv) the Airport Director's written recommendation for the City Manager's consideration. The City Manager shall either approve or disapprove the Application.

(c) *Conditions for Issuing; Issuance.* If the Application for an Access Permit is complete and if the applicant has provided all information or materials as may be required by an Access Permit, and if the applicant is current on any and all City taxes, fees, charges, assessments, or fines and in compliance with all laws, ordinances, codes, rules, policies, and regulations of the City, then the City Manager may issue and execute an Access Permit on behalf of the City.

(d) *Contents of Access Permit; Periodic Recertification; Amendment.* The Access Permit shall identify the use and/or intended use of the Off-Airport Property (i.e., either a Recreational/Incidental Business Use or a Commercial Aeronautical Use), specify the size of the Off-Airport Property (for a Commercial Aviation Use only) and the fee to be paid in connection with any Off-Airport Access, and shall contain such other terms, conditions, and requirements as the City Manager or Airport Director 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 Access Permit may not be sold, assigned, sublet, pledged, conveyed, or otherwise transferred without the prior written consent of the City. Periodically, the Airport Director may request an Off-Airport User to recertify the Off-Airport User's Access Permit by affirming the authorized users, registered aircraft, contact information, updated emergency and security plan, size of Off-Airport Property (for a Commercial Aviation Use only), permitted use or other terms and conditions of this Division.

(e) *Revocation; Access Prevented; Reinstatement.*

(i) The City Manager may revoke, cancel or terminate the Access Permit and access from an Off-Airport Property of any Off-Airport User who either (1) fails to pay the applicable fee, or fails to comply with any provision of the Access Permit, this Division, and any applicable laws, rules, codes, standards, regulations, policies, or permits, or (2) fails to pay prior to delinquency the lawfully assessed and levied City ad valorem taxes on the applicable Off-Airport Property, or (3) as otherwise set forth in the Access Permit.

(ii) If access from an Off-Airport Property to the Airport is revoked, canceled, or terminated, the City shall secure the Airport by erecting a fence or other barrier to prevent access to the Airport from the Off-Airport Property. If a fence or other barrier is erected, the affected Off-Airport Owner shall, prior to and as a condition of reinstatement of access from the Off-Airport Property to the Airport, reimburse the City for all costs (including, without limitation, attorney's fees) incurred by or on behalf of the City to collect any amounts due for access, to erect and/or remove a fence or other barrier, and other applicable costs.

(iii) Any revoked, canceled, or terminated Access Permit and access to the Airport from an Off-Airport Property may be reinstated only after the City Manager has determined that sufficient extenuating circumstances exist to merit consideration for reinstatement, and upon payment of any outstanding fees or costs plus interest as may be required, the correction of any non-compliance, and/or the payment of any such taxes

plus all penalties and interest, as applicable. Access to the Airport shall be reinstated within 72 hours following the City Manager's determination of the same.

(f) *Term.* Subject to the provisions, terms and conditions of this Division and an Access Permit, an Access Permit shall be issued for a term of ten (10) years (the "Initial Term"). At the end of the Initial Term, an Access Permit shall be automatically renewed for an additional period of ten (10) years, and at the end of the second ten (10) year period shall be automatically renewed for an additional period of ten (10) years (each such renewal term of ten (10) years is a "Renewal Term"), for a total term of thirty (30) years. Thereafter, an Access Permit may be renewed in accordance with then applicable laws, ordinances, rules, standards and regulations.

(g) *Renewals/Extensions of Access Permit.* A renewal and/or extension of an Access Permit may be considered (but not necessarily authorized or granted, which shall be in the City's sole discretion) by the City as long as: (i) the City will still own and control the Airport during the modified term; (ii) the continuation of the Off-Airport Access is, in the City's sole discretion, desirable for the City or the Airport; (ii.) is consistent with the City's and/or Airport purposes and objectives; (iii) no more than fifteen (15) years remain under the prevailing term and such renewal or extension does not exceed any duration of term authorized by law; (iv) 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, as the same may be amended or modified in whole or in part from time to time.

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

Section 14-107. Fee Calculation; Time of Payment; Penalty for Late Payment.

(a) *Determination of Airport Public Area Maintenance Rate.* On or before December 1, 2006 and on or before December 1 of every other year thereafter (e.g., 2008, 2010, etc.), the Airport Director shall determine the Airport Public Area Maintenance Rate.:

(b) *Adjustment to the Airport Public Area Maintenance Rate.* In order to, among other things, promote the economic development and use of the Airport and the development of aeronautical properties adjacent to the Airport and for other proper and beneficial purposes, in the discretion of the City the then applicable Airport Public Area Maintenance Rate may be adjusted by reducing the same in an amount determined appropriate by the City (the "Adjusted Airport Public Area Maintenance Rate"). The Adjusted Airport Public Area Maintenance Rate shall become effective on January 1 of the year next following such determination, and shall be used to establish the Access Fee for any new or extended Access Permit issued while it is in effect.

(c) *Access Fee.*

(i) *Commercial Aviation Use.* For each Off-Airport Property where the stated aviation use is a Commercial Aviation Use, the Access Fee shall be calculated as follows (the "Commercial Aviation Use Access Fee Formula"):

Adjusted Airport Public Area Maintenance Rate (then applicable)

x (times)

Off-Airport Property (gross land area in square feet)

=

Access Fee for Commercial Aviation Use

(ii) *Recreational/Incidental Business Use.* For each Off-Airport Property where the stated use is a Recreational/Incidental Business Use, giving due regard and consideration to the Airport Public Area and the Airport Public Area Expenses, the Access Fee shall be calculated at a rate and/or set in an amount which is smaller than the rate and/or amount of the fee for a Commercial Aviation Use.

Example (Commercial Aviation Use):

| | |
|---|-------------------|
| Total Airport Expenses (Airport Enterprise Fund) | \$3,851,878 |
| Less Non-Public Airport Facilities Expenses (including cost allocations provided for in sub-paragraph (ii) of the definition of Airport Public Area Expenses set forth in this Division) | (\$1,273,527) |
| Less Public Revenue offset | (\$ 746,293) |
| Plus 5 year CIP Reserve Allowance | <u>\$ 871,808</u> |
| <i>Airport Public Area Expenses</i> | \$2,703,866 |
| Square Footage of all Non-Public Airport Facilities and Total Off-Airport Properties | 9,232,967 Sq. Ft. |
| <i>Airport Public Area Maintenance Rate (Airport Public Area Expenses ÷ square footage of all Non-Public Airport Facilities and Total Off-Airport Properties)</i> | \$0.29/Sq. Ft. |
| <i>Adjusted Airport Public Area Maintenance</i> | \$.08/Sq. Ft. |

Rate

*Square footage of specific Off-Airport Property
(stated aviation use is a Commercial Aviation Use) 20,000 square feet*

Access Fee for Off-Airport Property (paid annually, subject to adjustment) 20,000 square feet x \$0.08 = \$1,600.00

(d) *Payment.* The initial Access Fee shall be due and payable in accordance with Section 14-106(b), above (but in any event, not later than the time of issuance of an Access Permit); Airport access shall not be permitted prior to the issuance of the Access Permit and until the said fee is paid. Thereafter, the Access Fee shall be paid in advance on or before the following payment date(s): if an Access Fee is less than \$5,000.00 annually, payment of the Access Fee shall be made on or before January 1 of each year; if an Access Fee is \$5,000 or more annually, payment may be made in not fewer than two equal installments, each installment being due on or before January 1 and July 1 of each year. A penalty may be assessed for a late payment in addition to the City's cost of collecting any such delinquent sum.

(e) *Modification of Size of Off-Airport Property.* If the total square footage of an Off-Airport Property (having as its stated aviation use a Commercial Aviation Use) is legally modified (including any platting or re-platting as may required) (i.e., the legal description has been changed or altered), the Off-Airport User owning the Off-Airport Property shall promptly report in writing such modification to the City. Upon such notice, the Access Permit shall be amended to reflect the modified land area and applicable Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

(f) *Modification of Off-Airport Use.* If an Access Permit is issued for an Off-Airport Property having a Commercial Aviation Use as its stated aviation use, and the stated aviation use is subsequently changed to a Recreational/Incidental Business Use, the Off-Airport User owning the Off-Airport Property shall report the same in writing to the Airport Director, and the Airport Director shall investigate the report and if the Airport Director concludes that such use has in fact changed, the Access Permit shall be amended to reflect the change in use and the modification of the Access Fee, if any, and a pro-rata adjustment to the Access Fee shall be made as appropriate.

If an Off-Airport User desires to change its Recreational/Incidental Business Use Access Permit to a Commercial Aviation Use, the Off-Airport User shall submit a written request to the Airport Director, which request shall be considered and processed in accordance with and as provided for in Section 14-106. If the City approves the requested change, the Access Permit shall be amended to reflect the change in use and an adjustment to the Access Fee, and a pro-rata adjustment to the Access Fee shall be made as appropriate

(g) *Adjustment to Access Fee.*

(i) Commencing on January 1 of the second year next following the year of the effective date of an Access Permit and every two (2) years thereafter (hereinafter referred

to as the "Adjustment Date"), the Access Fee shall be adjusted as follows (a "CPI Adjustment"):

(A) The Access Fee shall be adjusted to reflect changes in the Consumers' Price Index - All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index ("Basic Index") is the Consumer Price Index existing on January 1 of the year in which an Access Permit is effective. The current index ("Current Index") is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

(B) Beginning with the calendar year of the then applicable Adjustment Date, the Access Fee shall be adjusted so that it equals the product of the Access Fee multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall such monthly rent ever be decreased below the initial amount of the Access Fee.

(C) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible (as reasonably determined by the City) shall be substituted therefor.

(ii) An Access Fee shall be further adjusted as follows: At or about the beginning of each Renewal Term (as defined in Section 14-106(f), above) the Access Fee shall be determined by recalculating the same in accordance with the provisions of this Division (e.g., for a Commercial Aviation Use, the Access Fee shall be recalculated pursuant to the Commercial Aviation Use Access Fee Formula). Such Access Fee shall then be subject thereafter to CPI Adjustment.

(h) *Initial Access Fees.* Initial Access Fees are as follows:

(i) For December 1, 2006, the Airport Director has determined the Airport Public Area Maintenance Rate to be \$0.29 per square foot. The Adjusted Airport Public Area Maintenance Rate for the first two year period, commencing January 1, 2007 is hereby set at \$0.08 per square foot. Access Fees for Commercial Aviation Uses for such period shall be determined in accordance with the Commercial Aviation Use Access Fee Formula.

(ii) For each Off-Airport Property where the aviation use is a Recreational/Incidental Business Use, the Access Fee shall be Seven Hundred Fifty and No/100 Dollars (\$750.00).