

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 013-047

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING SECTION 14-106 (ACCESS PERMIT) THEREOF REGARDING OFF-AIRPORT ACCESS PERMITS, COMMONLY KNOWN AS THROUGH-THE-FENCE PERMITS, BY PROVIDING (I) TIME PERIODS FOR REVIEW OF AN APPLICATION FOR AN ACCESS PERMIT AND MATTERS AND CRITERIA TO CONSIDER IN REVIEWING AN APPLICATION AND IN MAKING A RECOMMENDATION AND DETERMINATION REGARDING AN APPLICATION, (II) REVISIONS TO ALLOW PERMIT REVOCATION WHERE OFF-AIRPORT PROPERTY IS NOT USED FOR THE PURPOSES FOR WHICH A PERMIT WAS ISSUED, (III) THAT AN ACCESS PERMIT ISSUED AFTER NOVEMBER 12, 2013 SHALL HAVE A TERM BASED ON THE AMOUNT AND NATURE OF CAPITAL INVESTMENT MADE IN FACILITIES USED IN CONNECTION WITH AN ACCESS PERMIT ACCORDING TO THE CITY'S GUIDELINES, WITH A MINIMUM INITIAL TERM NOT TO EXCEED 10 YEARS AND AUTOMATIC RENEWAL TERM OF 5 YEARS AND A MAXIMUM INITIAL TERM OF 25 YEARS AND AUTOMATIC RENEWAL TERM OF 15 YEARS, AND (IV) OTHER MODIFICATIONS TO SECTION 14-106 AS SET FORTH HEREIN; AMENDING SECTION 14-107 (FEE CALCULATION, TIME OF PAYMENT, PENALTY FOR LATE PAYMENT) OF THE CODE OF ORDINANCES BY ADDING LANGUAGE TO PARAGRAPH (2) OF SUBSECTION (G) (ADJUSTMENT TO ACCESS FEE) THEREOF REGARDING AN ACCESS PERMIT MODIFIED RENEWAL TERM; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") is the owner of the Addison Airport, and the City's Code of Ordinances includes provisions in Section 14-106 thereof regarding access to the Airport from property that abuts the Airport or an Airport taxiway; and

WHEREAS, the City Council desires to amend Section 14-106 as set forth herein, and hereby finds that the amendments included in this Ordinance are for the safety and protection and in the best interests of the Airport and the traveling public and in the best interests of the health, safety, and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending Chapter 14 (Aviation), Article III (Municipal Airport), Division 3 (Off-Airport Access to Airport), Section 14-106 (Access Permit) thereof as set forth below, and all other chapters, articles, sections, subsections, sentences, phrases and words of the Code of Ordinances are not amended hereby.

A. Section 14-106 of the Code of Ordinances of the City is amended to read as follows (additions are underlined; deletions are ~~struck through~~):

Sec. 14-106. Access permit.

(a) *Application.* The owner of the fee simple title of an off-airport property~~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 off-airport property~~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:

- (1) A copy of the application;

- (2) An access permit signed by the proposed off-airport user;
- (3) Acknowledgement of receipt of any fees due to the city in accordance with this division or an access permit; and
- (4) The airport director's written recommendation for the city manager's consideration. In making such recommendation, the airport director shall consider, among other things, the Airport Master Plan (as applicable) and all applicable laws, ordinances, rules, codes, standards, guidelines, policies, regulations, grant assurances, and grant agreements. The city manager shall either approve or disapprove the application.

(c) *Conditions for issuing; issuance.* Following receipt of the application and all accompanying information and materials, the city manager will review the same and may, within 15 days after such receipt, request that the airport director provide to the city manager other information in connection with the application as the city manager deems necessary. Following receipt of such other information, if any, the city manager will, in considering approval or disapproval of the application, review and consider the application and all materials and information pertaining to the application, including, among other things, the Airport Master Plan (as applicable) and all applicable laws, ordinances, rules, codes, standards, guidelines, policies, regulations, grant assurances, and grant agreements. 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, and the issuance of the permit will be consistent and in conformity with, the Airport Master Plan (as applicable), the Minimum Standards for the Conduct of Commercial Aeronautical Activities (applicable to commercial aviation use), and all applicable laws, ordinances, codes, rules, standards, guidelines, policies, and regulations, grant assurances, and grant agreements of the city, then the city manager may issue and execute an access permit on behalf of the city. The city manager's determination of issuance and execution of an access permit shall be made within 30 days after the city manager's receipt of the application and all materials, and information described herein (or, if the approval or consent of the FAA or other state or federal agency, entity, or authority is appropriate, necessary or required, such longer period of time as may be needed to obtain such approval or consent, if any). Written notice of the city manager's determination shall be provided to the applicant.

(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, identify and specify all aircraft to be stored or based at the off-airport property by stating each aircraft's registration number ("N" number), make, model and the aircraft owner's name and contact information, require compliance with the Minimum Standards for the Conduct of Commercial Aeronautical Activities (in the case of a commercial aviation use), 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 (not to be unreasonably withheld, and not to be withheld on the basis of a lawful use of the off-airport property existing as of July 10, 2007), 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.*

(1) The ~~airport director~~~~city manager~~ may revoke, cancel or terminate the access permit and access from an off-airport property of any off-airport user ~~who either:~~

a. who 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, and including, without limitation, fails to comply with the Minimum Standards for the Conduct of Commercial Aeronautical Activities (applicable to commercial aviation use); or

b. who fails to pay prior to delinquency the lawfully assessed and levied city ad valorem taxes on the applicable off-airport property; or

c. who fails to use or discontinues the use of the off-airport property that is the subject of the access permit for a recreational/incidental business use or commercial aviation use as described in the access permit (except as provided for in Section 14-107(f), below); or

d. as otherwise set forth in the access permit.

(2) 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.

(3) Any revoked, canceled, or terminated access permit and access to the airport from an off-airport property may be reinstated only after the ~~airport director~~~~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 airport director's~~city manager's~~ determination of the same.

(f) *Term.* Subject to the provisions, terms and conditions of this division and an access permit and except as provided below in this subsection (f), an access permit shall be issued for a term of 25 years (the "initial term"). At the end of the initial term, an access permit shall be automatically renewed for an additional period of 15 years (the "renewal term"). Thereafter, an access permit may be renewed in accordance with the Airport Master Plan (as applicable) and then applicable laws, ordinances, rules, standards, codes, guidelines, policies, and regulations, grant assurances, and grant agreements.

The term of an access permit issued after November 12, 2013 shall be based on the then current guidelines for the length of a term that have been developed and approved by the city manager in consultation with the airport director, which guidelines shall include criteria and standards that reflect a length of term based on the amount and nature of capital investment made in facilities to be used for aviation purposes in connection with the access permit. The minimum term of such permit shall be 10 years with an automatic renewal period of 5 years and the maximum term of such permit shall be 25 years with an automatic renewal period of 15 years (the renewal period of such permit, whether 5 years or otherwise, being a "modified renewal term"). Thereafter, an access permit may be renewed in accordance with the Airport Master Plan (as applicable) and applicable laws, ordinances, rules, standards, codes, guidelines, policies, regulations, grant assurances, and grant agreements.

(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:

- (1) The city will still own and control the airport during the modified term;
- (2) The continuation of the off-airport access is, in the city's sole discretion, desirable for the city or the airport;
- (3) Is consistent with the city's and/or airport purposes and objectives;
- (4) No more than 15 years (or 5 years for an access permit issued after November 12, 2013) remain under the prevailing term and such renewal or extension does not exceed any duration of term authorized by law;
- (5) 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.

B. Section 14-107 (fee calculation; time of payment; penalty for late payment) of the Code of Ordinances of the City is amended by amending subsection (g) (adjustment to access fee) thereof by amending paragraph (2) thereof to read as follows (additions are underlined; deletions are ~~struck through~~):

(g) *Adjustment to access fee.*

(1) Commencing on January 1 of the second year next following the year of the effective date of an access permit and every two 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.

(2) An access fee shall be further adjusted as follows: At or about the beginning of the automatic renewal term or the modified renewal term, as applicable (as defined in subsection 14-106(f), above) and at or about the beginning of any additional renewals thereafter as may be approved by the city, the access fee shall be determined by recalculating the same in accordance with

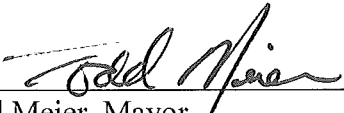
the provisions of this division (e.g., for a commercial aviation use, the access fee shall be recalculated pursuant to the commercial aviation use access fee formula). Such access fee shall then be subject thereafter to the CPI adjustment as set forth in and in accordance with subsection (g)(i) of this section.

Section 3. Savings; Repealer. 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 the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, paragraph, phrase, word, or provision of this Ordinance or the application of any section, subsection, sentence, paragraph, phrase, word, or provision hereof to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by the valid judgment or decree of a court of competent jurisdiction, the same shall not affect the validity of any other section, subsection, phrase, word, or provision of this Ordinance or the application of any other section, subsection, sentence, paragraph, phrase, word, or provision to any person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional section, subsection, sentence, paragraph, phrase, word, or provision, and to this end the remainder of this Ordinance shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law, including but not limited to the City Charter and ordinances.


PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 12th day of November, 2013.



Todd Meier, Mayor

ATTEST:
By: 

Matt McCombs, City Secretary

APPROVED AS TO FORM:
By: 

John Hill, City Attorney