

## ARTICLE IX. EXTRATERRITORIAL JURISDICTION MILITARY PROTECTION AREAS

### STATEMENT OF PURPOSE

*Pursuant to Texas Local Government Code § 43.0117., the purpose of this article is to promote the public health, safety, morals, general welfare, and to protect and preserve the training missions of the military in certain areas within five miles of a military base where an active training is conducted by applying land use controls in the manner recommended by the most recent joint land use study.*

### DIVISION 1. – ETJ MILITARY PROTECTION AREAS GENERALLY

Sec. 35-901. - **Purpose.** The purpose of this article is to establish Extraterritorial Jurisdiction Military Protection Areas and the associated Land Use Controls in certain areas within five miles of a military base where active training is conducted in the manner recommended by the most recent joint land use study in order to protect a military mission.

Sec. 35-902. – **General Provisions.**

- (a) **Applicability.** The provisions of this article shall apply only to such areas of the ETJ which have rejected annexation and voted to apply land use controls in the manner recommended by the most recent joint land use study at a duly called election.
- (b) **Conflicts with other provision of this chapter.** Where the provisions of this division conflict with other provisions of this chapter, the provisions of this division shall prevail.

Sec. 35-903. – **Designated ETJ Military Protection Areas.**

- (a) **“ETJMPD-1” Camp Bullis/Camp Stanley ETJ Military Protection Area.**
- (b) **“ETJMPD-2” Lackland/Medina Annex ETJ Military Protection Area.**

### DIVISION 2. – ETJ MILITARY PROTECTION AREA LAND USE CONTROLS

Sec. 35-904. – **Land Use Intensity Standards.**

- (a) **Applicable Standards.** Land Use intensity standards shall be applicable in designated ETJ Military Protection Areas. Land Use intensities shall be enforced in the platting process and/or building permit process. The development services director shall review each plat and/or building permit for conformity with the land use category of the City's Comprehensive Plan.
- (b) **Method of Enforcement.** The allowable intensity for a particular property shall be enforced by regulating the lot size in terms of units per acre and land use in terms of compatible land uses.

- (1) When lot size is regulated in terms of units per acre, an enforceable note shall be placed on the plat indicating the allowable minimum and maximum units per acre as defined by the related zoning districts identified in the land use categories of the city's Comprehensive Plan. The minimum and maximum units per acre shall be derived based upon the related zoning districts identified in the land use categories of the city's Comprehensive Plan.

*NOTE EXAMPLE: The Future Land Use Plan designates this property as "Medium Density Residential." Allowable lot sizes for single-family residential uses range from 3,000 square feet to 6,000 square feet. There are no minimum lot sizes for multi-family uses and non-residential uses.*

- (2) When lot use is regulated in terms of compatible land use, an enforceable note shall be placed on the plat indicating the related zoning districts identified in the land use categories of the city's Comprehensive Plan, and further stating that allowable land uses shall be consistent with those zoning areas.

*NOTE EXAMPLE: The Future Land Use Plan designates this property as "Medium Density Residential." Allowable land uses shall be as defined in the Unified Development Code for any property zoned "R-3", "R-4", "RM-4", "R-5", "RM-5", "RM-6", "MF-18", "MF-25", "MF-33", "MH", "MHC", and "MHP"..*

- (c) **Derivation of Allowable Standards.** The allowable lot sizes, units per acre, and/or use shall be derived by determining the land use category associated with the property according to the Comprehensive Plan.

- (1) The Comprehensive Plan includes permitted zoning area designations corresponding to zoning areas codified in Article III of this Chapter.

- (2) The allowable lot size, units per acre, and/or use for a property shall correspond to the minimum standards for any related zoning area as determined by the Comprehensive Land Use Category.

- (d) **Amendments to Comprehensive Land Use Category Designations.** Amendments to the Land Use Category Designations shall utilize the process codified in Section 35-420(f) of this chapter.

- (e) **Limitation On Single Family Residential Intensities Within A Certain Distance Of Military Bases.** In order to limit encroachments and sustain training and operations on a military base, within a designated Military Sound Attenuation District, no single-family residential development shall exceed a density of 10.9 units per acre

and no platted lot for single family residential use shall be less than 4,000 square feet in area.

Sec. 35-905. – **Military Lighting Overlay Area Standards.** Military Lighting Overlay Area Standards shall be applicable in all ETJ Military Protection Areas. The Military Lighting Overlay District standards and administrative remedies thereof shall be identical to Section 35-399.04. of this Chapter.

Sec. 35-906. – **Military Sound Attenuation Area Standards.** Military Sound Attenuation Area Standards shall be applicable in certain areas of designated ETJ Military Protection Areas. Areas where these standards are applicable shall be designated by the City Council. Where imposed, the Military Sound Attenuation District standards and administrative remedies thereof shall be identical to Section 35-399.05. of this Chapter.

Sec. 35-907. – **Airport Hazard Overlay Area Standards.** Airport Hazard Overlay Area Standards shall be applicable in certain areas of the ETJ Military Protection Areas. Areas where these standards are applicable shall be designated by the City Council. Where imposed, the Airport Hazard Overlay District standards and administrative remedies thereof shall be identical to Section 35-331. of this Chapter except that the this section shall be enforceable in areas outside of the corporate limits inside the ETJ Military Protection Areas.

- (a) **Imaginary Surfaces (Kelly Air Force Bases).** The following airport imaginary surfaces are hereby created and establish the limit above which any projection of a structure, natural growth or object constitutes an airport hazard under these regulations:
  - (1) **Primary Surface.** The primary surface is centered longitudinally and laterally about each runway. It extends two hundred (200) feet beyond each end of the runway in a horizontal plane at the same elevation as the associated runway end, except at military airports, where primary surface length is the same as the runway length. Between the ends of the runway it has a uniform gradient as established by the runway and elevations. The width varies as follows:
    - A. Instrument runways, municipally-owned airports, one thousand (1,000) feet.
    - B. Non-instrument runways, municipally owned airports, five hundred (500) feet.
    - C. Runway 16-34, Kelly Air Force Base: two thousand (2,000) feet.

Sec. 35-908. – **Tree Preservation Standards.** Tree Preservation Standards shall be applicable in all areas of designated ETJ Military Protection Areas. Where imposed, and notwithstanding any applicable rights determination, the Tree Preservation standards and administrative remedies thereof shall be identical to Section 35-523. of this Chapter.

Sec. 35-909. – **Edwards Aquifer Recharge Protection Standards.** Edwards Aquifer Recharge Protection Standards shall be applicable in certain areas of ETJ Military Protection Areas designated by the City Council.

- (a) **Abrogation and Greater Restrictions.** This division is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where the language of this division conflicts with language used elsewhere in this chapter, that which imposes the more stringent restrictions shall prevail.
- (b) **Purpose.** The Edwards Recharge Zone overlay area (ERZD) has been established for locations where the Edwards and associated limestone formations come to the surface to provide a recharge area for the underground water supply contained to provide a recharge area for the underground water supply contained within these formations. The recharge area also can provide an entrance to the underground water supply for contaminated water run-off from uses on the recharge zone as well as from the related sensitive area. Thus this recharge zone area is designed to not allow land uses that would produce toxic, corrosive, polluted, poisonous, radioactive, unpalatable, or otherwise dangerous substances injurious to the public health or which could otherwise adversely affect the water supply, and thereby minimizing the risk of potential occurrences wherein such substances could enter the water reservoir. Land uses permitted are those not having operations, production, or storage of hazardous materials that could contribute contaminants to the water supply. Additional land uses are permitted with appropriate restrictions, which will protect against the spread of contaminants due to the operations.
- (c) **Boundaries.** The limits of the Edwards Recharge Zone are described on United States Geological Survey Quadrangle Maps, being copies of the official maps in the offices of the Texas Natural Resource Conservation Commission (TNRCC), and are defined in the Texas Administrative Code, 31 TAC 213. If the limits of the ERZD cannot be accurately determined, then the zoning board of adjustments shall interpret the area boundaries after obtaining such geologic information as is necessary from the San Antonio Water System, the TEQC, the United States Geological Survey (USGS) or other properly designated agency.
- (d) **Derivation of Allowable Uses in the Edwards Recharge Zone (ERZD).** The allowable land uses in areas within the ERZD shall be derived by determining the Comprehensive Land Use category associated with the property according to the Comprehensive Plan.
- (1) The Comprehensive Plan includes permitted zoning area designations corresponding to zoning areas codified in Article III of this Chapter.
  - (2) The allowable ERZD land use for a property shall correspond to the permitted zoning area as determined by the Comprehensive Plan Comprehensive Land Use Category with a further limitation that if a use which is otherwise permitted is not permitted by virtue of the ERZD regulations, then that use shall not be allowable in the ERZD
  - (3) Allowable uses in the ERZD in the ETJ Military Protection Area shall be identical to those uses allowed in the ERZD inside the corporate limits as identified in Section 35-311 of this Chapter.
  - (4) Where a use in the ERZD is allowed by a specific use authorization as designated in Table 311-1 or Table 311-2 of this Chapter, the procedures in

Section 35-423 of this Chapter shall be followed. In addition to the requirement in Section 35-423, a Site Investigation Report and Water Pollution Abatement Plan.

A. **Site Investigation Report.** The staff recommendation on all Extraterritorial Jurisdiction Military Protection Area ERZD specific use authorization cases shall include a report from the San Antonio Water System Resource Protection and Compliance Department. The report shall contain a background description to include a discussion of the development, surrounding uses, geologic factors, on-site point and non-point pollution sources, sewer lines, proposed pollution abatement structures, and whether a water pollution abatement plan has been submitted. The report shall also contain a summation of facts and implications on the recharge zone; recommendation on use, pollution abatement plan needs, and monitoring requirements; and maps of the development and surrounding developments.

1. **Exceptions.** A site investigation report shall not be required for Extraterritorial Jurisdiction Military Protection Area Plan Amendment cases initiated by the City of San Antonio, however the San Antonio Water System may prepare an optional report at no cost to the city.

B. **Water Pollution Abatement Plan.** As a condition of all Extraterritorial Jurisdiction Military Protection Area ERZD specific use authorization cases, a water pollution abatement plan approved by the TCEQ shall be required for all regulated development as established and defined by Texas Administrative Code, 31 TAC 213, prior to the issuance of a building permit and/or certificate of occupancy.

(f) **Amendments to Comprehensive Land Use Category Designations in the ERZD.** Amendments to the Comprehensive Land Use Category Designations in the ERZD shall utilize the process codified in Section 35-420(f) of this chapter except that a Site Investigation Report and Water Pollution Abatement Plan shall be required for all Comprehensive Plan Amendments for properties located over the ERZD as specified below:

(1) **Site Investigation Report.** The staff recommendation on all Extraterritorial Jurisdiction Military Protection Area Plan Amendment cases within the ERZD shall include a report from the San Antonio Water System Resource Protection and Compliance Department. The report shall contain a background description to include a discussion of the development, surrounding uses, geologic factors, on-site point and non-point pollution sources, sewer lines, proposed pollution abatement structures, and whether a

water pollution abatement plan has been submitted. The report shall also contain a summation of facts and implications on the recharge zone; recommendation on intensity, pollution abatement plan needs, and monitoring requirements; and maps of the development and surrounding developments.

A. **Exceptions.** A site investigation report shall not be required for Extraterritorial Jurisdiction Military Protection Area Plan Amendment cases initiated by the City of San Antonio, however the San Antonio Water System may prepare an optional report at no cost to the city.

(2) **Water Pollution Abatement Plan.** As a condition of all Extraterritorial Jurisdiction Military Protection Area Plan Amendment cases within the ERZ, a water pollution abatement plan approved by the TCEQ shall be required for all regulated development as established and defined by Texas Administrative Code, 31 TAC 213, prior to the issuance of a building permit and/or certificate of occupancy.

**(g) Underground Storage Tanks.**

- (1) All new and replacement underground storage tank systems within the ERZD shall comply with this section and the most current regulations in 31 TAC Chapter 334, Underground and Aboveground Storage Tanks, which is incorporated by reference as part of this chapter.
- (2) New and replacement underground storage tanks installed within the ERZD shall require tertiary containment. The tertiary barrier shall consist of an artificially constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec or allow permeation at a rate of no more than 0.25 ounces per square foot per twenty-four (24) hours for the regulated substance stored) and be able to direct a release to the monitoring point and permit its detection. The barrier material shall be compatible with the regulated substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier allowing a release to pass through undetected.
- (3) All new and replacement underground storage tank systems shall include a monitoring and detection system able to detect a release between the underground storage tank and the tertiary barrier. The monitoring and release detection system must be capable of detecting a two-tenths (0.2) gallon per hour leak rate or a release of one hundred fifty (150) gallons within thirty (30) days such that the probability of detection shall be at least ninety-five (95) percent and the probability of false alarm shall be no greater than five (5) percent.

- (4) **Generally.** The installation of any new underground storage tank systems within the Edwards Recharge Zone area is prohibited. Any existing underground storage tanks that require additional upgrades, including replacement of existing underground storage tanks, must meet the current Unified Development Code standards.
- (5) **State Regulations.** All replacement underground storage tank systems within the ERZD shall comply with this section and the most current regulations in 31 TAC Chapter 334, Underground and Aboveground Storage Tanks, which are incorporated by reference as part of this chapter. All new and replacement underground storage tank systems within the Edwards Aquifer Transition Zone shall comply with this section and the most current regulations in 31 TAC Chapter 334, Underground and Aboveground Storage Tanks, and 31 TAC 213, Edwards Aquifer, which is incorporated by reference in this chapter.
- (6) **Tertiary Containment.** Replacement underground storage tanks installed within the ERZD shall require tertiary containment. New and replacement underground storage tank systems installed within the Edwards Aquifer Transition Zone shall require tertiary protection. The tertiary barrier shall consist of an artificially constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec or allow permeation at a rate of no more than 0.25 ounces per square foot per twenty-four (24) hours for the regulated substance stored) and be able to direct a release to the monitoring substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier allowing a release to pass through undetected.
- (7) **Monitoring System.** Replacement underground storage tank systems shall include a monitoring and detection system able to detect a release between the underground storage tank and the tertiary barrier. The monitoring and release detection system must be capable of detecting a two-tenths (0.2) gallon per hour leak rate or a release of one hundred fifty (150) gallons within thirty (30) days such that the probability of detection shall be at least ninety-five (95) percent and the probability of false alarm shall be no greater than five (5) percent.
- (8) **Single Wall Underground Storage Tank Systems Within ERZD.** Single wall underground storage tank systems within the Edwards Recharge Zone area are prohibited. All existing single wall underground storage tank systems within the Edwards Transition Zone, installed prior July 2, 1986 and in conformance with all the USEPA December 22, 1998 update requirements

shall be removed and upgraded to current Unified Development Code standards by the date of December 22, 2003.

- (9) **Fee.** A fee specified in Appendix "C" shall be required by the San Antonio Water System for Underground Storage Tanks (UST) located on the Edwards Recharge Zone area and the Edwards Transition Zone to ensure compliance with Ordinance No. 81147 and all requirements of Chapter 34 of the City Code regulating underground storage tanks over the Edwards Recharge Zone and Transition Zone. The fees include an initial permit fee (per site), an annual inspection fee (per site), and beginning in 1998, a renewal fee every three (3) years (per tank).

**Sec. 35-910. – Administrative Remedies.**

- (a) **Applicability.** This section shall apply to any request to the board of adjustment for permission to vary or depart from a requirement of Article IX of this chapter where, due to special conditions, a literal enforcement of the requirements will result in an unnecessary hardship.
- (b) **Board of Adjustment Procedures.** Procedures for Variances and Appeals of Article IX to the Board of Adjustment shall be consistent with Article IV, Division 10 of this Chapter.

**Sec. 35-911. – Notice Provisions.**

- (a) **Generally.** The notice requirements for each type of application for development approval are prescribed in the individual subsections of this article applicable thereto and/or the Texas statutes. The notice requirements for certain types of public hearings are established in Table 912-1 below provided, however, that to the extent of any inconsistency between the provisions of this section and any state statute, the state statute shall govern.
- (b) **Content of Notice.** The notice shall state the time, date and place of hearing and a description of the property subject to the application. The notice shall include, at a minimum, the following:
- (1) The street address, if the street address is unavailable, the legal description by NCB/CB, block, and lot metes and bounds or a general description of the location of the property, either using block numbers, nearby street intersections or approximate distances from intersections.
  - (2) The current future land use classification identified in the City's Comprehensive Plan, and
  - (3) The category of permit requested and a brief description of the proposed development including density or building intensity, revised land use classification (if any), and uses requested.

**Table 911-1  
Notice Requirements**

Type of Notice	Amendments to Comprehensive Plan	Variances or Authorized Special Exceptions
<b>Publication:</b> Publication in an official newspaper of general circulation before the 15th day	Required	Required



before the date of the hearing.		
<b>Mail :</b> Written notice of the public hearing shall be sent.	<p>Required</p> <p>Notice shall be sent to each owner, as indicated by the most recently approved county tax roll, of real property, within two hundred (200) feet of the property.</p> <p>Notice shall be sent prior to the tenth day before the date of the public hearing at the Planning Commission.</p>	<p>Required</p> <p>Notice shall be sent to each owner, as indicated by the most recently approved county tax roll, of real property, within two hundred (200) feet of the property.</p> <p>Notice shall be sent prior to the tenth day before the date of the public hearing at the Planning Commission.</p>
<b>Internet:</b> Post notice on the city's Internet website until the process has been completed.	Required	Required

- (c) **Action to be Consistent With Notice.** The reviewing body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable) of the application, or denial of the application, provided, however, that if an applicant amends their application for a change in future land use classification to a future land use classification of lesser intensity shall not require renote.

#### Section 35-912. – **Certificate of Compatibility**

- (a) **Applicability.** Applications proposing work or changes in the ETJ Military Protection Area shall require an MPA Certificate of Compatibility which shall certify that the work to be done complies with the provisions of this article. Such applications may include, but are not limited to:

- (1) New Construction of any structure with the exception of the structures exempted from permitting as listed in Section 10-6(e) of the City Code of San Antonio
- (2) Enlargement or additions of any structure
- (3) Relocation of any structure
- (4) Restoration, Rehabilitation, or Remodeling of any structure where the cost of such restoration, rehabilitation, or remodeling exceeds 50% of the replacement value of the structure.

- (b) **Procedure.**

- (1) **Commercial and Multifamily Uses.** Commercial and Multifamily Uses, as defined by the Office of Fire Marshal of Bexar County, Texas, or his designee, in

the ETJ Military Protection Area, shall require an MPA Certificate of Compatibility to be issued by the Development Services Department which shall indicate that the proposed activity complies with all applicable requirements of this Article.

- i. Upon receipt of an applicable application by the Office of Fire Marshal of Bexar County, Texas, the Fire Marshall, or his designee, shall refer the application to the Development Services Department for review.
- ii. The Development Services Department shall review the application and all associated plans for compliance with all applicable provisions of this Article. The Department shall issue the MPA Certificate of Compatibility to the applicant and provide a copy of such certificate to the Office of the Fire Marshall upon a finding that the application complies with all applicable provision of this Article.
- iii. A copy of an approved MPA Certificate of Compatibility shall be maintained and displayed by the applicant on the premises where the work is being conducted.
- iv. The Development Services Department may, upon a finding of incompatibility, refer an application to the appropriate review board or commission for additional review prior to the issuance of an MPA Certificate of Compatibility.

(2) **Single Family Uses.** Single Family Uses in the ETJ Military Protection Area shall require an MPA Certificate of Compatibility to be issued by the Development Services Department which shall indicate that the proposed activity complies with all applicable requirements of this Article.

- i. The Development Services Department shall be the primary point of contact for single family uses.
- ii. The Development Services Department shall review the application and all associated plans for compliance with all applicable provisions of this Article. The Department shall issue the MPA Certificate of Compatibility to the applicant and provide a copy of such certificate to CPS Energy upon a finding that the application complies with all applicable provision of this Article.
- iii. A copy of an approved MPA Certificate of Compatibility shall be maintained and displayed by the applicant on the premises where the work is being conducted.
- iv. The Development Services Department may, upon a finding of incompatibility, refer an application to the appropriate review board or commission for additional review prior to the issuance of an MPA Certificate of Compatibility.

(c) **Scope of Approval.** An MPA Certificate of Compatibility shall authorize only the work requested in the application. An MPA Certificate of Compatibility may be amended in the same manner as the approval of the original application.

- (d) **Appeal.** An applicant for an MPA Certificate of Compatibility may appeal the decision of the Director to the board of adjustment within thirty (30) days after receipt of notification of the Director's action. The applicant shall be advised by the Director or designee of the time and place of the hearing at which the appeal will be considered and shall have the right to attend and be heard as to the reasons for filing the appeal.

In determining whether or not to grant the appeal, the board of adjustment shall consider all of the relevant facts, rules, and regulations germane to the decision. If the board of adjustment approves the appeal, it shall direct the Director or designee to issue an MPA Certificate of Compatibility for all or part of the work described in the application.

If the board of adjustment disapproved the application, it shall direct the Director or designee to not issue such MPA Certificate of Compatibility. Such disapproval may indicate what changes in the plans and specifications would meet the conditions. Upon receipt of the written disapproval of the board of adjustment, the Director, or designee, shall immediately advise the applicant in writing.

- (e) **Subsequent Applications.** In the case of disapproval by the board of adjustment a new application for the same work shall not be resubmitted for consideration until one (1) year has elapsed from the date of disapproval unless the indicated changes in the plans and specifications required to meet conditions or requirements for approval have been incorporated into the new application.

#### Section 35-913. – **Vested Rights and Non-conforming Uses**

- (a) **Generally.** Vested rights and Non-conforming Uses in the ETJ Military Protection Areas shall be consistent with Article VII of this Chapter.
- (b) **Continuation of Land Use Rights.** The following continuation of land use rights are recognized in the ETJ Military Protection Areas:
- (1) Any plat application in the ETJ Military Protection Area which has been assigned a plat identification number before plat identification number XXXXXX.
    - i. Continuation of Land Use Rights under this subsection shall be limited to the density of units per acre as depicted on the plat.
  - (2) Legal land uses in existence on or before June 1, 2019 may continue to be used in the same manner in which the land was being used prior to the establishment of the ETJ Military Protection Area.
  - (3) Legal land uses that were planned for the land before the 90th day before June 1, 2019, if:
    - i. One or more licenses, certificates, permits, approvals, or other forms or authorization by a governmental entity were required by law for the planned and use; and
    - ii. The initial authorization for one or more licenses, certificates, permits, approvals, or other forms or authorization by a governmental entity was granted or approved by a governmental entity.
  - (4) Legally constructed structures in which legal land uses were occurring pursuant to subsection 1 or 2 above may continue to be operated or expanded provided that any applicable permits are granted.
  - (5) This subsection shall not apply to followings land uses or regulations:

- i. A regulation relating to the location of a sexually oriented business;
- ii. A regulation relating to preventing imminent destruction of property or injury to persons;
- iii. A regulation relating to public nuisances;
- iv. A regulation relating to flood control;
- v. A regulation relating to the storage and use of hazardous substances; or
- vi. A regulation relating to the sale and use of fireworks.

Section 35-914. - **Enforcement**

- (a) **Criminal Enforcement.** Criminal enforcement shall in accordance with Article IV, Division 11 of this Chapter. The proper venue for criminal enforcement shall be City of San Antonio Municipal Court.
- (b) **Civil Enforcement.** Civil enforcement shall in accordance with Article IV, Division 11 of this Chapter. The proper venue for civil enforcement shall be City of San Antonio Municipal Court.