

**THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL.**

AN ORDINANCE

**AMENDING CHAPTER 35 OF THE CITY CODE OF SAN ANTONIO,
TEXAS, THE UNIFIED DEVELOPMENT CODE, BY ADOPTING
ARTICLE IX RELATED TO EXTRATERRITORIAL JURISDICTION
MILITARY PROTECTION AREA (ETJMPA) REGULATIONS FOR THE
CAMP BULLIS ETJMPA AND LACKLAND ETJMPA.**

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WHEREAS, Section 43.0117. of the Texas Local Government Code provides for a municipality to call an election for areas within its extraterritorial jurisdiction which are located within five miles of a military base in which active training occurs that allows the qualified voters to choose between either annexation or providing the municipality with the authority to adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study; and

WHEREAS, on August 2, 2018, the City Council of San Antonio, Texas, passed Resolutions 2018-08-02-0032-R-A and 2018-08-02-0032-R-B ordering a special election on November 6, 2018, pursuant to Section 43.0117. of the Texas Local Government Code for areas within 5 miles of Camp Bullis and Camp Stanley and within 5 miles of Lackland Air Force Base and Lackland – Medina Training Annex; and

WHEREAS, on November 6, 2018, a Special Election was held pursuant to the City Council Resolutions; and

WHEREAS, on November 15, 2018, the City Council of San Antonio, Texas, passed Ordinances 2018-11-15-0901 and 2018-11-15-0902 canvassing the votes of the Special Election; and

WHEREAS, the qualified voters in both areas chose Option 2 which provided for the authority to adopt and enforce an ordinance regulating the land use in the city's extraterritorial jurisdiction in the manner recommended by the most recent joint land use study, for the purpose of protecting the Military missions, including the authority to adopt and impose related fees, fines, and other charges; and

WHEREAS, the Planning Commission, after notice and publication held public hearings on May 22, 2019, and June 26, 2019, at which time parties of interest and citizens were given an opportunity to be heard, and recommended approval; and

WHEREAS, the Zoning Commission, after notice and publication held public hearings on May 21, 2019, and July 16, 2019, at which time parties of interest and citizens were given an opportunity to be heard, and recommended approval; and

WHEREAS, the Zoning Commission has submitted a final report to the City Council regarding the amendments to the zoning regulations of the City of San Antonio; and

WHEREAS, the City Council finds these regulations to be consistent with the recommendations of the most recent Joint Land Use Study

NOW THEREFORE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS:

SECTION 1. Chapter 35 of the City Code of San Antonio, Texas, the Unified Development Code, is hereby amended by adding language that is underlined (~~added~~) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 35 of the City Code of San Antonio, Texas, is hereby amended as follows:

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 development project 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 except that in the Agricultural Comprehensive Land Use Category, a residential density of 0.25 dwelling units per acre shall be allowed.
- (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 35-339.04. 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 35-339.05. 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. Where imposed, the Edwards Aquifer Recharge Protection Standards and administrative remedies thereof shall be identical to Section 35-332 of this Chapter except as noted in subsection a below regarding the derivation of allowable uses.

(a) **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 Land Use Categories includes permitted zoning district designations corresponding to zoning districts codified in Article III of this Chapter.
- (2) The allowable ERZD land use for a property shall correspond to the permitted zoning district 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 requirements in Section 35-423, a Site Investigation Report consistent with Section 35-521(f) of this chapter shall also be required.

(b) **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 consistent with Section 35-521(f) of this chapter shall also be required.

(c) **Underground Storage Tanks.**

(1) Development of underground storage tanks in the EZRD shall be consistent with Section 35-521 of this Chapter.

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 comprehensive land use category 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 comprehensive land use category (if any), and uses requested.

Table 911-1
Notice Requirements

<u>Type of Notice</u>	<u>Amendments to Comprehensive Plan</u>	<u>Variances or Authorized Special Exceptions</u>
<u>Publication:</u> <u>Publication in an official newspaper of general circulation before the 15th day before the date of the hearing.</u>	<u>Required</u>	<u>Required</u>
<u>Mail :</u> <u>Written notice of the public hearing shall be sent.</u>	<u>Required</u> <u>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.</u> <u>Notice shall be sent prior to the tenth day before the date of the public hearing at the Planning Commission.</u>	<u>Required</u> <u>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.</u> <u>Notice shall be sent prior to the tenth day before the date of the public hearing at the Planning Commission.</u>
<u>Internet:</u> <u>Post notice on the city's Internet website until the process has been completed.</u>	<u>Required</u>	<u>Required</u>

- (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, if an applicant amends their application for a change in future land use classification to a comprehensive land use category of lesser intensity it does 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) **Existing Single-Family Residential Exemption.** Any residential single-family structure existing as of the effective date of this article shall not require a Certificate of Compatibility unless the use of such structure is changed from residential single-family use.
- (c) **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 Marshal 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) **Newly Constructed Single Family Uses.** Newly Constructed 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.
- (d) **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.
- (e) **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 disapproves 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.

- (f) **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 [effective date] 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 [effective date], 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. a completed application for the initial authorization was filed with the governmental entity before [effective date].
 - iii. For purposes of this section, a completed application is filed if the application includes all documents and information designated as required by the governmental entity in a written notice to the applicant.
 - (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 the following 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 be 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 be in accordance with Article IV, Division 11 of this Chapter. The proper venue for civil enforcement shall be City of San Antonio Municipal Court.

SECTION 3. Chapter 35 (Appendix C) of the City Code of San Antonio, Texas, is hereby amended by adopting the following:

Sec. 35-C116. – Military Protection Area Certificate of Compatibility Fee.

- A. **Military Protection Area Certificate of Compatibility Fee....\$200.00**

SECTION 4. All other provisions of Chapter 35 of the City Code of San Antonio, Texas, shall remain in full force and effect.

SECTION 5. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 6. The City Clerk is directed to publish notice of this ordinance amending City Code, Chapter 35. Publication shall be in a newspaper in the City in accordance with Section 17 of the City Charter.

SECTION 7. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 8. This ordinance shall become effective immediately on passage with eight affirmative votes; otherwise it shall become effective On September 29, 2019.

PASSED AND APPROVED this 19th day of September, 2019.

M A Y O R

Ron Nirenberg

SG/lj
[Date]
Item No. [Number]

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andy Segovia, City Attorney

DRAFT