



8 May 2024

SUBJECT: Incompatible Land Use Near the New Braunfels National Airport

Texas Local Government Code

Title 7 – Regulation of Land Use, Structures, Businesses, and Related Activities.

Subtitle C: Regulatory Authority Applying to More Than One Type of Government

Chapter 241. Municipal and County Zoning Authority Around Airports

Subchapter A. General Provisions

Sec. 241.002. LEGISLATIVE FINDINGS. The legislature finds that:

- (1) an airport hazard endangers the lives and property of users of the airport and of occupants of land in the vicinity of the airport;
- (2) an airport hazard that is an obstruction reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, tending to destroy or impair the utility of the airport and the public investment in the airport;
- (3) the creation of an airport hazard is a public nuisance and an injury to the community served by the airport affected by the hazard;
- (4) it is necessary in the interest of the public health, public safety, and general welfare to prevent the creation of an airport hazard;
- (5) the creation of an airport hazard should be prevented, to the extent legally possible, by the exercise of the police power without compensation; and
- (6) the prevention of the creation of an airport hazard and the elimination, the removal, the alteration, the mitigation, or the marking and lighting of an airport hazard are public purposes for which a political subdivision may raise and spend public funds and acquire land or interests in land.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.003. DEFINITIONS. In this chapter:

- (6) "Compatible land use" means a use of land adjacent to an airport that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land because of levels of noise or vibrations, or the risk of personal injury or property damage created by the operations of the airport, including the taking off and landing of aircraft.
- (7) "Controlled compatible land use area" means an area of land located outside airport boundaries and within a rectangle bounded by lines located no farther than 1-1/2 statute miles from the centerline of an instrument or primary runway and lines located no farther than five statute miles from each end of the paved surface of an instrument or primary runway.

Hazard zoning should protect all airports, regardless of the airport's size. Apparently, our State Legislators also feel this is important because they have tied the requirement of hazard zoning to the State's airport grant program. In addition, any airport capable of serving jet transports, business jets, or large propeller aircraft, now or in the twenty-year planning period, should consider the compatible land use planning and zoning measures.

Grant Assurances – obligations to which the City is bound.

Incompatible land use – protect the runway environs from construction of anything that would negatively impact airport operations.

The Airport Sponsor's Responsibility

The responsibility for insuring the compatible development of the airport environment and preventing tall structures that negatively affect airports rests primarily on the airport sponsor for two reasons. The first and foremost reason is that decisions on how land is developed are made at the local level. State statutes give municipalities and counties the authority to regulate land development and tall structures near airports through planning and zoning. State agencies, such as the Texas Department of Transportation, can recommend appropriate controls to be used by local governments, but the responsibility and authority for implementing such controls lie squarely and solely with local governments.

The other reason compatibility planning is a local responsibility has to do with numerous legal decisions that have placed the liability for airport operations on the local airport sponsor. The noise produced by airport operations has been the basis of various lawsuits by nearby residents and the courts have generally held that the airport sponsor is the appropriate body to be sued. The U.S. Supreme Court, in *Griggs v. Allegheny County*, has ruled that when an airport sponsor had the ability to acquire property impacted by aircraft noise but failed to do so, the airport sponsor could be held liable for the diminution of property values.

Airport compatible land uses are uses of adjacent properties that are not adversely affected by airport operations. Residential development is most sensitive to airport operations and is nearly always an incompatible land use if located close to an airport. Land uses where people congregate such as schools, churches, theaters, and hospitals also may be incompatible. Some uses are incompatible because they actually represent a danger to aircraft using an airport.

Examples of Compatible Land Uses

Airport Compatible Activities		Open Areas
Aerial survey companies	Convention centers *	Arboretum
Air cargo facilities	Gas stations	Botanical gardens
Air freight terminals	Hotels and motels *	Cemeteries
Aircraft manufacturing	Night clubs *	Farming and ranching
Aircraft repair facilities	Office buildings *	Game preserve
Aviation research and testing	Restaurants *	Golf courses
Aviation schools	Selected recreational activities	Landscape nurseries
Auto parking lots	Shopping centers *	Picnic areas
Auto storage areas	Taxi and bus terminals	Riding academies
Banks *	Trucking terminals	Sewage treatment facilities
Car rental agencies	Warehouse distribution centers	Water treatment facilities

* May require acoustical treatment

AC 150/5190-4B

1.6 Consequences of Incompatible Development.

1.6.1 Incompatible land uses such as those that pose physical obstructions, create visual distractions, and attract wildlife can threaten the safety of aircraft operations. They can also affect the safety of persons located near the airport environs. In addition, encroachment of incompatible land uses around airports may create physical constraints to safe and efficient aircraft operations, and challenges for airport capacity expansion or other needed airport development.

1.6.2 The effects of airport operations on incompatible land uses—especially noise impacts on residential areas—can create a negative perception of the airport in the local community. Airport operations can be perceived as generating negative effects on the local community, especially noise disturbances on incompatible land uses. Community opposition generated by off-site airport effects can:

- Lead to delays in airport development or require redevelopment;
- Constrain capacity expansion;
- Restrict airport operations;
- Result in more stringent environmental requirements (including greater environmental impact analysis and mitigation requirements);
- Increase public outreach requirements; and
- In some cases, lead to litigation.

1.6.3 On-Airport Economic Considerations.

When incompatible land uses result in community opposition to airport operation and expansion, there are economic consequences, such as project delays, which may result in additional costs to implement a project. For example, a delayed capacity expansion project leads to a variety of costly outcomes. These include persistent aircraft delays; diversion of aircraft to other airports; or, in extreme cases, the need to build a replacement airport at another site.

1.6.4 Off-Airport Economic Considerations.

1.6.4.1 Airports are local economic engines. They stimulate local economic activity, create employment, and generate income for local residents. When incompatible land uses around airports constrain airport use and efficient air service, local and regional jurisdictions cannot realize the full potential of airports to generate positive regional economic impacts. In addition, incompatible land use development can increase the risk of exposure to aviation accidents and expose neighboring residents to adverse environmental effects. These impacts are another cost of incompatible land uses near airports.

1.6.4.2 Coordinated compatible land use planning on the airport and in the airport environs seeks to balance development demands to optimize the benefit of the airport location to the community, and preclude hazards and adverse impacts of incompatible development on local airport and aviation facilities.

Further Consequences

- Cost for noise studies
- Violation of grant assurances: loss of grant funding
- Loss of aeronautical business