

**ORDINANCE NO. 2017-19**

**AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING CHAPTER 86, LAND DEVELOPMENT CODE, ARTICLE VI, DESIGN AND DEVELOPMENT STANDARDS; CREATING DIVISION 1, AIRPORT ZONING REGULATIONS; SECTION 86-201, FINDINGS AND PURPOSE; SECTION 86-202, DEFINITIONS; SECTION 86-203, IMAGINARY SURFACES AND HEIGHT LIMITATIONS; SECTION 86-204, PERMITS; SECTION 86-205, LAND USE RESTRICTIONS; NON-CONFORMING USES; SECTION 86-206, ADMINISTRATION; ENFORCEMENT; APPEALS; SECTION 86-207, JUDICIAL REVIEW; SECTION 86-208, CONFLICTING REGULATIONS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, section 333.02(1) of the Airport Zoning law (chapter 333, Florida Statutes) contains a finding that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the taking off, maneuvering, or landing of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein; and

**WHEREAS**, section 333.02 contains a further finding that certain activities and uses of land in the immediate vicinity of airports as enumerated in section 333.03(2) are not compatible with normal airport operations, and may, if not regulated, also endanger the lives of the participants, adversely affect their health, or otherwise limit the accomplishment of normal activities; and

**WHEREAS**, section 333.03(1) mandates that every political subdivision having an airport hazard area within its territorial limits must adopt, administer, and enforce, under the police power, airport protection zoning regulations for such airport hazard area; and

**WHEREAS**, recent amendments to chapter 333 necessitate the adoption of airport protection zoning regulations, with an effective date no later than July 1, 2017; and

**WHEREAS**, pursuant to section 163.3174, Florida Statutes, Venice City Council has duly designated the city's planning commission as the local planning agency for the incorporated area of the city; and

**WHEREAS**, the planning commission has considered this amendment to the land development code and following a duly noticed public hearing on May 2, 2017, forwarded its recommendation for approval and findings of consistency with the comprehensive plan of the city to city council as required by law; and

**WHEREAS**, city council has received and considered the report of the planning commission recommending approval.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, as follows:**

**SECTION 1.** Chapter 86, Land Development Code, Article VI, Design and Development Standards, Division 1, is hereby created to read as follows:

## DIVISION 1. AIRPORT ZONING REGULATIONS

### **Sec. 86-201. Findings and purpose.**

- (a) F.S. ch. 333 requires every political subdivision having an Airport Hazard Area within its territorial limits to adopt, administer, and enforce airport protection zoning regulations for such airport hazard area.
- (b) An Airport Hazard may endanger the lives and property of users of the Airport and of occupants of land in its vicinity and also, if of the Obstruction type, in effect reduces the size of the area available for the taking off, maneuvering, or landing of aircraft, thus tending to destroy or impair the utility of the Airport and the public investment therein. It is further found that certain activities and uses of land in the immediate vicinity of the Airport are not compatible with normal Airport operations, and may, if not regulated, also endanger the lives of the participants, adversely affect their health, or otherwise limit the accomplishment of normal activities. Accordingly, it is hereby declared:
  - (1) That the creation or establishment of an Airport Hazard and the incompatible use of land in the Airport vicinity is a public nuisance and an injury to the city;
  - (2) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of Airport Hazards and incompatible land uses be prevented; and
  - (3) That this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.
- (c) It is further declared that the limitation of land uses incompatible with normal Airport operations, the prevention of the creation or establishment of Airport Hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing Airport Hazards are public purposes for which the City may raise and expend public funds and acquire land or property interests therein, or air rights thereover.
- (d) The Airport conducted a noise study and all noise contours established therein are on property owned or controlled by the Airport.
- (e) An interlocal agreement in compliance with the provisions of F.S. ch. 163 will be entered into between Sarasota County and the City of Venice in accordance with F.S. § 333.03(1)(b).

### **Sec. 86-202. Definitions.**

When used in this division, the following words shall have the meaning ascribed to it in this section:

*Aeronautical Study* means a Federal Aviation Administration study, conducted in accordance with the standards of 14 C.F.R. part 77, subpart C, and Federal Aviation Administration policy and guidance, on the effect of proposed construction or alteration upon the operation of air navigation facilities and the safe and efficient use of navigable airspace.

*Airport* means the Venice Municipal Airport.

*Airport Hazard* means an Obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities.

*Airport Hazard Area* means any area of land or water upon which an Airport Hazard might be established.

*Airport Height* means the highest point of the Airport's usable landing area measured in feet above mean sea level, which is 18 feet.

*Airport Layout Plan* means a set of scaled drawings approved by the FAA that provides a graphic representation of the existing and future development plan for the Airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the Airport.

*Airspace Drawings* means the aerial photograph with the imaginary surfaces drawn thereon, the layout of the Runways, the Airport zoning reference point, the Airport elevation and the topography of the area.

*FAA* means the Federal Aviation Administration.

*FDOT* means the Florida Department of Transportation as created under F.S. § 20.23.

*Landfill* has the same meaning as provided in F.S. § 403.703.

*Minimum Descent Altitude* means the lowest altitude, expressed in feet above mean sea level, to which descent is authorized on final approach or during circling-to-land maneuvering in execution of a standard instrument approach procedure where no electronic glide slope is provided.

*Nonconforming Use* means any Obstruction which lawfully existed at the time of the adoption of this division, and which existence or height is inconsistent with the provisions of this division or an amendment thereto.

*Obstruction* means any existing or proposed object, terrain, or Structure construction or alteration that exceeds the federal obstruction standards contained in 14 C.F.R. part 77, subpart C. The term includes:

- (a) Any object of natural growth or terrain;
- (b) Permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus; or
- (c) Alteration of any permanent or temporary existing structure by a change in the structure's height, including appurtenances, lateral dimensions, and equipment or materials used in the structure.

*Person* means any individual firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

*Runway* means a defined area on the Airport prepared for landing and takeoff of aircraft along its length.

*Runway Protection Zone* means an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground, as depicted on the Airspace Drawings.

*Structure* means any object constructed, erected, altered, or installed, including, but not limited to: buildings, towers, smoke stacks, utility poles, earth formations, power generation equipment, and overhead transmission lines.

*Substantial Modification* means any repair, reconstruction, rehabilitation, or improvement of a Structure when the actual cost of the repair, reconstruction, rehabilitation, or improvement of the Structure equals or exceeds 50 percent of the market value of the Structure.

**Sec. 86-203. Imaginary surfaces and height limitations.**

Any existing or proposed object, terrain, or Structure construction or alteration that penetrates an imaginary surface of the Airport is an Obstruction. The imaginary surfaces are depicted on the Airspace Drawings and are described as follows, consistent with 14 C.F.R. part 77, subpart C:

- (a) Primary surface: A surface longitudinally centered on a Runway and extending 200 feet beyond each end of that Runway with a width of 500 feet for each Runway.
- (b) Horizontal surface: A horizontal plane 150 feet above the Airport Height, the perimeter of which is constructed by swinging arcs of a specified radii from the center of each end of the primary surface of each Runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 10,000 feet for Runways 05, 13, 23 and 31. The radius of the arc specified for each end of a Runway will have the same arithmetical value. That value will be the highest composite value determined for either end of the Runway.
- (c) Conical surface: A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
- (d) Approach surface: A surface longitudinally centered on the extended Runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each Runway based upon the type of approach available or planned for that Runway end.
  - (1) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 3,500 feet for Runways 05, 13, 23 and 31.
  - (2) The approach surface extends for a horizontal distance of 10,000 feet for Runways 05, 13, 23 and 31.
  - (3) The outer width of an approach surface to an end of a Runway will be that width prescribed in this subsection for the most precise approach existing or planned for that Runway end.
- (e) Transitional surface: The surface extending outward and upward at right angles to the Runway centerline and the Runway centerline extended at a slope of 7 to 1 from the sides of the primary surfaces and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the Runway centerline.

**Sec. 86-204. Permits.**

- (a) A person proposing to construct, alter, or allow an Obstruction in an Airport Hazard Area within a 10-nautical-mile radius of the airport reference point, located at the approximate geometric center of all usable runways of a public-use airport or military airport, shall apply for a permit from the zoning administrator. In determining whether an Obstruction constitutes an Airport Hazard, the zoning administrator, in consultation with the airport director, shall consider:
  - (1) The safety of persons on the ground and in the air.
  - (2) The safe and efficient use of navigable airspace.
  - (3) The nature of the terrain and height of existing structures.
  - (4) The effect of the construction or alteration of an Obstruction on the state licensing standards for the Airport contained in F.S. ch. 330 and rules adopted thereunder.
  - (5) Existing, planned, and proposed facilities and flight operations at the Airport on public-use airports contained in the Airport Master Plan or Airport Layout Plan.
  - (6) Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.
  - (7) The effect of the construction or alteration of an Obstruction on the minimum descent altitude at the Airport.
  - (8) The cumulative effects on navigable airspace of all existing Obstructions and all known proposed Obstructions in the area.
  - (9) Documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study. A permit may not be approved solely because the FAA determines that the proposed Obstruction is not an Airport Hazard.
- (b) Upon receipt of a complete permit application, the city shall provide a copy of the application to FDOT's aviation office by certified mail, return receipt requested, or by a delivery service that provides a receipt evidencing delivery. To evaluate technical consistency with F.S. § 333.025, FDOT shall have a 15-day review period following receipt of the application, which must run concurrently with the city's permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not to exceed 18 consecutive months are exempt from FDOT's review, unless such review is requested by FDOT.
- (c) A permit may not be issued if it would allow the establishment or creation of an Airport Hazard or if it would permit a Nonconforming Use to become a greater hazard to air navigation than it was when the applicable regulation herein was adopted which allowed the establishment or creation of the Obstruction, or than it is when the application for a permit is made.
- (d) The permit, if granted, shall require the owner of the Obstruction to install, operate, and maintain thereon, at his or her own expense, marking and lighting in conformance with the specific standards established by the FAA.
- (e) Any application submitted hereunder may be referred to the planning commission by the zoning administrator. The planning commission, at a publicly noticed public hearing, may grant or deny such application, or may grant such application subject to suitable conditions, safeguards and stipulations.

**Sec. 86-205. Land use restrictions; non-conforming uses.**

- (a) No new landfills shall be allowed:
  - 1. within 10,000 feet from the nearest point of any runway used or planned to be used by turbine aircraft;
  - 2. within 5,000 feet from the nearest point of any runway used by only nonturbine aircraft; and
  - 3. outside the perimeters defined in subparagraphs (1) and (2), but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. s. 77.19 and described in section 86-203, above.
- (b) No new incompatible uses, activities, or substantial modifications to existing incompatible uses shall be allowed within Runway Protection Zones as depicted on the Airport Layout Plan. Incompatible uses include residences, schools, churches/places of worship, hospitals/nursing homes, commercial/industrial buildings, recreational facilities, public roads, parking facilities, fuel storage facilities, hazardous material storage, wastewater treatment facilities, above ground utility infrastructure, and other places of public assembly.
- (c) The city, when either requesting from or submitting to a state or federal governmental agency with funding or approval jurisdiction a “finding of no significant impact,” an environmental assessment, a site-selection study, an airport master plan, or any amendment to an airport master plan, shall submit simultaneously a copy of said request, submittal, assessment, study, plan, or amendments by certified mail to Sarasota County as an “affected local government” under F.S. ch. 333.
- (d) Nonconforming Uses.
  - (1) This division may not be interpreted to require the removal, lowering, or other change or alteration of any Obstruction not conforming to these regulations when adopted or amended, or otherwise interfering with the continuance of any Nonconforming Use, except under subsection (2) below.
  - (2) If the city determines that a Nonconforming Use has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, the owner of the Nonconforming Use may be required, at his or her own expense, to lower, remove, reconstruct, alter, or equip such Obstruction as may be necessary to conform to the current regulations in this division. If the owner of the Nonconforming Use neglects or refuses to comply with such requirement for 10 days after notice thereof, the city may proceed to have the Obstruction so lowered, removed, reconstructed, altered, or equipped and assess the cost and expense thereof upon the owner of the Obstruction or the land whereon it is or was located.

**Sec. 86-206. Administration; enforcement; appeals.**

- (a) Pursuant to section 86-22, it shall be the duty of the zoning administrator to administer and enforce the regulations prescribed in this division, in consultation with the airport director.
- (b) The initiation of any civil or criminal enforcement procedure under the provisions of F.S. § 333.13, and the acquisition of any air rights under the provisions of F.S. § 333.12, shall be the sole responsibility of the city council.
- (c) A person may appeal a final decision of the zoning administrator under this division utilizing the procedures contained in section 86-23(i) and (j). A person may appeal any final decision of the planning commission under this division utilizing the procedures contained in section 86-21(b).

**Sec. 86-207. Judicial review.**

Any person aggrieved by any decision rendered pursuant to this division may appeal, after exhaustion of administrative remedies, to the Circuit Court of the 12th Judicial Circuit in and for Sarasota County, Florida, as provided in F.S. § 333.11.

**Sec. 86-208. Conflicting regulations.**

Where this division conflicts with or overlaps another ordinance or statute, whichever imposes the more stringent restrictions shall prevail. This division is cumulative and supplemental to existing ordinances and statutes.

**SECTION 2.** All Ordinances or parts of Ordinances in conflict herewith shall be and the same are hereby repealed.

**SECTION 3.** If any part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The city council specifically declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance, and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

**SECTION 4.** This Ordinance shall take effect immediately upon approval and adoption as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 27TH DAY OF JUNE, 2017**

First Reading: June 13, 2017

Final Reading: June 27, 2017

Adoption: June 27, 2017

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John W. Holic, Mayor

ATTEST:

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Lori Stelzer, MMC, City Clerk

Approved as to form:

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David Persson, City Attorney