

IDAHO FALLS PLANNING AND ZONING COMMISSION
STAFF REPORT
AMENDMENTS TO SECTION 11-5-3 OF THE ZONING
ORDINANCE
AUGUST 6, 2019



Community
Development
Services

Applicant: City of Idaho Falls

Future Land Use Map:

Attachments:

1. Proposed changes

Requested Action: To **recommend** approval of the proposed zoning ordinance amendments to the Mayor and City Council.

Staff Comments: Recently the City adopted a new Airport Overlay Zone in response to FAA concerns the City was not fulfilling its grant assurances. One of the requirements in certain areas of the new overlay was that as part of development, the applicant would be required to provide an avigation easement. An avigation is a protection of airspace, allowing normal aviation operations. The provision easement raised many questions by land owners, developers, and others.

As the Legal Department has further researched the issue, they found avigation easements can be prescriptive, similar to prescriptive road rights-of-way. In other words, if it can be demonstrated that airport operations have existed in the airspace for a significant amount of time, the avigation already exists.

The proposed modification to the ordinance states the avigation easement is only required when a prescriptive easement doesn't already exist.

Staff Recommendation: Staff recommends approval of the ordinance changes.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 11, CHAPTER 5 TO CLARIFY CONDITIONS OF AVIGATION EASEMENT DEDICATION AT DEVELOPMENT IN THE AIRPORT OVERLAY ZONE; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, the City's commitment to continued airport operations is firm; and

WHEREAS, protecting IFRA's current and future activities requires, in part, the City's earnest and consistent efforts; and

WHEREAS, such efforts in support of FAA grant assurances include protecting the City's current prescriptive rights of airspace use in and around IFRA; and

WHEREAS, such efforts also include exercising the City's authority under Idaho Code 67-5613 to require that subdivision development is born by the developer and not passed to taxpayers or subsidized by taxpayers; and

WHEREAS, the purpose of this Ordinance is to clarify the manner and extent of the developer's requirement to ensure IFRA's continued use of airspace by the supply of an avigation easement, where such requirement is in compliance with Idaho Code.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, THAT:

SECTION 1. Title 11, Chapter 5, of the City Code of the City of Idaho Falls, Idaho, is hereby amended as follows:

11-5-3: AIRPORT OVERLAY ZONE

...

(B) Compatible Land Use Regulations.

...

(8) Where specified on Table 11-5-6: Compatible Uses in the Airport Overlay and in order to mitigate the effects of development on the ability of the City to continue to deliver public airport services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision development and to the extent the City does not have a prescriptive easement, the property owner shall dedicate to the City, in advance of receiving a building permit, an avigation easement, as defined by this Zoning Code. Avigation easement

dedication is not necessary where or to the extent the City has established a prescriptive right to the airspace.

...

Table 11-5-6: Compatible Uses in the Airport Overlay

<p>“N” denotes a use that is not compatible and is prohibited.</p> <p>“Y” denotes a use that is compatible.</p> <p>“C” denotes a use that is compatible that meets one or more of the following indicated conditions <u>where applicable</u>:</p> <p style="padding-left: 40px;">Residential densities must be less than nine (9) units per acre for areas of parcels located within the sixty five (65) decibel limit on the IFRA Noise Contours Map (located in the City’s Planning Division)</p> <p style="padding-left: 40px;">Structures shall be shifted away from runway centerline when possible</p> <p style="padding-left: 40px;">A recorded avigation easement is required</p> <p style="padding-left: 40px;">A recorded avigation easement is required if within one thousand feet (1000’) of the runway.</p> <p style="padding-left: 40px;">Permitted uses will not create bodies of water, or generate smoke, steam, or other visual obstruction</p> <p style="padding-left: 40px;">An Airport Disclosure Note is required on plats recorded after the adoption of this Section.</p>				
Compatible Land Uses				
Land Use	No Development	Limited Development Approach Surface	Controlled Development Approach Surface	Limited Development
Accessory use	N	C ^{c,f}	Y	Y
Adult Business	N	C ^{c,f}	Y	Y
Agriculture	N	Y	Y	Y
Agriculture Tourism	N	C ^{c,f}	Y	Y
Airport	Y	Y	Y	Y
Amusement Center, Indoor	N	N	Y	Y
Amusement Center, Indoor Shooting Range	N	N	Y	Y
Amusement Center, Outdoor	N	C ^{c,e,f}	C ^e	Y
Animal Care Clinic	N	C ^{c,f}	Y	Y
Animal Care Facility	N	C ^{c,f}	Y	Y

Land Use	No Development	Limited Development Approach Surface	Controlled Development Approach Surface	Limited Development
Artist Studio	N	C ^{b,c,e,f}	C ^e	C ^e
Auction, livestock	N	C ^{c,e,f}	Y	Y
Bed and Breakfast	N	N	C ^{a,b,f}	C ^{d,f}
Boarding /Rooming House	N	N	C ^{a,b,f}	C ^{d,f}
Building Contractor Shop	N	C ^{b,c,f}	Y	Y
Building Material, Garden and Farm Supplies	N	C ^{b,c,e,f}	Y	Y
Cemetery	N	C ^{c,e,f}	C ^e	Y
Club	N	N	Y	Y
Communication Facility	N	C ^{b,c,e,f}	Y	Y
Correctional Facility or Jail	N	C ^{b,c,e,f}	C ^{b,e}	Y
Day Care, all Types	N	C ^{b,c,f}	Y	Y
Drinking Establishment	N	C ^{b,c,f}	Y	Y
Drive-through Establishment	N	C ^{b,c,f}	Y	Y
Dwelling, accessory unit	N	N	C ^{a,b,f}	C ^{d,f}
Dwelling, multi-unit	N	N	C ^{a,b,f}	C ^{d,f}
Dwelling, single unit attached	N	N	C ^{a,b,f}	C ^{d,f}
Dwelling, single unit detached	N	N	C ^{a,b,f}	C ^{d,f}
Dwelling, two unit	N	N	C ^{a,b,f}	C ^{d,f}
Eating Establishment	N	C ^{b,c,f}	Y	Y
Eating Establishment, limited	N	C ^{b,c,f}	Y	Y
Equipment Assembly	N	C ^{b,c,e,f}	C ^{b,e}	C ^e

Entertainment and Cultural Facilities	N	N	Y	C ^e
Equipment Sales, Rental and Services	N	C ^{b,c,f}	Y	Y
Financial Institutions	N	C ^{b,c,f}	Y	Y
Food Processing, small scale	N	C ^{b,c,e,f}	C ^{b,e}	C ^e
Food Processing	N	C ^{b,c,e,f}	C ^{b,e}	C ^e
Food Store	N	C ^{b,c,f}	Y	Y
Fuel Station	N	C ^{b,c,f}	Y	Y
Fuel Station, super	N	C ^{b,c,f}	Y	Y
Health Care and Social Services	N	N	Y	Y
Higher Education Center	N	C ^{b,c,f}	Y	Y
Home Occupation	N	N	Y	Y
Hospital	N	C ^{b,c,f}	Y	Y
Industry, Craftsman	N	C ^{b,c,e,f}	C ^{b,e}	C ^e
Industry, Heavy	N	C ^{b,c,e,f}	C ^{b,e}	C ^e
Industry, Light	N	C ^{b,c,e,f}	C ^{b,e}	C ^e
Information Technology	N	C ^{b,c,f}	Y	Y
Laundry and Dry Cleaning	N	C ^{b,c,f}	Y	Y
Live-Work	N	N	C ^{a,b,f}	C ^{d,f}
Lodging Facility	N	N	C ^{a,b,f}	C ^{d,f}
Manufactured Home	N	N	C ^{a,b,f}	C ^{d,f}
Land Use	No Development	Limited Development Approach Surface	Controlled Development Approach Surface	Limited Development
Medical Support Facility	N	C ^{b,c,f}	Y	Y

Mobile Home Park	N	N	C ^{a,b}	C ^{d,f}
Mortuary	N	N	Y	Y
Park and Recreation Facility	N	N	Y	Y
Parking Facility	C ^{b,c,e,f}	C ^{b,c,f}	Y	Y
Pawn Shop	N	C ^{b,c,f}	Y	Y
Personal Service	N	C ^{b,c,f}	Y	Y
Planned Unit Development	N	N	C ^{a,b,f}	C ^{d,f}
Professional Service	N	C ^{b,c,f}	Y	Y
Public Service Facility	C ^{b,c,e,f}	C ^{b,c,e,f}	C ^{b,e}	C ^e
Public Service Facility, limited	C ^{b,c,e,f}	C ^{b,c,e,f}	C ^{b,e}	C ^e
Public Service Use	C ^{b,c,e,f}	C ^{b,c,e,f}	C ^{b,e}	C ^e
Railroad Freight Terminal and Station	C ^{b,c,e,f}	C ^{b,c,f}	Y	Y
Recreational Vehicle Park	N	N	C ^{a,b,f}	C ^{d,f}
Religious Institution	N	N	Y	Y
Research and Development	N	C ^{b,c,f}	C ^{b,e}	C ^e
Residential Care Facility	N	N	C ^{a,b,f}	C ^{d,f}
Retail	N	C ^{b,c,f}	Y	Y
School	N	C ^{b,c,f}	Y	Y
Short Term Rental	N	N	C ^{a,b,f}	C ^{d,f}
Storage Facility, Indoor	N	C ^{b,c,f}	Y	Y
Storage Facility, self serve	N	C ^{b,c,f}	Y	Y
Storage Yard	N	C ^{b,c,f}	Y	Y
Terminal Yard, trucking and bus	C ^{b,c,e,f}	C ^{b,c,f}	Y	Y

Transit Station	C ^{b,c,e,f}	C ^{b,c,f}	Y	Y
Vehicle Body Shop	N	C ^{b,c,f}	Y	Y
Vehicle Repair and Service	N	C ^{b,c,f}	Y	Y
Vehicle Sales and Rentals	N	C ^{b,c,f}	Y	Y
Vehicle Washing Facility	N	C ^{b,c,f}	Y	Y
Warehouse	N	C ^{b,c,f}	C ^b	Y
Warehouse, Wholesale with flammable materials	N	N	C ^b	Y

SECTION 2. Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

SECTION 3. Codification Clause. The City Clerk is instructed to immediately forward this Ordinance to the codifier of the official municipal code for proper revision of the Code.

SECTION 4. Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Idaho Falls, Idaho, this ____ day of June, 2019.

CITY OF IDAHO FALLS, IDAHO

REBECCA L. NOAH CASPER, MAYOR

ATTEST:

KATHY HAMPTON, CITY CLERK

(SEAL)

STATE OF IDAHO)
) ss:
County of Bonneville)

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO,
DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance entitled, “AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 11, CHAPTER 5 TO CLARIFY CONDITIONS OF AVIGATION EASEMENT DEDICATION AT DEVELOPMENT IN THE AIRPORT OVERLAY ZONE; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.”

(SEAL)

KATHY HAMPTON, CITY CLERK