

ORDINANCE #25-1

AN ORDINANCE BY THE CITY COUNCIL OF DUCHESNE CITY IMPLEMENTING A ZONING ORDINANCE TO CREATE AN AIRPORT OVERLAY ZONING DISTRICT PROTECTING THE DUCHESNE MUNICIPAL AIRPORT

WHEREAS, Duchesne City owns and operates the Duchesne Municipal Airport; and,

WHEREAS, to qualify for funding from the Federal Aviation Administration (hereafter "FAA"), Duchesne City has adopted an Airport Master Plan and will adopt an Airport Overlay Zoning District to regulate development in proximity of the Duchesne Municipal Airport; and,

WHEREAS, the Duchesne Municipal Airport Runway Protection Zone, Inner Approach/Departure Zone, Inner Turning Zone, Outer Approach/Departure Zone, Sideline Zone and Traffic Pattern Zone extend outside of the corporate limits into Duchesne City jurisdiction as shown on Duchesne City Municipal Airport Land Use Compatibility Overlay Zones Map, (Exhibit 1) which can be found at the Duchesne City Office or in the Master Plan; and

WHEREAS, the Utah Legislature, during the 2023 General Session, passed House Bill 206, which requires cities to adopt airport overlay zoning regulations to protect airports from incompatible development and safety hazards; and

WHEREAS, Duchesne City's future growth is likely to trend toward the vicinity of the airport due to topographic and other constraints; and

WHEREAS, overly restrictive land use regulations near the Duchesne Municipal Airport could constitute a taking without just compensation unless Duchesne City were to acquire such properties; and

WHEREAS, the Duchesne City Council desires to implement an airport overlay zoning district municipal code known as Title 10, Chapter 15, Airport Overlay

WHEREAS, the Duchesne City Planning and Zoning Commission conducted a public hearing on January 13th, 2025, regarding this proposed ordinance and has recommended approval; and

WHEREAS, the Duchesne City Council conducted a public meeting regarding this proposed ordinance on January 28, 2025 and accepted the Planning and Zoning Commission recommendation.

WHEREAS, said H.B. 206 requires the overlay zone to be in compliance with 14 C.F.R. Part 77; and U.S. Code Title 72 Chapter 10; and

WHEREAS, this ordinance #25-1 is intended to satisfy those requirements,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DUCHESNE, UTAH, THAT THE FOLLOWING CHAPTER WILL BE ADDED TO TITLE 10, AS CHAPTER 15 – AIRPORT OVERLAY OF THE MUNICIPAL CODE AS FOLLOWS:

**TITLE 10
CHAPTER 15
AIRPORT OVERLAY**

SECTION I

15.1.1 Purpose

- A. It is the purpose of this section to regulate and restrict the height of structures and objects of natural growth, and otherwise regulate the use of land, in the vicinity of the Duchesne City Municipal Airport by creating the appropriate zones and establishing the boundaries thereof; defining certain terms used in this section, and referring to the Duchesne City Municipal Airport Land Use Compatibility Overlay Zones Map, which can be found at the Duchesne City Office or in the Master Plan, and providing for enforcement.

15.1.2 Findings

- B. Pursuant to passage by the Utah State Legislature of H.B. 206, Duchesne City finds that:
1. It is necessary and in the interest of the public health, public safety and general welfare that the creation or establishment of obstructions that are hazardous to air navigation be prevented; and
 2. The encroachment of noise sensitive or otherwise incompatible land uses within certain areas as set forth in this section may endanger the health, safety and welfare of the owners, occupants, or users of the land in proximity to the Duchesne City Municipal Airport;
 3. The Duchesne City Municipal Airport fulfills an essential community purpose.

15.1.3 Applicability

- C. The provisions of this section shall apply to all lands, buildings, structures, natural features or uses located within those areas that are defined by the airport overlay district and designated on the Duchesne Airport Airspace map found in the Airport Layout Plan (ALP), which identifies areas of height limitations and the Duchesne City Municipal Airport Land Use Compatibility Overlay Zones Map (Exhibit 1).

15.1.4 Definitions

- D. The following definitions shall apply in the Duchesne Municipal Airport Overlay District:
1. "Airport" means the Duchesne Municipal Airport.
 2. "Airport elevation" means the highest point of the airport's usable landing area measured in feet above sea level. The Duchesne Municipal Airport is five thousand eight hundred thirty (5,830) feet above mean sea level.
 3. "Airport-compatible land uses" means those land uses that can coexist with a nearby airport without constraining the safe and efficient operation of the airport or exposing people living or working nearby to potential negative environmental or safety impacts. Airport-compatible land uses do not create airspace obstructions and hazards to safe navigation (such as tall structures, light, glare, electronic/radio, smoke, steam, or other atmospheric interference emanating from

nearby land uses). Airport-compatible land uses do not attract birds and other wildlife hazards to the airport and its immediate environs and do not bring high concentrations of people within airport runway protection zones. The entity authorized to determine what constitutes an airport-compatible land use, in terms of the impact on the airspace, is the FAA, via issuance of a Determination of No Hazard to Air Navigation or a finding that the applicant does not exceed the criteria of the FAA Notice Criteria tool. The City land use authority determines what constitutes an airport compatible land use, based on consultation with the City and guidance found in Advisory Circular 150/5190-4B (or latest edition)

(https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentnumber/150_5190-4) and in the State of Utah's land use guidebook:

https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentnumber/150_5190-4 and <https://luau.utah.gov/wp-content/uploads/Airports-and-Land-Use-Guide-8-2018-Version-WEB.pdf>

4. "Approach surface" means an imaginary surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 15.1.5 F below. The perimeter of the approach surface coincides with the perimeter of the approach zone in plan view.
5. "Approach, Transitional, Horizontal, and Conical Zones." These zones are defined in Section 15.1.5 E below.
6. "City" means the City of Duchesne, Utah.
7. "Conical surface" means an imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (20:1) for a horizontal distance of four thousand (4,000) feet.
8. "County" means Duchesne County, Utah.
9. "FAA Form 7460-1, Notice of Proposed Construction or Alteration" means a form which the Federal Aviation Administration requires to be completed by anyone who is proposing to construct or alter an object that could affect airspace and allows the FAA to conduct an airspace analysis to determine whether the object will adversely affect airspace or navigational aids. More information regarding this requirement can be found on the FAA website.
10. "FAR Part 77 surfaces" means imaginary airspace surfaces, per Part 77 of 49 CFR of the Federal Aviation Regulations, established with relation to each runway of an airport. There are five types of surfaces: (1) primary; (2) approach; (3) transitional; (4) horizontal; and (5) conical.
11. "Hazard to air navigation" means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
12. "High Density Residential" means residential development greater than four dwelling units per acre.
13. "Horizontal surface" means a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which plane coincides with the inner perimeter of the conical surface.
14. "Low Density Residential" means residential development of one dwelling unit per acre or less.
15. "Obstruction" means any permanent or temporary structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 15.1.5 F below.

16. "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity, including a trustee, receiver, assignee, or similar representative of any of them.
17. "Primary surface" means a surface longitudinally centered on a runway. The primary surface has a width and distance beyond each end of the runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The primary surface at Duchesne Municipal Airport is five hundred (500) feet wide and extends two hundred (200) feet beyond runway end.
18. "Runway" means a defined area on an airport prepared for landing and takeoff of aircraft along its length, at the Duchesne Municipal Airport.
19. "Structure" means an object (including a mobile object extending 15 feet or more above a roadway surface, 17 feet or more above a highway surface or 23 feet or more above a railroad surface) constructed or installed by persons, including, but not limited to buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.
20. "Transitional surfaces" means those imaginary surfaces extending outward at ninety (90) degree angles to the runway centerline at a slope of seven feet horizontally for each foot vertically, from the sides of the primary and approach surfaces to where they intersect with the horizontal and conical surfaces.
21. "Tree" means any vegetation of natural growth of 7 feet.

15.1.5 Airport Height Limitation Zones

- E. In order to carry out the purposes of this section, zones are established which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces as they apply to the Duchesne Municipal Airport. The zones are shown on the Duchesne Municipal Airport Part 77 Surfaces Map, which is a part of the Duchesne Airport Layout Plan (ALP). A parcel located in more than one zone is considered to be only in the zone with the more restrictive height limitation. The various zones are defined as follows:
1. Approach Zone. The inner edge of this approach zone coincides with the width of the primary surface and is two hundred fifty (250) feet wide for Runways at Duchesne Airport. The approach zone expands uniformly to the width of one thousand two hundred fifty (1,250) feet at a horizontal distance of ten thousand (10,000) feet from the primary surface end. Its centerline is the continuation of the centerline of the runway.
 2. Transitional Zone. Transitional zones are the areas beneath the transitional surfaces.
 3. Horizontal Zone. Horizontal zones are established by swinging arcs of ten thousand (10,000) feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. Horizontal zones do not include approach and transitional zones.
 4. Conical Zone. Conical zones are established as the area commencing at the periphery of the horizontal zones and extending outward and upward twenty (20) to one (20:1) therefrom for a horizontal distance of four thousand (4,000) feet.
- F. Height limitations. No structure shall be erected, altered, or maintained and no tree shall be allowed to grow in any zone, as defined in this section, to a height in excess of the applicable height limit

established for that zone. The applicable height limitations for each of the zones are established as follows:

1. Approach Zone. Slopes twenty (20) feet outward for each foot upward (20:1) beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway centerline.
2. Transitional Zones. Slopes seven feet outward for each foot upward (7:1) beginning at the sides of and at the same elevation as the primary surface and the approach surface and extending to a height of one hundred fifty (150) feet above the airport elevation.
3. Horizontal Zone. One hundred fifty (150) feet above the airport elevation or at a height of five thousand nine hundred eighty (5,980) feet above mean sea level.
4. Conical Zone. Slopes twenty (20) feet outward for each foot upward (20:1) for four thousand (4,000) feet beginning at the periphery of the horizontal zone to a height of six thousand one hundred eighty (6,180) feet above mean sea level.

G. Safety Measures. No use may be made of land or water within any zone defined herein so as to:

1. Create electrical interference with the navigational signals or radio communications between the airport and aircraft;
2. Make it difficult for pilots to distinguish between airport lights and others; no new or expanded industrial, commercial, recreational or residential use shall project lighting directly onto an existing runway, taxi way, or approach/departure surface except where necessary for safe air travel;
3. Results in glare in the eyes of pilots using the airport or impair visibility in the vicinity of the airport;
4. Create bird strike hazards; or
5. Otherwise endanger or interfere with the landing, take-off or maneuvering of aircraft intending to use the airport.

H. Airport Safety Compatibility Zones (ASCZ). Zones described below are shown on the Duchesne Municipal Airport Land Use Compatibility Overlay Zones Map (Exhibit 1). A parcel located in more than one zone is considered to be only in the zone in which the majority of the parcel is located.

1. Zone 1 - Runway Protection Zone (RPZ), Zone 2 - Inner Approach/ Departure Zone, Zone 3 - Inner Turning Zone, Zone 4 - Outer Approach/Departure Zone, and Zone 5 - Sideline Zone (depicted as Airport Safety Compatibility Zone 1-5 on Exhibit 1: Potentially incompatible land uses within these zones are low and high density residential, places of public assembly such as churches, schools (K-12), colleges, hospitals, shopping centers and other uses with similar concentrations of persons, asphalt plants, sand and gravel mining rock crushing, fuel storage facilities or the storage or use of significant amounts of materials which are explosive, flammable, toxic, corrosive, or otherwise exhibit hazardous characteristics. Hazardous wildlife attractants including waste disposal operations, water management and storm water facilities with above-ground water storage, and manmade wetlands shall not be allowed within these zones. Notwithstanding the above, airport-compatible land uses, as defined herein, are allowed in Zones 1-5; provided that the applicant has documented to the City that their proposal has either not exceeded the FAA Notice Criteria, after querying the FAA pursuant to 14 C.F.R. Part 77 or has applied for and the FAA has issued a Determination of No Hazard to Air Navigation for the

project; the associated conditions of approval are met and the City deems the proposed use compatible. However, the storage or use of materials which are explosive, flammable, toxic, corrosive, or otherwise exhibit hazardous characteristics, oil storage tanks, and similar facilities for the storage of oil or related produced hydrocarbons from oil and gas drilling and production facilities is expressly permitted as an airport-compatible land use, subject to the FAA and conditional use permit approval process (see Section 15.1.5 (H) (2) below).

2. Oil and Gas Drilling and Production in All Zones: Notwithstanding anything to the contrary herein, activities directly or indirectly related to or necessary for exploring for, developing, producing, storing and transporting oil and gas, along with all associated hydrocarbon and non-hydrocarbon substances, are Airport compatible land uses and are allowed in all zones provided that the operator has documented to the City that their proposal has either not exceeded the FAA Notice Criteria, after querying the FAA pursuant to 14 C.F.R. Part 77 or has applied for and obtains a Determination of No Hazard to Air Navigation from the FAA for each surface location prior to the commencement of surface disturbance and any associated conditions of FAA approval are met. The Oil and Gas drilling and production facility operator shall provide the City with a copy of said confirmation from the FAA of not exceeding the FAA Notice Criteria pursuant to 14 C.F.R. Part 77 or the Determination of No Hazard to Air Navigation. If the FAA determines the operator has not exceeded the FAA Notice Criteria pursuant to 14 C.F.R. Part 77 or issues the foregoing Determination of No Hazard to Air Navigation no further permits or approvals will be required from the City under this Ordinance, but other sections of the Zoning Ordinance may require a conditional use permit.

I. Permits for Future Uses.

1. Except as specifically provided in this section, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone defined in this section unless a permit shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to determine whether the resulting use, structure, or tree would conform to the provisions of this section. Certain applications may be forwarded to the FAA for a determination whether the proposal constitutes an airport-compatible land use. No permit for a use inconsistent with the provisions of this section shall be granted unless a variance has been approved in accordance with this section. All permit applications within the airport overlay district shall, in addition to being reviewed through the standard development review process, be subject to the following:
 - a. All developments, permits or plats with proposed buildings and/or structures found to be within twenty (20) feet of any of the height limitations described in Section 15.1.5 F above and/or all buildings and structures over two hundred (200) feet in height must submit a site plan, building elevations and an FAA Form 7460- 1 to the City. Upon review, further documentation shall be required, if more accurate data is necessary for a determination of impact, including detailed surveys by a licensed land surveyor.
 - b. All developments, permits or plats falling within the ASCZs described in Section 15.1.5 H above associated with special use permits, variances or existing nonconforming uses must also submit a site plan to the City for review.

- c. In the area lying within the limits of an approach zone, horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground except when, because of terrain, land contour, or topographic features, the tree or structure would extend above the height limits prescribed for such zones.
 - d. Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction or alteration of any structure or growth of any tree in excess of any height limits established by this section.
 - e. Future uses must meet the definition of an "airport-compatible land use" in order to be placed in any of the six Airport Safety Compatibility Zones listed above.
 - f. Approval of cellular and other communications or transmission towers located within any height limitation zone described within Section 15.1.5 E above shall be conditioned to require their removal within ninety (90) days of the discontinuance of use.
- 2. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction, or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this section.
- 3. Nonconforming Uses Abandoned or Destroyed. Whenever the City determines that a nonconforming tree or structure has been abandoned, or more than eighty (80) percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such a structure or tree to extend above the applicable height limit or otherwise deviate from the zoning regulations.
- 4. Variances.
 - a. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property not in accordance with the provisions of this section, may apply to the City for a variance. The application for variance shall be accompanied by a Determination of No Hazard to Air Navigation from the FAA
 - b. A variance shall be allowed where it is found that a literal application or enforcement of this section will result in an unnecessary hardship and relief granted will not be contrary to the public interest; will not create a hazard to air navigation; will do substantial justice; and will be in accordance with the purposes of this section.
- 5. Obstruction Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this section, be conditioned to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, necessary markings and lights. If deemed proper by the City, or FAA, this condition may be modified to require the owner to permit the city, at its own expense, to install, operate and maintain the necessary markings and lights.
- 6. Conditional Use Permit. Any use allowed conditionally under the City zoning code, which will be located in an Airport Safety Compatibility Zone, shall be treated as a conditional use under that code and shall be subject to all provisions and procedures required for conditional uses. However, the proposed use must qualify as an airport-compatible land use. The decision shall be made by the Duchesne City Council, after receiving a recommendation from the Duchesne City Planning and Zoning Commission and the FAA.

J. Nonconforming uses.

1. Effect Not Retroactive. The provisions of this section shall not be construed to adversely affect any existing structure or use as of its effective date, nor require any change in the construction, alternation or intended use of any prior structure, the construction or alternation of which was begun prior to its effective date, so long as it is diligently pursued to its completion.
2. Marking and Lighting. The owner of any existing nonconforming structure or tree is required to permit the installation, operation, and maintenance of markers and lights deemed necessary by the operation authority of the airport to indicate to the operators of aircraft the presence of obstructions. The markers and lights shall be installed, operated, and maintained at the expense of the operating authority of the airport.

K. Disclosure.

1. To all extents possible, property owners and potential property buyers should be made aware of the following disclosure. The disclosure statement shall be recorded on all approved subdivision plat, minor subdivision plats, conditional use permits, agreements, deeds and building permits within any of the identified zones in Section 15.1.5 E or 15.1.5 H above:

"Properties near the Duchesne Municipal Airport within confines of Duchesne City limits may be subject to varying noise levels and vibration. Properties near the airport may be located within height and use restriction zones as described and illustrated by Federal standards and regulations and Duchesne City. There is the potential that standard flight patterns will result in aircraft passing over the properties at low altitudes and during all hours of the day. Generally, it is not practical to redirect or severely limit airport usage and/or planned airport expansion. Developments near the airport should assume that at any given time there will be some impact from air traffic."

SECTION II – SEVERABILITY

If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only, and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.

SECTION III – EFFECTIVE DATE

This ordinance shall take effective immediately upon its being passed by the City Council.

PASSED AND ADOPTED by the City Council of Duchesne City, Utah on this _____ day of _____ 2025.

Rodney Rowley, Mayor

Attest:

Myra Young, City Recorder

DRAFT