

**Department of Community Planning and Economic Development – Planning Division
Zoning Code Text Amendment**

Date: October 6, 2008

Initiator of Amendment: Council Member Benson

Date of Introduction at City Council: 9/12/08

Ward: 8, 11, 12, & 13 **Neighborhood Organization:** 19 Neighborhoods

Planning Staff and Phone: Merland Otto 612-673-2576

Intent Of The Ordinance: The intent of the amendment is to incorporate the MSP Joint Airport Zoning Board's amended airport zoning ordinance for height limitation and land use zoning into the City's zoning code as required and to comply with a provision of the October 19, 2007 Consent Decree to consider performance standards for noise attenuation in airport noise impacted and mitigated areas.

Appropriate Section(s) of the Zoning Code: Chapter 521.10, Chapter 535.60, Chapter 551

Background: The City of Minneapolis was one of the participants on the Wold Chamberlain Field (MSP) Joint Airport Zoning Board which began working on amending the 1984 Wold Chamberlain Field (MSP) Airport Zoning Ordinance on Sept 13, 2001. The draft ordinance together with supporting documents was submitted August 25, 2003 to the MnDOT Commissioner of Transportation for review and approval. A series of 23 meetings, all of which were open to the public, were held as the Joint Zoning Board deliberated and developed the Ordinance. Additionally, two public hearings were held on September 26, 2002 and February 18, 2004 prior to adoption of the Ordinance in April, 2004. A Metropolitan Council requirement is that impacted communities must incorporate airport safety and height limitation zoning within their zoning code.

Presentations on the proposed ordinance were made to CPC COW on October 3, 2002 and on October 30, 2003. A follow up presentation was made to the Zoning and Planning Committee on August 1, 2006 which first broached the idea of also incorporating provisions for sound attenuation in impacted areas. No specific actions were requested at that time.

No City action has been taken on the proposed ordinance, until now, because there was a delay in getting final electronic plates from MAC and because the ordinance became a bargaining issue in the settlement negotiations with MAC for noise mitigation.

The amendment is very much in the public interest at a range of levels. One of the purposes of the amendment is to protect navigable airspace and thereby protect the traveling public as well as the public

Minneapolis City Planning Department Report

investment in the airport. At another level a direct purpose of the amendment is to protect people on the ground as well as to mitigate noise impacts associated with the airport.

The predominant zoning classification of the proposed overlay district is R-1 with pockets of R-2 and C-1 and C-2, typical of an Established Residential Neighborhood in a Built Up Urban Area. Adoption of the Airport Overlay District will not change the underlying zoning classifications.

Purpose For The Amendment:

What is the reason for the amendment?

What problem is the amendment designed to solve?

What public purpose will be served by the amendment?

What problems might the amendment create?

The reason why this amendment is necessary is to comply with regional policies requiring that airport zoning and land use compatibility is incorporated into the City's zoning code and comprehensive plan. The adopted MSP Joint Airport Zoning Ordinance and accompanying plates are on file with the Hennepin County Recorder's Office as well as the Dakota and Ramsey County Recorders' offices.

There are two separate components to this amendment. The first addresses land use and height limitation zoning required by statute and the Metropolitan Council. The second component addresses noise attenuation provisions of the Consent Decree which the City is obligated to consider but is not required to adopt.

The purpose of this amendment is to:

- Create Airport Zoning Overlay District
- Height Limitation Zoning
- Land Use Safety Zoning
- Noise Impact Area

Height Limitation

The intent of limiting height of structures and trees is to protect federally defined navigable airspace (imaginary surfaces) near the airport. All imaginary surfaces are as defined by Federal Aviation Regulation Part 77.25. The height limitation for structures is actually less restrictive, for the most part, than the City's current ordinance which generally limits heights to 35'. The more restrictive zoning will prevail.

Land Use Safety Zoning

Land use safety zoning is required by state statute and is intended to limit density to protect property and persons in the vicinity of the airport. Generally, safety zoning is more restrictive closer to the end of each runway and becomes less restrictive farther out and off to the sides of the approach path. At MSP land use safety zoning deviates significantly from the state model ordinance and from the 1984 ordinance.

Minneapolis City Planning Department Report

Safety zone A- coincides with federal runway protection zones (1000'X2500'X1750') rather than the standard two-thirds of runway length or 4667' in 1984 ordinance.

Safety zone B-extended from 2333' to 4500'; site population, parcel size restrictions removed, specific prohibitions against amphitheatres, hospitals, nursing homes, schools, stadiums and wildlife attraction areas

Exempt from restrictions- Under both the current (1984 ordinance) and the revised ordinance all affected areas in Safety Zones A and B in Minneapolis are designated Established Residential Neighborhoods in a Built up Urban Area and are exempt from the safety zone A and B restrictions. All uses are conforming uses and could continue or, if partially or fully destroyed, could be rebuilt under the Airport Zoning Ordinance.

Noise Performance Requirements

The purpose of requiring noise attenuation is:

Within 1996 65 DNL Contour and 2007 63 and 64 DNL noise contours

- a. Preserve the integrity of those homes which already have received or are scheduled to receive MAC's sound insulation package by requiring similar construction using materials with a Sound Transmission Class rating of 40 or higher for additions and expansions and providing central air conditioning in habitable rooms.
- b. Prevent new incompatible residential development without additional noise attenuation

Within 2007 60, 61 and 62 DNL noise contours

- a. Require new home construction to provide central air conditioning

Within 2007 60-64 DNL noise contours

Require multi-family homes to provide central air conditioning

Noise attenuation requirements **do not** apply to remodeling projects.

Staff does not anticipate that land use safety zoning will create any problems since Zone A (undevelopable) land lies almost wholly within airport property except for a small triangular piece in Bossen Park. All parcels in Zone B are exempt by state statute from the Zone B requirements since they are in an Established Residential Neighborhood in a Built Up Urban Area. Zone C requirements are limited to prohibiting uses which might affect visibility, light interference with aircraft and electro-magnetic interference with aircraft or airport facilities. Height limitation zoning is generally less restrictive for structures than are the underlying height restrictions. Height limitations are most restrictive in the neighborhoods south of Crosstown Highway. While structures would be grandfathered in, some trees may have to be evaluated to determine if they are hazards, and if so determined, may need to be removed. City staff is working with the Metropolitan Airports Commission to resolve an issue regarding existing trees. The noise attenuation provision will increase initial construction costs to homeowners (estimated to be less than 15% over standard construction) but will maintain the integrity of the sound attenuated structure, provide a higher quality environment and maintain quality housing stock for future generations.

Timeliness:

Is the amendment timely?

Is the amendment consistent with practices in the surrounding area?

Are there consequences in denying this amendment?

The amendment is timely for three reasons. The City is submitting our 2008 Comprehensive Plan Update to the Metropolitan Council for their review. A requirement of the Comprehensive Plan is that impacted communities must address airport zoning. Further, the MAC entered into an indemnification agreement with communities on the Joint Zoning Board which is effective only if the communities incorporate the ordinance into their plans and codes. Lastly in regards to noise attenuation, provision VI.6.1(a) of the Consent Decree stipulates, "Each staff of the Cities of Minneapolis, Richfield and Eagan shall develop draft ordinances, and present them by September 1, 2008, to their city councils for their consideration..."

As of this time, only Bloomington has adopted the Joint Airport Zoning Ordinance. Since they were not a party to the Consent Decree, they are not under obligation to develop a noise performance ordinance. The Cities of Eagan and Richfield are working to develop ordinances to meet the intent of the Consent Decree. Richfield's has been presented at Planning Commission and City Council and staff was directed to continue to develop their ordinance. Eagan staff met with their Council in a workshop session and they continue to develop their ordinance.

Consequences for not adopting the land use safety and height limitation zoning may mean that the Metropolitan Council would not approve the City's Comprehensive Plan or they may indicate at a future date that we are not in compliance with their regional policies. Additionally, if the City does not adopt at least the land use and height limitation provisions, the MAC has no obligation to indemnify the City in the administration of the Ordinance.

While there are no direct consequences for not adopting the noise attenuation provisions of the Consent Decree, there is a direct consequence to residents who have received noise mitigation but through expansion or additions may compromise the integrity of the sound insulation package.

Is this a problem?

In 2006, CPED conducted a preliminary analysis to determine the extent of teardowns/rebuilds within the noise impacted areas and determined possibly 10 occurrences. If that analysis were to extend through 2008, we would expect a higher number. These existing homes, if this ordinance is adopted, would not be required to do additional attenuation, but any future construction within the noise zones would be so required.

Recently, a gentleman who had purchased a 500 square foot home in the noise impacted area in 2000 queried whether he would be eligible for noise mitigation under the new noise mitigation program. In 2001 he applied for and received a permit to expand his home by 1500 square feet. He now wants to know whether MAC will provide noise attenuation for his newly expanded

home. The previous home was insulated by MAC in 1996. He, thus, is not eligible under the new program. This is exactly the type of occurrence this ordinance is intended to address.

Comprehensive Plan:

How will this amendment implement the Comprehensive Plan?

The amendment will implement the following policies of the Minneapolis Comprehensive Plan:

Policy 2.11.4-“Ensure development is consistent with the provisions of Minneapolis-St.Paul International Airport (Wold Chamberlain Field) Zoning Ordinance and 14 CFR Part 77, Objects Affecting Navigable Airspace as applicable.”

Policy 6.3-“Encourage sustainable design practices in the planning, construction and operations of new developments, large additions and building renovations”.

Policy 6.11-“Take measures to reduce noise pollution at point and non-point sources”.

The City of Minneapolis makes the following additional findings:

- (1) The City of Minneapolis along with other governmental entities participated in litigation to obtain noise attenuation from the Metropolitan Airports Commission relating to noise generated by the operation of Minneapolis/St. Paul International Airport.
- (2) That litigation resulted in a consent decree issued by a Minnesota District Court, dated October 19, 2007.
- (3) Section 6.1 of that consent decree requires the Cities of Minneapolis, Richfield and Eagan to consider ordinances requiring noise attenuation for construction in those areas where existing homes are being provided noise attenuation pursuant to the consent decree.
- (4) This ordinance is intended in part to fulfill the requirements of Section 6.1 of the consent decree.
- (5) Minnesota Statutes, Section 473.192 provides that Minnesota Statutes Section 16B.62 requiring uniform building code provisions does not apply to ordinances adopted pursuant to 473.192 for the purpose of attenuating aircraft noise in habitable buildings in and around the aircraft noise zone.
- (6) Development and redevelopment in certain areas of the City is impacted by aircraft noise.
- (7) Some structures do not adequately attenuate aircraft noise. This results in negative impacts on the health, safety and welfare of some residents or inhabitants of the structures.

Minneapolis City Planning Department Report

- (8) Through proper construction methods and materials, the means exist to attenuate aircraft noise to interior levels which help alleviate such negative impacts.
- (9) The requirements of this section will aid in promoting and preserving the health, safety and welfare of the citizens of the City.

Recommendation Of The Department of Community Planning and Economic Development Planning Division:

The Department of Community Planning and Economic Development - Planning Division recommends that the City Planning Commission and City Council adopt the above findings and **approve** the text amendment, amending Sections 521.10, 535.60, and 551.