

ORDINANCE NO. 44-22

AN ORDINANCE TO ESTABLISH A TEMPORARY MORATORIUM ON THE ISSUANCE OF NEW RESIDENTIAL HOUSING BUILDING PERMITS IN A DESCRIBED AREA ASSOCIATED WITH THE FORT SMITH REGIONAL AIRPORT, TO PROVIDE FINDINGS OF FACT, DEFINITIONS, APPLICATION, AND DURATION PROVISIONS RELATED TO THE TEMPORARY MORATORIUM, AND FOR RELATED PURPOSES.

WHEREAS, the development and operation of the Fort Smith Regional Airport is essential to the health, safety, and welfare of the residents of the City of Fort Smith and the surrounding metropolitan area;

WHEREAS, the April, 2020 Airport Master Plan (“Master Plan”) for the Fort Smith Regional Airport asserts the baseline assumption that the airport will continue to operate, in part, as a military-use airport throughout the 20-year planning period covered by the Master Plan (page i-3);

WHEREAS, the Master Plan (page i-8) identifies the use of the airport as an Air National Guard Base as the strength of the Fort Smith Regional Airport;

WHEREAS, to address an airport weakness of runway length (summertime restrictions) noted at page i-8 of the Master Plan, the Master Plan anticipated an extension of runway 8-26 to accommodate, in part, military aircraft that have the potential to operate at the Fort Smith Regional Airport in the future (page i-10);

WHEREAS, Fort Smith Regional Airport has been selected for consideration as a pilot training center to be housed at the Ebbing Air National Guard Base at the Fort Smith Regional Airport;

WHEREAS, in anticipation of the expanded military use, the City of Fort Smith and the Fort Smith Airport Commission have contracted for, and construction is currently underway, an extension to runway 8-26 to a length of 9,317 feet at a local cost of \$5 million and a total cost of \$22 million;

WHEREAS, the anticipated, expanded military use of the Fort Smith Regional Airport will necessitate an evaluation of noise especially as it affects expanded residential use of real property in the vicinity of the Fort Smith Regional Airport;

WHEREAS, the Master Plan (page 1-58) notes:

Noise-sensitive land uses near the airport consist primarily of residential uses in all directions from the airport. A Part 150 study was prepared for the airport in 1997. At that time, there were noise-sensitive land uses within the 65, 70, and 75 DNL noise contours for the airport;

WHEREAS, the 1997 noise contours have been placed on the 2001 Noise Contours and Sensitive Land Uses Map attached hereto;

WHEREAS, the anticipated, expanded military use of the airport will require a new noise study conducted pursuant to FAA guidelines in the FAA's FY2023 grant year for the Fort Smith Regional Airport (the "2023 Noise Study");

WHEREAS, the draft Environmental Impact Study draft (EIS) associated with the pilot training center to be housed at the Ebbing Air National Guard Base is anticipated to be available to the public later in 2022 and is anticipated to contain pertinent noise information;

WHEREAS, additional City of Fort Smith regulations protecting new residential users of real property from the noise effects from the anticipated increased military use of the Fort Smith Regional Airport may be needed;

WHEREAS, the City desires to study and evaluate the impact of further residential development, appropriate zoning and noise regulations, and issues that will affect future growth and development of the area within its jurisdiction;

WHEREAS, the City finds this evaluation process of potential zoning and noise regulations will require community input and will take a reasonable amount of time to complete;

WHEREAS, the City of Fort Smith will retain a qualified consultant to advise on the City's process of developing appropriate regulations;

WHEREAS, the health and welfare benefits to be derived from the development of noise regulations in relation to the Fort Smith Regional Airport with the benefit of draft EIS and the 2023 noise study mandate that new residential development potentially affected by increased military use noise levels be delayed until the adoption of new noise regulations by December 31, 2023; and,

WHEREAS, a temporary moratorium on issuance of building permits for new residential housing structures in a designated area related to the Fort Smith Regional Airport during the period of study and development of potential zoning and noise regulations, which period shall continue no longer than the date of December 31, 2023, is determined to be essential for the health and welfare of the inhabitants of the City of Fort Smith;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Moratorium Adoption. For the purpose of land-use planning, including the consideration, drafting, review, and adoption of potential zoning or noise regulations regarding sound impact on residential uses of real property, there is hereby established a temporary moratorium (a temporary prohibition) on the issuance of building permits for residential housing construction in the Moratorium Area described in Section 2 of this Ordinance for the Moratorium Period described in Section 3 of this Ordinance. The adoption of the described moratorium is based on all available information including the findings of fact stated in the whereas clauses of this Ordinance.

SECTION 2: Moratorium Area. The moratorium enacted by Section 1 of this Ordinance shall be in effect in that portion of Fort Smith, Arkansas, identified as the Moratorium Area on the attached Exhibit "1," more specifically described as being the area, including Airport Area, bounded by a line described as follows, to wit:

Beginning at the point of an intersection of Stateline Road with Phoenix Avenue; thence east on Phoenix Avenue to the Interstate 540 overpass; thence following Interstate 540 north to Leigh Avenue; thence east to Phoenix Avenue; thence along Phoenix Avenue to Rogers Avenue; thence east on Rogers Avenue to South 91st Street; thence north on South 91st to Gary Street; thence east on Gary Street to South 96th Street; thence south on South 96th Street to Apple Gate Drive; thence east on Apple Gate Drive to South 98th Street; thence north on South 98th Street to Dallas Street; thence east on Dallas Street to Old Harbor Road; thence south on Old Harbor Road to Hunters Point Road; thence along Hunters Point Road to the cul-de-sac at the easternmost point on Hunters Point Road; thence due east across the tributary of the Arkansas River to the city limit line; thence south along the city limit line; thence west along the city limit line; thence south along the city limit line to South Zero Street; thence east on South Zero Street to Wells Lake Road; thence south on Wells Lake Road to the Fort Chaffee West Trail; thence due north to South Zero Street; thence west on South Zero Street to Interstate 540; thence south on Interstate 540 to McKinley Avenue; thence west on McKinley Avenue to Highway 71; thence along Highway 71 south to South 28th Street; thence south along South 28th Street to the southern lot line of 7200 South 28th Street; thence along the southern lot line of 7200 South 28th Street west to railroad tracks; thence west along the railroad tracks to Geren Street; thence along Geren Street west to Texas Road; thence along Texas Road south to Hillside Drive; thence along Hillside Drive west to city limit line on Stateline Road; thence north along Stateline Road to the point of beginning.

SECTION 3: Moratorium Period. The moratorium enacted by Section 1 shall be temporary and shall be in effect from the date of adoption of this Ordinance until December 31, 2023, or, if Fort Smith Sound Impact Regulations – Fort Smith Regional Airport ("Sound

Regulations”) are adopted prior to December 31, 2023, the moratorium shall be in effect until the effective date of the Sound Regulations.

SECTION 4: Moratorium Application and Definitions.

A. The reference to “building permit” in Section 1 of this Ordinance refers to any permit which would have been issued pursuant to the Arkansas Fire Code (adopting the International Residential Code) adopted by Fort Smith Code of Ordinances Section 6-2.

B. The City Administrator, through the employees of the City, shall observe and enforce the moratorium adopted by Section 1 of this Ordinance, in the Moratorium Area identified in Section 2 of this Ordinance, during the Moratorium Period stated in Section 3 of this Ordinance.

C. The Moratorium shall not be applicable to building permits applied for and issued for non-residential housing uses, including, without limitation, commercial or industrial structures or residential accessory uses including decking or other non-residential housing uses.

D. The Moratorium shall not be applicable to Fort Smith Planning Department and Planning Commission review and action, including but not limited to, approval of development plans, land use amendments, zoning and re-zoning, nor subdivision of land applications; provided, any such land use action in the Moratorium Area involving new residential housing development shall be so conditioned as to be subject to any Sound Regulations adopted in the Moratorium Period, and no building permit for new residential housing use shall be issued in violation of the Moratorium adopted by Section 1 above.

E. The Moratorium applies to new residential housing building permits. Building permits may be applied for and issued for demolition, repair, and remodeling (but not demolition and reconstruction nor to enlarge existing square footage greater than twenty-five (25) percent of the current gross square footage of the principal single family structure) of residential housing existing on the date of adoption of this Ordinance.

F. Terms appearing in this Ordinance but not defined herein shall have the meanings provided in the City’s Code of Ordinances, or if not defined by the City then the common meanings in accordance with ordinary usage or as defined in applicable state statutes.

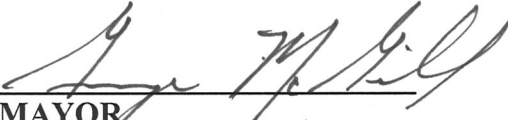
SECTION 5: The provisions and applications of this Ordinance shall be considered severable. The invalidity or inapplicability of this Ordinance to one tract of real property shall not adversely affect the validity or applicability of this Ordinance to other tracts of real property. The invalidity of any provision or application of this Ordinance shall not adversely affect the validity or application of another provision hereof.

SECTION 6: Emergency Clause. It is determined that an emergency situation exists in the described area associated with the Fort Smith Regional Airport related to possible noise

impacts of increased military uses on residential uses and the necessity of a period of time to study, consider, and adopt appropriate sound regulations. Based on that emergency situation, this Ordinance shall be of full force and effectiveness from and after the date of its adoption in order to properly and adequately provide for the health, safety, and welfare of the inhabitants of the City of Fort Smith, Arkansas.

PASSED AND APPROVED THIS 21st DAY OF June, 2022.

APPROVED:


MAYOR

ATTEST:


CITY CLERK

Approved as to form:


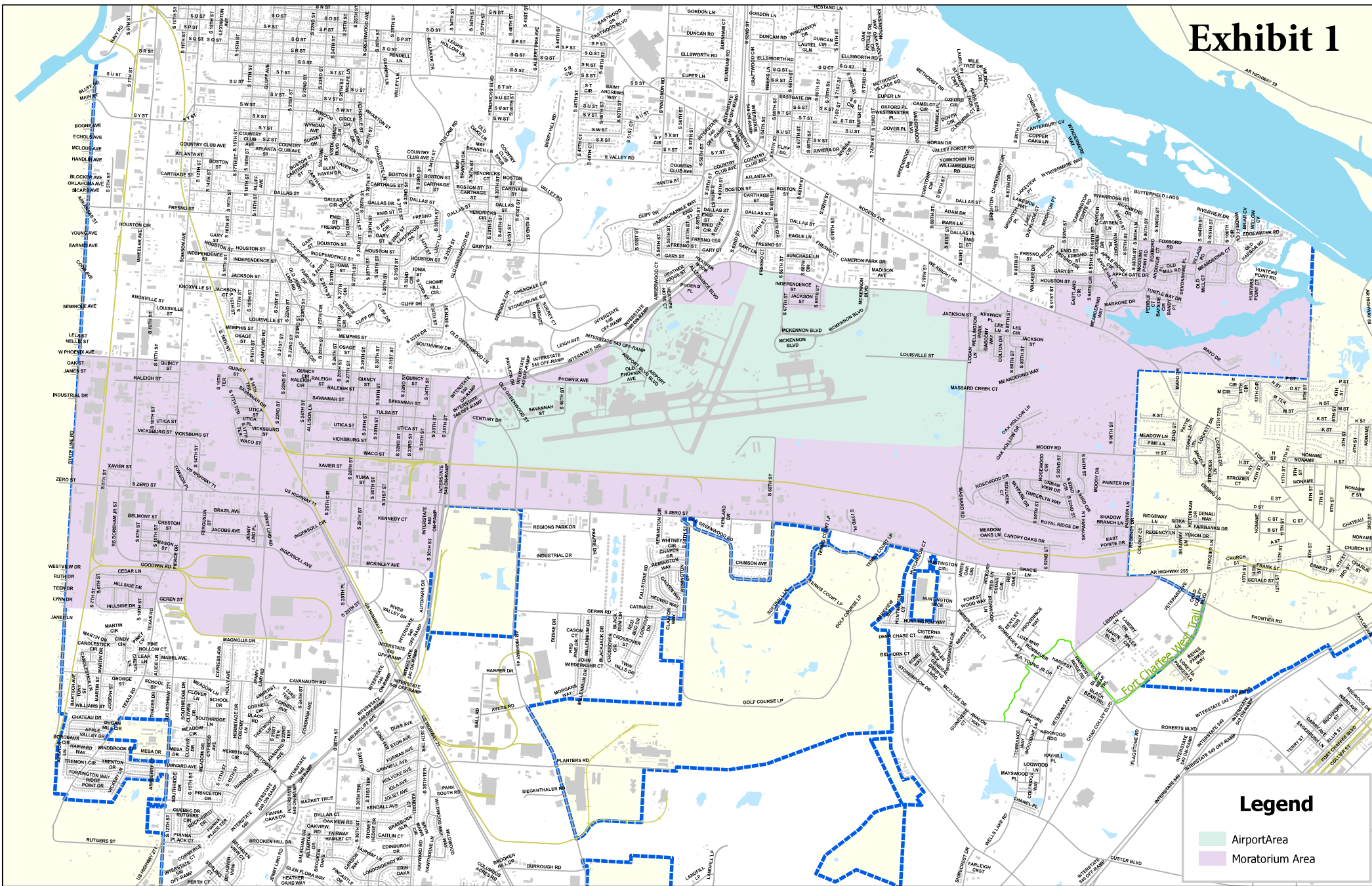



Publish 1 Time

Exhibit 1



Legend

-  Airport Area
-  Moratorium Area