



ORDINANCE NO. 3458-15

**AN ORDINANCE Establishing Land Use Regulations for Airport Compatibility
as Part of the 2015-2035 Comprehensive Plan Update,
Amending Ordinance No.s 1671-89 and 1847-92, as Amended**

WHEREAS, RCW 36.70A.130 (5) requires that cities in Snohomish County take action on or before June 30, 2015 to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the Growth Management Act; and

WHEREAS, on June 24, 2015, City Council adopted Resolution No. 6872 concluding that the City had completed a great majority of the substantive steps necessary to complete the 2015 update and establishing a schedule for adoption of the Comprehensive Plan Update and related regulations, including proposed Airport Compatibility regulations, by October 28, 2015 provided that the schedule is subject to change as necessary to ensure public review and comment and thorough review by the City Council; and

WHEREAS, following a public involvement process that included issuance of a Determination of Significance and scoping for an environmental impact statement on the update, on December 18, 2013 City Council approved Resolution No. 6685 adopting a Comprehensive Plan Audit and Public Involvement Plan for the update in accordance with RCW 36.70A.130(2); and

WHEREAS, Everett has followed its adopted Public Involvement Plan and provided many opportunities for public comment; and

WHEREAS, the City issued a Draft Environmental Impact Statement (DEIS) under State Environmental Policy Act requirements that evaluated the impacts of the proposals on July 20, 2015 and a Final Environmental Impact Statement (FEIS) responding to the comments received on September 4, 2015; and

WHEREAS, the proposed Comprehensive Plan Update amendment, Williams Plan Amendment and Rezone, Draft Environmental Impact Statement and related regulations, including proposed Airport Compatibility regulations, were submitted to the Washington Department of Commerce for 60-day review on July 17, 2015 in accordance with RCW 36.70A.106; and

WHEREAS, RCW 36.70.547 require cities to discourage the siting of incompatible uses adjacent to airports through comprehensive plans and development regulations; and

WHEREAS, the proposed Airport Compatibility regulations will provide consistency with Comprehensive Plan direction and policies; and

WHEREAS, the proposed amendment will protect Paine Field from incompatible land uses, reduce flight hazards and encourage economic development opportunities; and

WHEREAS, the Planning Commission held a public workshop on August 4, 2015 to take public comments and held a public hearing to take public testimony on the proposed amendment on September 15, 2015 and recommended that City Council approve the proposed amendment; and

WHEREAS, the City Council finds that the proposed Airport Compatibility zoning code amendment:

1. Is consistent with the applicable provisions of the Everett Comprehensive Plan;
2. Bears a substantial relation to public health, safety or welfare; and
3. Promotes the best long term interests of the Everett community.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

SECTION 1: Ordinance No. 1671-89, as amended (Title 19 EMC) is hereby amended by addition of the following chapter, Airport Compatibility, to be codified as 19.17:

EMC 19.17 Airport Compatibility

19.17.010 Purpose

The purpose of this chapter is to protect Paine Field from nearby incompatible land uses and development by:

- A. Identifying areas where incompatible uses should be discouraged;
- B. Notifying property owners if their property is located adjacent to an airport, that they may experience impacts from airport operations and may be subject to use, height, or other limitations;
- C. Discouraging the siting of uses that attract birds, create visual hazards, discharge particulate matter in the air that could alter atmospheric conditions, emit transmissions that would interfere with aviation communications or instrument landing systems, or otherwise obstruct or conflict with aircraft patterns;
- D. Identifying potential aeronautical hazards and preventing or minimizing the adverse impacts to the safe and efficient use of navigable airspace by requiring proof of analysis pursuant to Federal Aviation Administration (FAA) regulation before issuing permits for projects that are proposed for development adjacent to Paine Field;

E. Recognizing and supporting Paine Field as an essential public facility and significant economic resource; and

F. Encouraging economic development opportunities and aviation-related uses adjacent to the Paine Field.

19.17.020 Applicability

A. This chapter applies to:

1. Development activities and uses within the airport influence area (AIA), as defined in Section 19.17.020(B) and the table below.
2. Development activities and uses within the airport compatibility area (ACA), as defined in Section 19.17.020(B) and the table below.

B. Airport Name: Snohomish County Airport/Paine Field

FAA Identifier: KPAE

Airport Elevation: 609 feet

Runways	Runway Alignment	Runway Length	ACA Distance	AIA Distance
16R/34L	N/S, West	9,010 feet	10,200 feet	14,000 feet
16L/34R	N/S, East	3,004 feet	7,200 feet	9,000 feet
12/30	NW/SE	2,000 feet	5,700 feet	9,000 feet

19.17.030 Exemptions

A. The following development activities and uses are exempt from the requirements of this chapter provided the development activity or use will not interfere with airport operations:

1. Any air navigation use or facility, airport visual approach or airport arresting device, meteorological device, or a type of approach device approved by the Federal Aviation Administration, the location and height of which is fixed by its functional purpose.
2. Aeronautical activity, including but not limited to:
 - a. Aerospace industry and aerospace manufacturing;
 - b. Fixed base operations, and other necessary airport support facilities, as approved by the airport, if located outside of airport property;
 - c. Aerospace and aviation educational facilities, including technical schools and flight training schools;
3. Development activities regulated by the City's construction codes, Title 16 EMC, which are determined by the Planning Director to be minor or incidental in nature and consistent with the purpose of this chapter.

B. Personal wireless telecommunications services facilities that are subject to the requirements of Section 19.41.150D.1.b. shall comply with the requirements of Sections 19.17.080 and 19.17.090 but are exempt from other provisions of this chapter.

19.17.040 Pre-existing uses

A. Uses and structures lawfully established as of effective date of this ordinance are exempt from the requirements of EMC 19.17.070.

B. Expansion of any use or structure identified in EMC 19.17.070(A) shall be exempt from the provisions of EMC 19.17.070 when the use of the structure lawfully existed at the effective date of this ordinance.

C. A pre-existing use may be changed to any use allowed by the underlying use zone.

19.17.050 General requirements within an airport compatibility area

This section establishes general requirements for any development activities or uses within an Airport Compatibility Area (ACA) subject to the requirements of this chapter.

A. In addition to the notice requirements in Title 15 EMC, the City shall provide notice of applications for development activities or uses within an ACA to the airport manager of Paine Field.

B. Applicants for development within an ACA are encouraged to work cooperatively with the airport manager and refer to FAA and Washington State Department of Transportation guidance related to airport and land use compatibility.

19.17.060 Federal Aviation Administration Review

A. Federal Aviation Regulations, 14 CFR Part 77, impose certain limitations on the height of proposed construction or alteration of structures. Notice is required to be provided to the Federal Aviation Administration (FAA) by filing Form 7460-1 "Notice of Proposed Construction or Alteration" if the structure falls within the notification requirements outlined in 14 CFR Part 77. An applicant for a permit or approval under Chapter 16 EMC is responsible for researching 14 CFR Part 77 to determine whether notification is required, regardless of whether the property that is the subject of the application is within or outside of the airport compatibility area (ACA). Nothing in this chapter shall diminish the responsibility of the project proponents to submit to FAA Form 7460-1 "Notice of Proposed Construction or Alteration" to the FAA if required by 14 CFR Part 77.

B. Applicants for a permit or approval under this chapter for development activity or a use within the ACA consisting of a structure over a height of 30 feet above base elevation, including antennas and building appurtenances, shall provide documentation of one of the following before an approval or permit may be issued:

1. The proposed construction would not require notice to the FAA, per Form 7460-1 as amended, based on standards outlined in 14 CFR Part 77;
2. The FAA has issued a determination that the height would not create an obstruction by penetrating the 14 CFR Part 77 surfaces; or
3. The FAA has conducted an aeronautical study of the proposed structure and issued a determination that the object would create an obstruction but would not create a hazard to the navigable airspace of the airport or impede operations at the airport. If the FAA determination includes recommendation or conditions to mitigate impacts, the following shall apply:
 - a. The department shall provide notice of determination to the airport manager. The airport manager shall be allowed 21 days from the date the notice is transmitted to submit comments to the department to demonstrate that the FAA recommendations or conditions would not be sufficient to address adverse impacts and if so, to recommend additional mitigation strategies to address those impacts; and
 - b. The applicant shall provide documentation that demonstrates that the project has incorporated all recommendations and conditions included in the FAA determination and any additional recommendations submitted by the airport manager necessary to address any remaining adverse impacts to airport operations demonstrated pursuant to EMC 19.17.060B(3)a.

19.17.070 Uses and development approvals within the airport compatibility area

A. Permitted Uses and Development Activities. All properties located within the airport compatibility area (ACA) shall be permitted to have the same uses as permitted in the underlying zoning district subject to the requirements of the underlying use zone and the requirements of this Chapter.

B. Approvals of all uses and development activities within an ACA shall be subject to the following requirements:

1. The proposal will not locate the storage of explosives, hazardous waste, fuel, gas or petroleum, or other hazardous materials within the runway protection zone documented in the relevant airport layout plan.

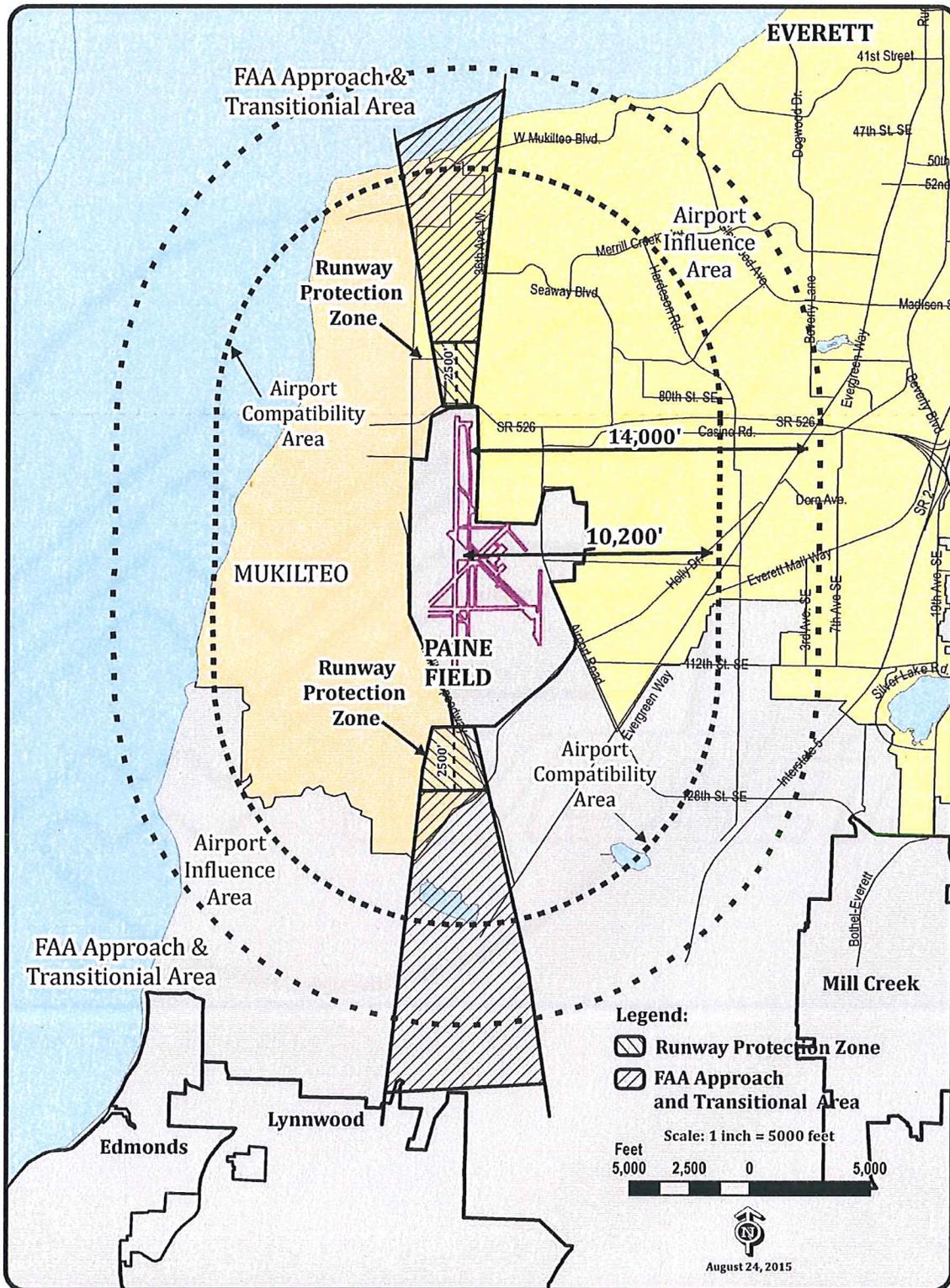
2. Permit applications for uses proposed within an ACA shall provide information showing proximity to airport runways, approach areas, and transitional areas. Application materials should be of sufficient detail to determine that the proposal is compatible with airport operations and consistent with all requirements of this chapter. A pre-application meeting under EMC 15.20.010 is required unless waived by the City.

3. In addition to any notice requirements for the proposed use or underlying use zone, the City shall provide notice of the permit application to the Paine Field airport manager and shall allow the airport manager to submit comments to the department regarding the

proposal, including those related to potential adverse impacts on airport operations and FAA standards.

F. The City may deny, approve, or approve with conditions an application for a development permit or approval within an ACA. The application shall be approved only if the proposal will not require a change in airport operations or flight patterns, including but not limited to adverse impacts due to concentrations of people, height hazards, noise abatement procedures, visual hazards such as lighting and reflective building materials, emissions such as smoke, steam, dust, gas or thermal plumes, transmissions that may cause electrical interference, or wildlife attractants.

Figure 17-1: Airport Influence Area



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19.17.080 Notice and disclosure required within an airport influence area

A. Development approvals and building permits for development activity and uses that are within an Airport Influence Area (AIA) as shown on Figure 17-1 shall not be issued until the owner of the property with the proposed development activity or use signs and records with the county auditor a disclosure notice that:

1. Is in a form provided by the department;
2. Contains a legal description of the property;
3. Bears a notarized signature of the owner; and
4. Contains the disclosure text set forth in EMC 19.17.090.

This subsection does not apply when the disclosure text already has been recorded against the property.

B. In no case shall liability attach to the City for any actions, error, or omissions of any person subject to the requirements of this section.

19.17.090 Disclosure text

The following shall constitute the airport influence area disclosure required by EMC 19.17.080:

Your real property is located within the Airport Influence Area of Paine Field. Occupants of properties within the Airport Influence Area may be subject to inconveniences or discomforts arising from aviation activities, including but not limited to noise, odors, fumes, dust, smoke, hours of operation, low overhead flights and other aeronautical activities. Everett Municipal Code (EMC) 19.17.080 requires that you receive this disclosure notice in connection with permits you are or may be seeking. A provision of EMC 20.08.100 provides that "Noise originating from aircraft in flight and sounds which originate at airports and are directly related to flight operations" is exempt from noise control regulations. The City of Everett has adopted airport compatibility regulations in Chapter 19.17 EMC which may affect you and your land. You may obtain a copy of Chapter 19.17 EMC from the City of Everett. In addition, current and future property owners are notified that the Federal Aviation Administration establishes standards and notification requirements for potential height hazards that may be caused by structures, buildings, trees and other objects affecting navigable air space through 14 Code of Federal Regulations Federal Aviation Regulations Part 77. This disclosure may no longer be applicable if the subject property is removed from the Airport Influence Area.

SECTION 2: Section 4.020 of Ordinance 1847-92, as amended (EMC 19.4.020) is hereby amended by addition of definitions as follows:

"Airport approach area" is the area of land under an imaginary approach surface of an airport as described in 14 CFR Part 77.19(d).

"Airport compatibility area" or "ACA" means an area adjacent to a public use airport where land uses that are incompatible with airport operations are discouraged. The airport compatibility area is the area within a specified distance of each runway, to be measured as a distance extending outward from the portion of the runway centerline between runway thresholds.

"Airport hazard" means any structure or tree or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

"Airport influence area" or "AIA" means an area within a specified distance of a public use airport that may experience impacts from airport operations. The airport influence area is the area within a specified distance of each runway, to be measured as a distance extending outward from the portion of the runway centerline between runway thresholds.

"Airport runway protection zone" means a trapezoidal area at ground level off the end of an airport runway, the dimensions of which are defined by the Federal Aviation Administration to enhance the safety and protection of people and property on the ground.

"Airport transitional area" is the area of land under an imaginary transitional surface of an airport as described in 14 CFR Part 77.19(e).

SECTION 3: Authority. In addition to the authority provided by Chapter 36.70A RCW, the City adopts the Airport Compatibility amendments set forth in this Ordinance under its general land use authority, Washington State Constitution, Article XI, Section 11 and Chapter 35.63 RCW.

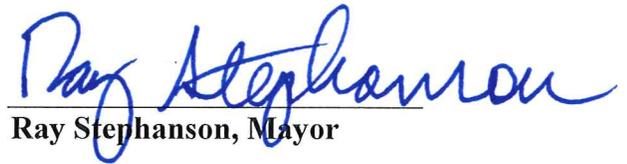
SECTION 4: Pending actions. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending before the City or in any court.

SECTION 5: Severability. Should any section, paragraph, clause or phrase of this Ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

SECTION 6: Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

SECTION 7: Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

SECTION 8: General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provisions or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.


Ray Stephanson, Mayor

ATTEST:


CITY CLERK

Passed: 10/21/2015

Valid: 10/26/2015

Published: 10/30/2015

Effective Date: 11/10/2015

Staff Recommended Revision to Planning Commission Recommendation

Airport Compatibility Proposed Text Revision

19.17.040 Pre-existing uses

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- B. Expansion of any use or structure identified in EMC 19.17.070(A) shall be exempt from the provisions of EMC 19.17.070 when:
 - 1. The use of the structure lawfully existed at the effective date of this ordinance; and
- C. A pre-existing use may be changed to any use allowed by the underlying use zone.

Reason for Change:

Following discussion at the August 4, 2015 Planning Commission workshop, the regulations were revised to allow new building construction within the Runway Protection Zone and other minor revisions. The Planning Commission held a public hearing and recommended adoption of the revised regulations on September 15, 2015.

After further consideration, staff is recommending that restrictions for expanding existing buildings in the Runway Protection Zone be removed (strike-through text above). This revision will create consistent regulations for both existing and new building construction. All proposed construction will be subject to all other development standards in these regulations.