

## CHAPTER EIGHT - MERCER COUNTY REGIONAL AIRPORT REGULATIONS

### I. TITLE

- A. This Ordinance shall be known and may be cited as Mercer County Regional Airport Zoning Ordinance.
- B. Definitions.
  - 1. AIRPORT, REGIONAL - Means Mercer County Regional Airport.
  - 2. AIRPORT ELEVATION - 1832 feet above mean sea level.
  - 3. APPROACH SURFACE - A 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 IV of this Ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.
  - 4. APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES - These zones are set forth in Section III of this Ordinance.
  - 5. BOARD OF ADJUSTMENT - The Mercer County Commission shall act in such capacity, as provided in Section 2-04-10 NDCC.
  - 6. CONICAL SURFACE - A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
  - 7. HAZARD TO AIR NAVIGATION - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
  - 8. HEIGHT - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall mean sea level elevation unless otherwise specified.
  - 9. HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

10. LARGER THAN UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.
11. NONCONFORMING USE - Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.
12. NONPRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing air navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.
13. OBSTRUCTION - Any structure, growth or other object, including a mobile object, which exceeds a limiting height set forth in Section IV of this Ordinance.
14. PERSON - An individual, firm, partnership, corporation, company, association, joint stock association or governmental entity; including a trustee, a receiver, an assignee or a similar representation of any of them.
15. PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Section III of this Ordinance. The elevation of any point on the primary surface is the same as the elevation or the nearest point on the runway centerline.
16. RUNWAY - A defined area on an airport prepared for landing and take-off of aircraft along its length.
17. STRUCTURE - An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.
18. TRANSITIONAL SURFACES - These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

19. TREE - Any object of natural growth.
20. UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.
21. VISUAL RUNWAY - A runway intended solely for the operation of aircraft using visual approach procedures.

## **II. PURPOSE AND INTENT**

- A. An Ordinance regulating and restricting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of the Regional Airport by creating the appropriate zones and establishing the boundaries of such zones; defining certain terms used herein; referring to the Regional Airport Zoning Map which is incorporated in and made a part of this ordinance; providing for enforcement; establishing a board of adjustment; and imposing penalties.
- B. This Ordinance is adopted pursuant to the authority conferred by Chapter 2-04 NDCC. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Regional Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing or future instrument approach minimums of the Regional Airport; and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of Regional Airport and the public investment therein. Accordingly, it is declared:
  1. That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by the Regional Airport;
  2. That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented; and
  3. That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

- C. It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alternation or mitigation of hazards to air navigation, or making and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

### **III. AIRPORT ZONES**

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces as they apply to the Regional Airport. Such zones are shown on the Regional Airport Zoning Map consisting of one sheet, prepared by the Airport Engineer. The Regional Airport Zoning map is located in the Airport regulations zoning case file. An area located in more than one (1) of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

- A. UTILITY RUNWAY VISUAL APPROACH ZONE - The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- B. UTILITY RUNWAY NONPRECISION INSTRUMENT APPROACH ZONE - The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- C. RUNWAY LARGER THAN UTILITY VISUAL APPROACH ZONE - The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- D. RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN 3/4 MILE NONPRECISION INSTRUMENT APPROACH ZONE - The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at

a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

- E. TRANSITIONAL ZONES - The transitional zones are the areas beneath the transitional surfaces.
- F. HORIZONTAL ZONE - The horizontal zone is established by swinging arcs of 5,000 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. The horizontal zone does include the approach and transitional zones.
- G. CONICAL ZONE - The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

#### **IV. REGIONAL AIRPORT ZONE HEIGHT LIMITATIONS**

Except as otherwise provided in this Ordinance, no structure shall be erected, altered or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones as follows:

- A. UTILITY RUNWAY VISUAL APPROACH ZONE - Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- B. UTILITY RUNWAY NONPRECISION INSTRUMENT APPROACH ZONE - Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- C. RUNWAY LARGER THAN UTILITY VISUAL APPROACH ZONE - Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- D. RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN 3/4 MILE NONPRECISION INSTRUMENT APPROACH ZONE - Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

- E. TRANSITIONAL ZONES - Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 1805 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- F. HORIZONTAL ZONE - Established at 150 feet above the airport elevation or at a height of 1955 feet above mean sea level.
- G. CONICAL ZONE - Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
- H. EXCEPTED HEIGHT LIMITATIONS - Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 50 feet above the surface of the land.

#### **V. USE RESTRICTIONS**

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

#### **VI. NONCONFORMING USES**

- A. Regulations Not Retroactive - The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently completed.

- B. Marking and Lighting - Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the Mercer County Land Use Administrator, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the Regional Airport.

## **VII. PERMITS AND VARIANCES**

- A. Future Uses - Except as specifically provided herein, 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 hereby created unless an appropriate permit therefore shall have been obtained. Each application for a permit shall indicate the purpose for which the permit is requested, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with this Section.

B. Exceptions to Permit Requests:

1. In the area lying within the limits of the horizontal zone and conical zone;
2. In areas lying within the limits of the approach zones, but a horizontal distance of not less than 4,200 feet from each end of the runway;
3. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone;
4. These exceptions apply to trees or structures less than seventy-five (75) feet of vertical height above ground, except when such tree or structure, because of terrain, land contour or topographical features, would extend above the height limit prescribed for the applicable zone(s).

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 of the height limits established by this Ordinance except as set forth in Section IV, (E).

- C. 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 Ordinance or any amendments thereto or than it is when the application for a permit is made. Except as indicated, herein all applications for permit(s) shall be granted.
- D. Nonconforming Uses Abandoned or Destroyed - Whenever the Land Use Administrator, determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated or decayed, no permit shall be granted that would allow such a structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.
- E. Variances - Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where a literal application or enforcement of the regulations will result in unnecessary hardship and the 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 spirit of this Ordinance and Chapter 2-04 NDCC. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Manager for advice as to the aeronautical effects of the variance. If the Airport Manager does not respond to the application within 15 days after receipt, the Board of Adjustment may act on its own to grant or deny said application.
- F. Obstructing Marking and Lighting - Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the Regional Airport, at its expense, to install, operate and maintain thereon such markers and lights as may be deemed necessary.



## **VIII. ENFORCEMENT**

It shall be the duty of the Land Use Administrator, to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Land Use Administrator, upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Land Use Administration, shall be promptly considered and granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Land Use Administrator.

## **IX. BOARD OF ADJUSTMENT**

- A. There is hereby created a Board of Adjustment to have and exercise the following powers:
  1. To hear and decide appeals from any order, requirement, decisions or determination made by the Land Use Administrator, in the enforcement of this Ordinance;
  2. To hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass; and
  3. To hear and decide specific variances.
- B. The Mercer County Board of Commissioners shall act as the Board of Adjustment and each member shall serve in such capacity until a successor is duly elected and qualified.
- C. The Board of Adjustment shall adopt rules for its governance and in harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board of Adjustment may determine. The Chairperson or, in the absence of the Chairperson, the Acting Chairperson may administer oaths and compel the attendance of witnesses. All hearings of the Board of Adjustment shall be public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question; or if absent for failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall immediately be filed in the office of the County Auditor and shall be public records.
- D. The Board of Adjustment shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming or modifying any order, requirement, decision or determination which comes before it under the provisions of this Ordinance.

E. The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision or determination of the Land Use Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect variation to this Ordinance.

## **X. APPEALS**

A. Any person aggrieved, or any taxpayer affected, by any decision of the Land Use Administrator, made in the administration of the Ordinance, any appeal to the Board of Adjustment.

B. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the Land Use Administrator, a notice of appeal specifying the grounds thereof. The Land Use Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

C. Any appeal shall stay all proceedings in furtherance of the action appealed from unless the Land Use Administrator, certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Land Use Administrator, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment or notice to the Land Use Administrator, and on due cause shown.

D. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

E. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.

## **XI. JUDICIAL REVIEW**

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal as provided in Chapter 2-04 NDCC.

**XII. ENFORCEMENT AND REMEDIES**

Each violation of this Ordinance or of any regulation, order or ruling promulgated hereunder shall constitute a class B misdemeanor, and thereby be punishable by a fine of not more than \$500 or imprisonment for not more than 30 days or both; and each day a violation continues to exist shall constitute a separate offense.

The Mercer County Commission may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Ordinance or Chapter 2-04 NDCC, or of any order or ruling made in conjunction with the administration or enforcement thereof.

**XIII. SEVERABILITY**

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

**XV. EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage by the Mercer County Board of Commissioners.