

## **Zoning for Public Use Airports in the State of Michigan**

The State of Michigan has taken a very proactive approach to providing safe and reasonable methods for assuring proper zoning for the areas surrounding airports in the State that are **licensed for public use**. The following is intended to explain the various State Laws intended to protect aviation throughout the State of Michigan and promote the safety, welfare, and protections of persons and property in the air and on the ground.

### **Airport Approach Plans The State Plan for Airport Approach Protection Areas**

The continuance of accepted, incompatible land uses adjacent to airport lands, irrespective of their relationship to the operational needs of airports, may result in the loss of, or significantly impede, some of the airports within the state aviation system.

This loss would endanger the state's mission to preserve a system of essential public facilities that provides access for all regions of the state to the nation's air transportation system.

As such State of Michigan zoning acts, Act 183 of 1943 (County Zoning Act), Act 207 of 1921 (City/Village Zoning), and Act 184 of 1943 (Township Zoning Act), were amended in 2000 to include language that requires the incorporation of an airport approach plan. The Michigan Zoning Enabling Act, Act 110 of 2006, repealed the other State of Michigan zoning acts; however, the new act includes the same language as the repealed zoning acts as it pertains to airport approach plans. As per the Aeronautics Code, the Commission has adopted airport approach plans for all licensed airports.

The Aeronautic Code of the State of Michigan provides that the Michigan Aeronautics Commission (MAC) may adopt an ***Airport Approach Plan (AAP)*** (also commonly referred to as an ***Approach Protection Plan***) for each licensed airport. The AAP describes the airport protection area. The "***State Plan for Approach Protection Areas***" section 259.151 of the Aeronautics Code of the State of Michigan, declares that the MAC "***may create and establish a state plan for approach protection areas surrounding airports, landing fields, and other aeronautical facilities, establishing standards of height and use to which any structure or obstruction, whether natural or human-made, may be erected or maintained within a distance from the boundaries of any airport, landing field or other aeronautical facility necessary for public safety.***"

AAP's are intended to provide airport sponsors with standards which are reasonable and enforceable under local zoning ordinances. These plans should also provide airport sponsors with sufficient airspace protection according to local needs and conditions. The standards utilized for each AAP include airspace protection in accordance with FAR Part 77 standards. The land use standards utilized for the establishment of these plans (developed by the University of California-Berkeley using NTSB accident data and standard noise contours) have been endorsed by the FAA. Additionally, the AAP also includes protection for the FAA's VOR's (VHF Omni-directional Radio Range) and AWOS (Automated Weather Observing System) sighting criteria. The AAP's approved by the MAC were based on the current airport layout plan (ALP) for the airport. When ALP's are updated, it may be necessary to update the AAP. The MAC has approved the use of a standard AAP to be applied to an approved ALP without being resent to the MAC if the airport has had a previously approved AAP.

The Michigan Zoning Enabling Act, Act 110 of 2006 requires that local zoning officials incorporate the AAP at the time of the next master plan/ordinance update. The Zoning Enabling Act does not require that non-conforming sections of the ordinance be modified to be consistent with the AAP; however it does require the ordinance *shall* not become any more inconsistent.

**“125.3203 (1) The zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to insure that uses of the land shall be situated in appropriate locations and relationships, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements, and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties. The zoning ordinance shall be made with reasonable consideration to the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development.**

**(2) If a local unit of government adopts or revises a plan required under subsection (1) after an airport layout plan or airport approach plan has been filed with the local unit of government, the local unit of government shall**

**incorporate the airport layout plan or airport approach plan into the plan adopted under subsection (1).**

**(3) In addition to the requirements of subsection (1), a zoning ordinance adopted after March 28, 2001 shall be adopted after reasonable consideration of both of the following:**

**(a) The environs of any airport within a district.**

**(b) Comments received at or before a public hearing under section 306 or transmitted under section 308 from the airport manager of any airport.**

**(4) If a zoning ordinance was adopted before March 28, 2001, the zoning ordinance is not required to be consistent with any airport zoning regulations, airport layout plan, or airport approach plan. A zoning ordinance amendment adopted or variance granted after March 28, 2001 shall not increase any inconsistency that may exist between the zoning ordinance or structures or uses and any airport zoning regulations, airport layout plan, or airport approach plan. This section does not limit the right to petition for submission of a zoning ordinance amendment to the electors under section 402 or the right to file a protest petition under section 403. “**

The overall concept of the amendment to the State Zoning Acts, was to “grandfather” in the current zoning ordinance of the zoned political subdivision. The amendment did not call for existing zoning ordinances to be repealed and readopted to become compliant with the AAP. The intent is to assure that any future Master Plans will incorporate the AAP. Also, subsection four of the amendment requires that any variance request or Zoning Ordinance update or change cannot make the ordinance *any more inconsistent* with the AAP. The amendment does allow for a zoning ordinance amendments under section 402 (referendum).

Typically, the steps to approve and implement an AAP are as follows:

- Project Support Unit staff will prepare an AAP to be presented to the MAC for their approval.
  - a. If the Airport has an approved Airport Layout Plan (ALP)
    - i. The land use guideline portion of the AAP will be applied to the most restrictive (existing, future or ultimate) configuration of the airport as shown in the ALP.
    - ii. The FAA Part 77 sheet in the ALP will be the height restriction portion of the AAP

- b. If an ALP does not exist for the airport
    - i. The land use guideline portion of the AAP will be applied to the current airport configuration as shown on the most current airport inspection drawing.
    - ii. Airports Division staff will prepare a drawing depicting the FAA Part 77 height restrictions.
  - c. If the Airport has an on-site VOR or AWOS
    - i. The FAA's VOR and AWOS sighting criteria will become part of the AAP
- Once the AAP has been approved by the MAC, Airports Division Staff will send a copy to the Airport Manager along with an accompanying letter explaining the required next steps.
  - a. If the airport has an ALP,
    - i. The FAA Part 77 sheet will not be sent with the land use portion of the AAP.
    - ii. The letter accompanying the AAP will direct the Airport Manager to file a copy of the ALP, which will include the FAA Part 77 sheet, along with the Land Use Guideline portion of the AAP with all affected political subdivisions.
    - iii. If the airport has an on-site VOR or AWOS, the FAA sighting criteria should also be filed with the affected political subdivisions.
    - iv. The Airport Manger should also file their name and address and other contact information with the political subdivisions.
  - b. If the Airport does not have an approved ALP
    - i. The drawing depicting the FAA Part 77 sheet produced by Airport Division staff will be sent to the Airport Manager
    - ii. The letter accompanying the AAP will direct the Airport Manager to file a copy of the drawing depicting the FAA Part 77 height restrictions along with the Land Use Guideline portion of the AAP with all affected political subdivisions.

- iii. If the airport has an on-site VOR or AWOS, the FAA sighting criteria should also be filed with the affected political subdivisions.
  - iv. The Airport Manger should also file their name and address and other contact information with the political subdivision.
- Once the AAP has been filed with all affected political subdivisions that have Zoning Ordinances that were adopted prior to March 28<sup>th</sup> 2001:
  - a. The political subdivision should consult the AAP for any variance request or zoning ordinance amendment that affects a property that underlies the zoned area depicted in the land use portion of the AAP. (MCL 125.3203 (3))
  - b. The political subdivision *shall* not allow a zoning ordinance amendment, variance that would increase any existing inconsistency with the AAP. (MCL 125.3203 (4))
  - c. The political subdivision *shall* include the AAP in its next Master Plan Update. (MCL 125.3203 (1))
- Once the AAP has been filed with all affected political subdivisions that have Zoning Ordinances that were or will be adopted after March 28<sup>th</sup> 2001:
  - a. The Municipality shall include the AAP in its Master Plan. (MCL 125.3203 (1))
  - b. The Zoning ordinance *shall be consistent with the AAP*. (MCL 125.3203 (4))
- Airport Manager and/or sponsors should attend any planning and zoning meetings and remind the political subdivision officials of the requirements of the Zoning Enabling Act pertaining to airports.
- Questions regarding the content of this article, Airport Approach Plans or Approach Protection Plans can be directed to the Michigan Department of Transportation's Airports Division.

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## **Airport Zoning Under Authority of the Airport Zoning Act, Act 23 of 1950**

Airports that are licensed for public use and are also publicly owned are empowered by the Airport Zoning Act to establish, adopt, administer and enforce airport zoning regulations limiting the height of structures and objects of natural growth and use of property in the vicinity of the airport. Airport Zoning ordinances adopted under the authority of this Act have the same power and effectiveness as more common ordinances adopted by Counties, Townships, Cities and Villages. Airport Zoning ordinances commonly control the area surrounding the airport for up to 10 miles. It is common for Airport Zoning Ordinances to “overlap” the jurisdiction of other zoned political subdivisions. The following handbook, “Better Neighbors by Design” was compiled and authored by Rick Hammond of the Airports Division of the Michigan Department of Transportation. It contains information regarding sample zoning ordinances and the three different sections within the Act that outline the process of forming an Airport Zoning Board (Commission) and adopting an Airport Zoning Ordinance. Questions regarding the Airport Zoning Act or an existing Airport Zoning Ordinance can be directed to the Michigan Department of Transportation’s Project Support Unit.

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# AIRPORT ZONING



*BETTER NEIGHBORS BY DESIGN*



## INTRODUCTION

Airports present a variety of unique considerations to those involved in community planning. Height restrictions are necessary in the vicinity of airports and airways for the protection of aircraft in flight. Land uses near airports and their approach/departure corridors must remain compatible for the comfort of residents on the ground. Additional concerns include the airport's proximity to landfills and wetlands due to the hazard created by flocks of birds. Unusual lighting in the approach area to an airport can create a visual hazard to pilots. Uses which create smoke, fog or other visibility obscurations may be hazardous to flight. Each of these concerns must be addressed in community planning in order to maintain the safety of flight as well as the quality of life expected by community residents.

As communities continue to grow, areas that once were rural in nature are quickly becoming urbanized. A result of "urban sprawl" is the loss of open space, agricultural land, and the loss of airports and/or their utility. Many communities have used the airport as an economic engine. Proximity of industrial parks and recreational areas have proven to be not only compatible but mutually beneficial. Some communities have used the resources of an airport to contribute to the quality of life in the community. The preservation of open space and the ability to accommodate emergency medical airlifts are good examples of this contribution.

Increases in air travel are placing an increasing demand on our nation's airports. Some estimates are that air traffic could double by the year 2016. Environmental concerns and cost virtually prohibit the establishment of new airports. This means that in order to provide for the protected demand in air traffic maximum utility must be achieved at our existing airports. In turn the land uses in the vicinity of airports must be reserved for compatible uses. It is to this end that this guidance is provided.

## ***REGULATORY BACKGROUND***

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Airports receiving federal funds under the provisions of the Airport Improvement Program, must enter into an agreement containing certain assurances. Among these assurances are two which should be addressed by proper local zoning. Specifically the assurances read:

It (the sponsor) will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creations of future airport hazards.

and

It (the sponsor) will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of te airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.

The State of Michigan has legislated authority to Counties, Townships, Cities, and Villages to regulate land use, through zoning ordinances, on land within their jurisdiction. Additionally, the Airport Zoning Act (Appendix A) enables public airport sponsors to establish Airport Zoning Boards or Joint Airport Zoning Boards to regulate, through zoning, height and land uses within the airport hazard area as established by the Michigan Aeronautics Commission and the local airport sponsor. Michigan's Tall Structure Act (Appendix B) provides for additional airspace protection by establishing standards of height which must be met prior to permitting proposed structures.

# **Airport Zoning Act**

**Act 23 of 1950 (Ex. Sess.)**



**Michigan Department of Transportation**

**Office of Aeronautics**



# **AIRPORT ZONING ACT**

## **Act 23 of 1950 (Ex. Sess.)**

AN ACT to empower and direct the Michigan aeronautics commission to adopt airport approach plans for publicly owned airports within this state; to empower the Michigan aeronautics commission, municipalities, and other political subdivisions to promulgate, adopt, establish, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property in the vicinity of publicly owned airports, and to acquire, by purchase, grant, condemnation, or otherwise, air rights and other interests in land; to provide for the establishment of zoning commissions, administrative agencies, and boards of appeals to administer the provisions of this act, and to provide for their organization and procedure and appeals therefrom; and to provide penalties and remedies for violations of this act or ordinances or regulations made under the authority herein conferred; to provide for reciprocity with adjoining states maintaining and operating airports; and to repeal any inconsistent act or parts of acts.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950;--Am. 1976, Act 158, Imd. Eff. June 17, 1976.

The People of the State of Michigan enact:

259.431 Airport zoning act; definitions.

Sec. 1. For the purpose of this act the words, terms and phrases set forth in sections 2 through 10, inclusive, shall have the meanings prescribed in such sections.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.432 Airport; publicly owned; definitions.

Sec. 2. The term "airport", when used in this act means any location which is used for the landing or taking off of aircraft, which provides facilities for the shelter, supply or care of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or acquired for airport buildings or other airport facilities, and all appurtenant rights-of-way, either heretofore or hereafter established. An airport is "publicly owned" if the portion thereof used for the landing and taking off of aircraft is owned, operated, controlled, leased to or leased by the United States, any agency or department thereof, this state or any municipality or other political subdivision of

this state, or any other governing body, public agency or other public corporation.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.433 Airport hazard; definition.

Sec. 3. The term "airport hazard", when used in this act means any structure or tree or use of land or of appurtenances thereof which obstructs the air space required for the safe flight of aircraft in landing or taking off at an airport or is otherwise hazardous or creates hazards to such safe landing or taking off of aircraft.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.434 Airport hazard area; definition.

Sec. 4. The term "airport hazard area", when used in this act means any area of land or water, or both, upon which an airport hazard might be established if not prevented as provided in this act, including any such area which has been declared to be an "airport hazard area" by the Michigan aeronautics commission in connection with any airport approach plan adopted by said commission.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.435 Commission; definition. Sec. 5. The term "commission", when used in this act means the Michigan aeronautics commission, or any successor thereto established by law.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.436 Political subdivision; definition.

Sec. 6. The term "political subdivision", when used in this act means any county, city, village or township of this state, and any other political subdivision, public corporation, authority, or district in this state which is or may hereafter be authorized by law to construct, enlarge, improve, maintain, equip, operate and regulate airports.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.437 Person; definition.

Sec. 7. The term "person", when used in this act means any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.  
259.438 State; definition.

Sec. 8. The term "state" when used in this act means the state of Michigan.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.439 Structure; definition.

Sec. 9. The term "structure", when used in this act means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke stacks and overhead transmission lines, but not including highways and their appurtenances.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.440 Tree; definition.

Sec. 10. The term "tree", when used in this act, means any object of natural growth.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.441 Airport hazard declared nuisance; prevention.

Sec. 11. It is hereby found that an airport hazard endangers the lives and property of the general public, of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) That the creation or establishment or maintenance of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, abatement, or marking or lighting of existing airport hazards are public purposes for

which political subdivisions may raise and expend public funds and acquire land or property rights therein.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.442 Airport approach plan; adoption by aeronautics commission, considerations.

Sec. 12. The commission shall formulate, adopt and revise, when necessary, an airport approach plan for each publicly owned airport in this state. Each such plan shall indicate and determine the circumstances in which structures and trees are or would be airport hazards, the airport hazard area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be. In adopting or revising any such plans, the commission shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the traffic pattern and regulations affecting flying operations at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions; and the commission may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.443 Airport hazard area; determination; zoning regulations; "development" defined.

Sec. 13. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area wholly or partly within its territorial limits or jurisdiction may make an official determination that the area is in fact an airport hazard area and may thereupon adopt, administer, and enforce, in the interest of public safety and in the manner and upon the conditions prescribed in this act, airport zoning regulations for that part of the airport hazard area which is within its territorial limits or jurisdiction. The regulations may divide the area into zones, and, within those zones, may specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) A political subdivision in which is wholly or partially located an airport hazard area, may adopt, administer, and enforce zoning regulations for that part of an airport hazard area within the political subdivision's territorial limits or jurisdiction to protect public health and safety. The political subdivision may divide the area into zones and specify within the zones the land uses or developments permitted. As used in this subsection, "development" means an activity which materially alters or affects the

existing conditions or use on any land.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950;--Am. 1976, Act 158, Imd. Eff. June 17, 1976.

259.444 Joint airport zoning board; creation; powers; membership.

Sec. 14. In each case where (a) an airport is owned, operated, controlled, leased to, or leased by a political subdivision and an airport hazard area appertaining to the airport is located wholly or partly outside the territorial limits or jurisdiction of the political subdivision, or (b) an airport hazard area is located wholly or partly within the territorial limits or jurisdiction of 2 or more political subdivisions, whether or not the particular airport in connection with which the airport hazard area exists is owned, operated, controlled, leased to, or leased by 1 or more of the political subdivisions, all the political subdivisions involved, including the political subdivision which is the owner, operator, controller, lessee, or lessor of the airport, shall, by ordinance or by resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question, as that vested by section 13 in the political subdivision or political subdivisions within which the hazard area is wholly or partly located. Each joint board shall have as members 2 representatives appointed by the governing body of each political subdivision participating in its creation and in addition, another member to be elected by a majority of the members so appointed. This section shall not require the creation of a joint airport zoning board whenever a county, acting through its governing body or any county agency which is by law authorized to maintain, operate, and improve airports, adopts airport zoning regulations applicable to an airport hazard area located entirely within the territorial limits or jurisdiction of the county and the airport zoning regulations shall supersede any other airport zoning regulations applicable to the same airport zoning area.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950;--Am. 1976, Act 158, Imd. Eff. June 17, 1976.

259.445 Airport zoning regulations; incorporation into zoning ordinance.

Sec. 15. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and may be administered and enforced as an integral part thereof.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.446 Airport zoning regulations; amendment.

Sec. 16. Every airport zoning regulation for an airport hazard area existing in connection with a publicly owned airport shall be designed to effectuate the commission's airport approach plan, as amended by it, whenever necessary, for such publicly owned airport, and said regulations shall likewise be amended, when necessary, to conform to any revision of the applicable airport approach plan that may be made by the commission.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.447 Airport hazard; definition and certification by aeronautics commission; joint airport zoning board, appointment, meetings, powers, compensation and expenses, expenditures.

Sec. 17. In each case where an airport hazard area exists in connection with a publicly owned airport and suitable airport zoning regulations have not been adopted, administered and enforced for such airport hazard area in a form and manner deemed reasonably adequate by the commission for the purposes of this act, the commission on behalf of this state shall define and determine such airport hazard area and certify such determination to the board of supervisors of the county or counties within which such airport hazard area is located and to the political subdivision authorized by law to maintain, operate, improve and regulate such airport, hereinafter referred to in this section as the airport operating agency.

Whereupon and within 90 days thereafter, the board of supervisors of each county involved shall appoint 3 members and the operating agency and the commission shall each appoint 1 member to a board which shall constitute a joint airport zoning board. Two of the members appointed by the board of supervisors of each county involved shall be from a township or townships within which the hazard area is located and 1 shall be from that part of the county outside the townships where the hazard area is located. Within 120 days after such certification such airport zoning board shall meet and organize and thereafter function in the same manner and with the same powers as joint airport zoning boards provided for under section 14 of this act. Members of joint zoning boards created pursuant to the provisions of this section shall be compensated for services actually rendered at a rate established by the airport operating agency and approved by the commission, and shall be reimbursed for any actual and necessary expenses incurred by them in the performance of their duties.

Subject to the approval of the airport operating agency, each joint board created pursuant to the provisions of this section is hereby authorized to make such expenditures, to employ such servants and to engage such professional and consultant services as are necessary to carry out the provisions of this act. All expenses of such

joint boards, including the compensation of its members, shall be paid by the airport operating agency. Provided, however, that the commission and the board of supervisors of any county involved, or any of them, are hereby authorized to participate in and contribute toward such compensation and expenses in such amounts and to such extent as may be fixed or provided by agreement.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.448 Airport zoning regulations; conflict, determination by commission.

Sec. 18. In the event of conflict between any airport zoning regulations adopted under this act and any other zoning regulations applicable to the same area, whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, or by a joint airport zoning board, and whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, those limitations or requirements which may be determined by the commission to be most conducive to airport and air travel safety shall govern and prevail.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.449 Airport zoning regulations; public hearing on adoption or amendment, notice.

Sec. 19. No airport zoning regulations shall be adopted, amended, or changed under this act except by action of the governing body of the political subdivision in question, or by action of the joint board provided for in sections 14 or 17, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in a newspaper of general circulation, in the political subdivision or subdivisions in which is located wholly or partly, the airport hazard area to be zoned, or, if no newspaper is generally circulated in any such political subdivision, then in a newspaper of general circulation in the county in which such political subdivision is located.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.450 Airport zoning commission; appointment, reports and hearings.

Sec. 20. Prior to the initial zoning of any airport hazard area under this act, the governing body of the political subdivision or the joint airport zoning board which is to adopt the regulations shall appoint a body, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such airport zoning commission shall make a

preliminary report and hold public hearings thereon before submitting its final report, and the governing body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such airport zoning commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.451 Airport zoning regulations; reasonableness, considerations.

Sec. 21. All airport zoning regulations adopted under this act shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board, shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the traffic pattern and regulations affecting flying operations at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.452 Airport zoning regulations; removal or alteration of structures or trees prohibited, exception.

Sec. 22. No airport zoning regulations adopted under this act shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in sections 23 and 25.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.453 Airport zoning regulations; construction permits for new structures required.

Sec. 23. Any airport zoning regulations adopted under this act shall require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or substantially repaired. All such regulations shall further provide that before any non-conforming structure or tree may be replaced, substantially altered or substantially repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing such replacement, change or repair must be secured from the administrative agency authorized to administer and enforce the regulations.

No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming structure or tree or non-conforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for permit is made. Whenever an administrative agency determines that a non-conforming use or non-conforming structure or tree has been abandoned or more than 80 per cent torn down, destroyed, deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.454 Airport zoning regulations; variances, application, allowance.

Sec. 24. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of the airport zoning regulations adopted under this act, may apply to the board of appeals, for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations of this act: Provided, however, that any variance may be allowed subject to any reasonable conditions or condition subsequent that the board of appeals may deem necessary to effectuate the purposes of this act. Nothing in this section authorizes the allowance of any variation which will conflict with any general zoning ordinance or regulation of any political subdivision, except such as is adopted exclusively for airport zoning purposes.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.455 Airport zoning regulations; variances, markers and lights required.

Sec. 25. In granting any permit under section 23 or variance under section 24, any administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this act and reasonable in view of the surrounding circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the state or the political subdivision, as the case may be, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.456 Airport zoning regulations; administration and enforcement.

Sec. 26. All airport zoning regulations adopted under this act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of any political subdivision adopting the regulations or one of the political subdivisions which participated in the creation of the joint zoning board adopting the regulations, if satisfactory to that political subdivision; but in no case shall such administrative agency be or include any member of the board of appeals. The duties of any administrative agency designated pursuant to this act shall include that of hearing and deciding all permits under section 23 but such agency shall not have or exercise any of the powers herein granted to the board of appeals.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.457 Board of appeals; provision, powers.

Sec. 27. All airport zoning regulations adopted under the provisions of this act shall provide for a board of appeals to have and exercise the following powers:

( a ) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the zoning regulations, as provided in section 29;

( b ) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations;

( c ) To hear and decide specific variances under section 24.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.458 Board of appeals; members, appointment, terms, officers, removals, rules, meetings, records, subpoenas.

Sec. 28. Where a zoning board of appeals already exists it may be appointed as the board of appeals under this act. Otherwise, the board of appeals shall consist of 5 members, each to be appointed for a term of 3 years and until his successor is appointed and qualified, 1 of whom shall be designated as chairman and 1 of whom shall be designated as vice-chairman, which appointments shall be made by the governing body of the political subdivision adopting the regulations, or by the joint airport zoning board adopting the regulations, as the case may be; and said members shall be removable by the appointing body for cause shown, upon written charges and after notice and opportunity for public hearing before the appointing body.

The concurring vote of a majority of the members of the board of appeals shall be sufficient for all purposes including the reversal of any order, requirement, decision or determination of the administrative agency, or a decision in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

The board shall adopt rules concerning its organization and procedure and other authorized matters, consistent with the provisions of this act, and in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the vice-chairman, may administer oaths or affirmations and issue subpoenas to compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the offices of the board and shall be a public record.

In case of disobedience of a subpoena, the board or its duly authorized agents may invoke the aid of any circuit court of the state of Michigan in requiring the attendance and testimony of witnesses and the production of books, records and papers pertaining to the question involved. Any of the circuit courts of the state within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said board or its duly authorized agents and to produce books, records and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.459 Appeals; filing, hearing, notice.

Sec. 29. In cases where airport zoning regulations are adopted by a political subdivision or joint airport zoning board under sections 13, 14, 15 or 17, any person, including the commission on behalf of the state, aggrieved by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this act, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of appeals authorized to hear and decide appeals from the decisions of such administrative agency.

All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of 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.

The board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify, the order, requirement, decisions, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.460 Appeals; petitions for review by circuit court.

Sec. 30. Any person, including the commission, on behalf of and in the name of the state, aggrieved by any decision of a board of appeals, or any governing body of a political subdivision or any joint airport zoning board who is of the opinion that a decision of a board of appeals is erroneous, after first exhausting the remedies provided by such board, may present to the circuit court in any county in which the board transacts its business, a verified petition setting forth that the decision is erroneous, in whole or in part, and specifying the grounds of the error. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. When petitions for review are filed in qualified courts located in different counties, the court in which a petition is filed first shall have exclusive jurisdiction of the matter.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.461 Board of appeals; certiorari; jurisdiction of court.

Sec. 31. Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decisions of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, or notice to the board and on due cause shown, grant a restraining order.

The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact of the board if supported by substantial evidence, shall be accepted by the court as conclusive.

In any case in which airport zoning regulations adopted under this act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.462 Approach protection; acquisition of property by aeronautics commission.

Sec. 32. In any case in which: ( a ) it is desired to remove, lower, or otherwise terminate a non-conforming structure, tree or use; or ( b ) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or ( c ) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the commission, on behalf of and in the name of the state, within the limitation of available appropriations, or each political subdivision within which the property or non-conforming use is wholly or partly located or the political subdivision owning, operating, controlling or which is lessee or lessor of the airport or is served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which the commission, on behalf of and in the name of the state, or political subdivisions are authorized to acquire real property for public purposes, such air right,

avigation easement, or other estate or interest in the property or non-conforming structure or use in question as may be necessary to effectuate the purposes of this act.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.463 Violation of act or regulations; penalty.

Sec. 33. Any person who shall violate this act or any regulations, orders, or rulings promulgated or made pursuant to this act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$100.00 and imprisonment for a term not to exceed 90 days, and each day a violation continues to exist after notice shall constitute a separate offense. In addition, the political subdivision or joint airport zoning board adopting airport zoning regulations under this act may institute in the circuit court of any county in which the airport hazard area is located, in whole or in part, in connection with which such airport zoning regulations were adopted, an action to prevent, restrain, correct or abate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.464 Airport zoning act; short title.

Sec. 34. This act shall be known and may be cited as the "Airport Zoning Act."

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950.

259.465 Powers and duties of contiguous political subdivision in adjoining state as to airports, landing fields, and other aeronautical facilities.

Sec. 35. The governing body of a contiguous political subdivision in an adjoining state whose laws permit may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, and operate airports, landing fields, and other aeronautical facilities in this state with a political subdivision thereof, subject to the laws and rules of this state applicable to its political subdivisions in aeronautical projects and subject to the laws of the other state in matters relating to financing the projects. A political subdivision of an adjoining state shall have the same privileges, rights, and duties of a like political subdivision of this state. This section shall not apply unless the laws of the adjoining state permit political subdivisions of this state to acquire, establish,

construct, enlarge, own, control, lease, equip, improve, maintain, operate, and otherwise control airports, landing fields, and other aeronautical facilities in the adjoining state with all privileges, rights, and duties applicable to the other political subdivisions of that state in aeronautical projects.

History: Add. 1976, Act 158, Imd. Eff. June 17, 1976.

# ***ZONING PROCEDURE***

## **AIRPORT ZONING BOARDS**

There are three (3) methods of establishing zoning boards as described in the Airport Zoning Act, No. 23 of Public Acts of 1950, Section 13, Section 14 and Section 17.

Section 13. This section allows any political subdivision containing all or part of an airport hazard area within its boundaries, to zone the part it controls. In this case, the controlling body becomes the zoning board.

Section 14. When an airport hazard area includes two or more jurisdictions, the political subdivisions involved may create a joint airport zoning board under this section. Each political subdivision should appoint two (2) members to the board, and that board shall elect another member.

Section 17. This section allows the state to define the hazard area and certify such determinations to the county or counties within which the hazard area is located.

This board is constituted by three (3) members appointed by each County Board of Commissioners involved, one (1) from the operating agency and one (1) by the Michigan Aeronautics Commission. Two (2) of the three (3) appointed by the county shall be from a township or townships within the hazard area and the third from a township outside the hazard area.

The zoning ordinance in each case shall follow the airport approach plan compatible with the approved airport layout plan.

**PROCEDURAL STEPS FOR ESTABLISHING AIRPORT ZONING  
ORDINANCE IN ACCORDANCE WITH ACT 23 OF 1950, SEC. 13 OR 14**

- STEP 1: Informal discussions should take place between the airport sponsor or local unit of government and Office of Aeronautics staff to determine the desired scope of airport zoning.
- STEP 2: The airport owner or operator shall make an official determination that such area is in fact an airport hazard area.
- STEP 3: Appointments made to form the zoning board.
- STEP 4: Zoning board meets and appoints a zoning commission in accordance with Section 20.
- STEP 5: Zoning commission and, if possible, members of the zoning board met with Office of Aeronautics and consultant before and during the preparation of the zoning plans and ordinance.
- STEP 6: When ordinance and plans are complete, the zoning commission holds a public hearing and submits their report to the zoning board.
- STEP 7: Zoning board holds a public hearing.
- STEP 8: Zoning board adopts the zoning ordinance and sets the effective date.
- STEP 9: Zoning board appoints the appeal board and designates the chairman and vice chairman.
- STEP 10: Airport zoning commission is dismissed after ordinance is adopted.
- STEP 11: The Zoning Board should meet at least annually to review the effectiveness of the ordinance and decide on the need to make amendments. Board members should also be tasked with coordinating with other local units and zoning boards to address areas of mutual concern.

**PROCEDURAL STEPS FOR ESTABLISHMENT OF AIRPORT ZONING  
ORDINANCE IN ACCORDANCE WITH ACT 23 OF 1950, SEC. 17**

- STEP 1:** Informal meetings will be held with Aeronautics staff to discuss the actual hazard area, formulation of plans, etc.
- STEP 2:** The Michigan Aeronautics Commission will declare an “Airport Hazard Area” and request the Airport Operating Agency and County Board of Commissioners to make appointments to the Zoning Board.
- STEP 3:** Within 90 days of Step 3, the County Board of Commissioners must appoint three (3) members of the Joint Airport Zoning Board, the Operating Agency must appoint one (1) member, the Michigan Aeronautics Commission must appoint one (1) member.
- STEP 4:** Within 120 days of Step 3, the Joint Airport Zoning Board must meet and organize.
- STEP 5:** The Joint Airport Zoning Board appoints an Airport Zoning Commission. The Zoning Commission makes recommendations for the ordinance.
- STEP 6:** The Airport Zoning Commission and, if possible, members of the Zoning Board meet with the Office of Aeronautics and recommend the boundaries of the various zones to be established and the regulations to be adopted then the Zoning Commission will hold a public hearing and submit a report to the Joint Airport Zoning Board.
- STEP 7:** Joint Airport Zoning Board holds public hearing after a public hearing held by Airport Zoning Commission.
- STEP 8:** Joint Airport Zoning Board adopts the Airport Zoning Ordinance and sets an effective date.
- STEP 9:** Airport Zoning Commission is dismissed after adoption of Airport Zoning Ordinance.
- STEP 10:** Joint Airport Zoning Board creates an Administrative Agency, which will hear and decide permits and will be the body to enforce the Airport Zoning Ordinance.
- STEP 11:** Joint Airport Zoning Board creates a Board of Appeals which will hear and decide appeals from any order, requirements, decision or determination made by the Administrative Agency; to hear and decide any special exceptions to the terms of the Airport Zoning Regulations; to hear and decide specific variances.

## **DUTIES OF THE ZONING BOARD**

- 1 The joint zoning board shall organize itself, elect a chairman, a vice chairman, and a secretary.
- 2 The joint board shall decide its own meeting times, except for an annual meeting which shall be held jointly with the appeal board and the administrative agency.
- 3 It shall appoint an airport zoning commission for the purpose of recommending an initial zoning ordinance.
- 4 It shall inform the commission of its duties and special requirements needed in the proposed zoning ordinance such as who acts as the administrative agency.
- 5 It shall listen to the zoning commission's preliminary report.
- 6 It shall accept the final report of the zoning commission when they believe it is acceptable.
- 7 It shall advertise and hold a final hearing on the proposed ordinance.
- 8 It shall adopt the final ordinance when finalized.
- 9 It shall appoint (if the governing body has not already done so) an appeal board consisting of five (5) members each for a term of three (3) years, which shall rotate.
- 10 It shall meet annually with the administrative agency and the Board of Appeals to review the activity and adequacy of the ordinance.
- 11 Its members shall seek to maintain open communications with other area zoning boards and governmental agencies regarding the concerns of the airport and zoning issues.

## **DUTIES OF THE ZONING COMMISSION**

**Appointment:** Either by the political subdivision or the joint airport zoning board, whichever is going to adopt the zoning regulation.

- Purpose:**
1. To recommend boundaries of various zones to be established.
  2. To recommend the regulations each zone shall be controlled.
  3. To make a preliminary report to the zoning board.
  4. To hold a public hearing. Fifteen (15) days notice of the hearing shall be published in a newspaper of general circulation in the political subdivision.

(See Airport Zoning Act 23, Public Acts of 1950, Section 19, 20)

5. To submit a final report to the airport zoning board for their hearing and adoption.

**DUTIES OF THE JOINT AIRPORT ZONING  
BOARD OF APPEALS**

The board shall meet and adopt rules such as are covered under the Airport Zoning Act, being Act 23, 1950 (Extra Session), Sec. 27, 28, 29, 30, 31 and further described in the Airport Zoning Ordinance under Ordinance Administration Section 4.03.

A short resume of rules to be adopted by the board is attached.

# **BOARD OF APPEALS**

## **Rules of Organization and Procedure**

### **ORGANIZATION**

Meetings of the Board to be called at the discretion of the chairman. The Board should meet at least once a year, preferably during the anniversary week of the adoption date of the ordinance.

### **PROCEDURE**

Appeals should be made within 30 days after written decisions of the Administrative agency. Time can be extended at the discretion of the Board. Place of hearings to be the (City Hall, County Courthouse) unless otherwise designated. Stenographic records of hearings for appellant to be at the expense of the appellant. Notices for appeals should be in writing. The Administrative Agency is to write a letter of transmittal on records of the case in appeals. A quorum is to consist of three (3) members of the Board of Appeals. Public notice for hearing published once in the newspaper five (5) business days prior to day of hearing. Notice to interested people to be given by registered mail five (5) days prior to hearing. Interested parties are: (1) Person filing appeal; (2) Airport Zoning, Board of Supervisors; (3) the Administrative Agency; and (4) Michigan Aeronautics Commission. The decisions to the Board of Appeals to be given in writing to: (1) the Administrative Agency; (2) to the appellant; and (3) Michigan Aeronautics Commission.

The same procedure to be followed for variances as for appeals.

All appeals should be considered within a period of thirty (30) days after receiving notice from the applicant.

At the annual meeting, the new members should be introduced by the continuing members and a report of the Administrator should be given covering permits given out during the year and the secretary should furnish the Michigan Aeronautics Zoning Engineer with an annual report of permits given out and hearing held by the Appeal Board.

Please refer to the ordinance for additional rules and regulations of the Board of Appeals.

# Michigan Aeronautics Commission

## WRITING AN ORDINANCE CLEARLY

Zoning ordinances, like all other ordinances, are legal documents requiring precise writing to avoid misinterpretation. There are always times when it is advisable to consult your attorney for interpretation of an ordinance. Although some ordinances (for example a sewer ordinance) contain technical material out of necessity, most ordinances (including zoning) are directed to the general public and most people should be able to read and understand them.

The University of Oregon Bureau of Governmental Research and Services has published a booklet entitled “Manual for Ordinance Drafting and Maintenance.” Discussed below are some of the recommendations of the manual to ensure that ordinances are clearly written.

1. Legal Subject. “It” and “there” are not proper legal subjects. Instead of writing “It shall be unlawful to fail to obey a traffic control device,” use “No person shall fail to obey a traffic control device.”
2. Verb Tense. Ordinances should be drafted in the present tense. The law acts now and continues to act until repealed. Using the present tense avoids the use of “shall” as part of the future tense. “Shall” should be reserved for mandatory provisions that prohibit or require action.
3. “May” vs. “Shall.” “May” is permissive and “shall” is mandatory. Too often, ordinance drafters use only “shall” in the belief that it sounds more legal. Before using “shall,” decide if the action must be taken or if it is discretionary. Some legal writers suggest that the negative of “shall” is “may not.”
4. Duplication. Do not use redundant pairs of words that have the same meaning such as “null and void” and “full and complete.” These are legalisms that have a fascinating history going back to the need for Anglo-Saxon and French terms in English law, but the need has long since disappeared. Determine what is meant, and say it in one word.
5. Date and Time. It is best to clearly specify dates and times. For example, it is more succinct to state “will go into effect after June 30, 1984,” instead of “will not go into effect on or before July 1, 1984,” or “will go into effect after 11

p.m.” To avoid confusion, use noon or midnight of 12:01 a.m. and p.m. rather than 12 a.m. and p.m.

6. “Such” and “Said.” These words are greatly overworked in legal drafting. Ordinances are littered with “said building,” “said owner,” “such application,” and “such street.” These phrases are used as a shorthand method to refer to, for example, “the building that was just mentioned in the preceding sentence,” although it is not necessary to do so. If an ordinance section is referring to a dangerous building, write “the building.” The reader will know which building. If there is reference to more than one type of building, use identifying terms such as “the dangerous building” and “the non-dangerous building.”
7. “Any,” Each,” “Every,” and “All.” If the intent of the ordinance provision is to encompass everyone who might possibly come within its prohibitions or regulations, it is only necessary to write “no person shall,” or “A person may.” It is evident from the use of these phrases that no person is excluded.
8. Singular vs. Plural. Singular should be used instead of plural. For example, use “person” instead of “person or persons” or “person(s).” The singular encompasses all persons.
9. Sexist Language. The use of “he” as a neutral pronoun instead of using “he or she,” “s/he,” etc., is a policy matter for each governing body to determine. However, in drafting ordinances, care should be taken to avoid producing discriminatory effects by using male and female nouns and pronouns. It is preferable to draft an ordinance in sex-neutral terms by directing the prohibitions to “person.”
10. Abbreviations. If abbreviations are used, spell out the words, and show the abbreviation to be used in parentheses the first time the abbreviated words are used in the ordinance. For example, “the Department of Environmental Quality (DEQ)....” Abbreviations could be included in a definitions section.

The use of definitions can also help clarify the ordinance. Common words should not be defined unless the common meaning is altered. However, creating artificial meaning for commonly understood words usually causes confusion.

#### FOR MORE INFORMATION

The “Manual for Ordinance Drafting and Maintenance” contains 63 pages of tips to ensure that ordinances are legally valid and readily usable to local officials, staff and the general public. The manual can be ordered from the University of Oregon, Bureau of Governmental Research and Service, Eugene, Oregon 97403. Cost is

\$6.00. Some of the information applies only to Oregon cities and counties, but the manual includes several general guidelines for adopting and amending ordinances.

We are not aware of a comparable manual for Michigan. Township officials may want to consult “managing the Modern Michigan Townships” available through the Michigan Townships Association.

**SUBSTITUTES FOR SOME WORDS  
COMMONLY USED IN ORDINANCES**

<b>AVOID</b>	<b>SUBSTITUTE</b>
the applicant shall be accorded the opportunity to be heard	the applicant may request a hearing
the council shall afford the opportunity	the council shall allow
the aforesaid vehicle the above mentioned vehicle the said vehicle	the vehicle
fine and/or imprisonment	fine or imprisonment, or both
at such time as	when
at the place where	where
attains the age of sixteen	becomes sixteen years of age
the recorder be, and he hereby is, directed to	the recorder shall
when the council shall be of the opinion that	when the council determines, decides
the council may constitute and appoint a board	the council may appoint a board
due to the fact that notice was not received	because notice was not received
during such time as the position remains vacant	while the position is vacant
each and every councilor may	a councilor may
if the applicant shall fail, refuse, or neglect to file	if the applicant does not file
for the reason that because of	because
shall make a full and complete report to	shall report to
the recorder shall give consideration to the report	the recorder shall consider the report
if any person shall violate the provisions of	violation of the provisions of

<b>AVOID</b>	<b>SUBSTITUTE</b>
in the event that the meeting falls on a holiday	if the meeting falls on a holiday
the city manager is authorized and directed to	the city manager may (or shall, depending on the intent)
the fire marshal is ordered and directed to	the fire marshal shall
it shall be the fire marshal's duty to	the fire marshal shall
it shall be lawful to	a person may
it shall be unlawful to	no person shall
when the municipal judge shall order, adjudge and decree	when the municipal judge orders
as allowed by the provisions of state law	as provided by state law
unless and until the council determines	until (or unless, depending on the intent) the council determines
councilman	councilor, council member
chairman	chair

If possible, the following words should not be used.

forthwith	thereupon
henceforth	therewith
hereby	to wit
herein	whatsoever
hereinabove	whensoever
hereinbelow	wheresoever
heretofore	whichsoever
thenceforth	wherein
hereinafter	hereafter

# ***Model Airport Zoning Ordinance***



**Michigan Department of Transportation**

**Office of Aeronautics**



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# AIRPORT ZONING ORDINANCE

## FOREWORD

The \_\_\_\_\_ Airport Zoning Ordinance was adopted on \_\_\_\_\_ and became effective \_\_\_\_\_ and repeals and replaces a similar ordinance adopted by the \_\_\_\_\_ in 20\_\_\_. The principal objective is to provide additional safety and protection to the users of the airport and to the people who live and work in its vicinity.

The Ordinance establishes regulations on land within a 10 mile radius of the \_\_\_\_\_ Airport (see attached Sheet \_\_\_\_). This Ordinance establishes a huge air bowl with a minimum height limitation of 25 feet above ground at some locations in the approaches to the runways immediately adjacent to the airport increasing to a maximum height limitation of 500 feet above the established elevations of the airport as the distance from the airport is increased.

Structures and trees which project above the height limitations are considered hazards to flying and endanger lives and property. The prescribed height limits are based on past experience and studies made by the Aeronautics Commission of the State of Michigan and by the Federal Aviation Administration. Height limits are based upon the established elevation of the airport or upon the elevation of the end of the nearest runway.

This Ordinance does not affect existing structures, the height of which exceeded the limits imposed by this Ordinance at the time it became effective. New construction, and construction increasing the height of existing structures, within the airport area, must conform to the provisions on height. The Ordinance also restricts such uses of land within the vicinity of the airport as would unreasonably interfere with radio communication systems and other navigational aids or devices used by the airport and aircraft, or would reduce visibility, or would create confusing lights, or would be subject to undesirable effects that may be caused by the operation of aircraft.

The Board of Commissioners has charged \_\_\_\_\_ with the responsibility of administering and enforcing the provisions of the Ordinance with the understanding that it will seek the close cooperation of, and work through, Township, City, and the County Zoning Boards, and the County Planning Commission.

To effectively administer the Ordinance, the Board of Commissioners established application heights which are below the allowable height limits of the Ordinance. This was done to make it easier for the local Zoning Boards and the general public to decide whether an application for permit must be filed with the Zoning Administrator. This was also done to give added insurance to those who are constructing the higher, more costly structures. The establishment of application heights reduces the number of those who must make application.

The Ordinance contains provisions for the variance of the regulations in the event of practical difficulty or unnecessary hardship if the relief granted would not be contrary to the public interest and safety. It is the intent of the Board of Commissioners, with the cooperation of the public, to have the Ordinance administered in a reasonable and just manner in keeping with the responsibilities involved.

The preceding is by way of explanation only and is not to be considered a part of the Ordinance. Information regarding height limits and copies of the Ordinance are available at the offices of the \_\_\_\_\_ Airport, the County Planning Commission and the Michigan Aeronautics Commission, Capital City Airport, Lansing, Michigan 48906. A copy of the Ordinance is on file with the County Clerk of \_\_\_\_\_ County.

\_\_\_\_\_ AIRPORT ZONING ORDINANCE GENERAL

An Ordinance establishing airport zoning regulations restricting the height of structures and objects of natural growth and otherwise regulating the use of property in the vicinity of the \_\_\_\_\_ Airport; providing for the allowance of variances from such regulations; designating the Zoning Administrator charged with the administration and enforcement of such regulations; establishing an airport zoning board of appeals; providing for enforcement; and imposing penalties for violation of this Ordinance.

Pursuant to the authority conferred by the provisions of the Airport Zoning Act, being Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session) and for the purpose of promoting the health, safety, and general welfare of the inhabitants of the County of \_\_\_\_\_ by preventing the establishment of the airport hazards and thereby protecting the general public, users of the \_\_\_\_\_ Airport, and occupants of land in its vicinity, and preventing the destruction and impairment of the utility of said airports and the public investment therein.

The Board of Commissioners of the County of \_\_\_\_\_ under the provisions of Section 13, 14, 17 of Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session), does hereby ordain as follows:

**ARTICLE 1  
PURPOSE AND LIMITATIONS**

1.1 Title

This Ordinance includes all airport zoning plans attached hereto and is to be known and may be cited as the " \_\_\_\_\_ Airport Zoning Ordinance."

1.2 Objective

The principle objective of this Ordinance is to prevent the creation or establishment of airport hazards and thereby to provide additional safety and protection to the users of the airport and to the people who live and work in its vicinity.

1.3 Hazard Area

The Ordinance establishes regulations on land within a 10 mile radius of the \_\_\_\_\_ Airport (see attached Sheet \_\_\_\_). This Ordinance establishes a huge air bowl with a maximum height limitation of 500 feet above the established elevation of the airport at the outer edge and has a minimum height limitation of 25 feet above the ground at some locations in the approaches to the runways immediately adjacent to the airports. The height limitations of this Ordinance become less severe as the distance from the airports is increased.

1.4 Hazards

Structures and trees which project above the height limitations under this Ordinance are considered hazards to flying and endanger lives and property. The prescribed height limits are not arbitrarily set, but are based on past experience and studies made by the Michigan Aeronautics Commission and by the Federal Aviation Administration. Height limits are based upon the established elevation of the airport or upon the elevation of the end of the nearest runway.

1.5 Existing Non-Conforming Objects

The Ordinance does not affect existing structures, the height of which exceeded the limits imposed by this Ordinance at the time it became effective. New construction, and construction increasing the height of existing structures, within the hazard area, must conform to the provisions on height limitations. The Ordinance also restricts such uses of land within the vicinity of the airport as will unreasonably interfere with radio communications systems, navigational aids, or other devices used by the airport and aircraft, or would reduce visibility or would create confusing lights, or would be subject to undesirable effects that may be caused by the operation of aircraft.

### 1.6 Administration

The \_\_\_\_\_ shall administer and enforce the provisions of the Ordinance and shall seek the close cooperation of and work through the local County, Township and City Zoning Boards.

### 1.7 Heights Requiring Permits

To effectively administer the Ordinance, the Board of Commissioners hereby establishes application heights which are below the allowable height limits of the Ordinance. This is done to make it easier for the local Zoning Boards and the general public to decide whether an application for permit must be filed with the Zoning Administrator. This was also done to give added insurance to those who are constructing the higher, more costly structures. The establishment of application heights reduces the number of those who must make application.[25' within 6.32 miles of airport 100' from 6.32 mi. to 10 mi.]

### 1.8 Land-Use Types Requiring Permits

To promote the general purpose and objectives of this Ordinance and its effective administration, all persons making use of land within the areas shown on sheet \_\_\_\_\_ of the zoning plans are advised to consult Section 3.07 of this Ordinance as to undesirable land uses within designated airport land-use guidance zones.

### 1.9 Provisions for Variance

The Ordinance contains provisions for the variance of the regulations in event of practical difficulty or unnecessary hardship if the relief granted would not be contrary to the public interest and safety. It is the intent of the Administration and Zoning Administrator, with the cooperation of the public, to have the Ordinance administered in a reasonable and just manner in keeping with the responsibilities involved.

### 1.10 Where to Obtain Copies of this Ordinance

Information regarding height limits and copies of the Ordinance are available at the offices of \_\_\_\_\_, the \_\_\_\_\_ Airport, or the Michigan Department of Transportation, 2700 Port Lansing Road, Lansing, Michigan 48906. A copy of the Ordinance is on file with the County Clerk of \_\_\_\_\_ County.

## **ARTICLE 2 DEFINITIONS**

2.1 Words and Phrases For the purposes of this Ordinance, the words, terms and phrases set forth in Sections 2.2 through 2.13 inclusive, shall have the meanings prescribed in those sections.

### 2.2 Airport

The term "Airport" means the \_\_\_\_\_ Airport and all appurtenances used or acquired for airport buildings or other airport facilities, and all other appurtenant rights of way or other existing or future interests.

### 2.3 Airport Hazard

"Airport Hazard" means any structure or tree within the airport hazard area which exceeds the height limitations established by this Ordinance, or any use of land or appurtenances within the airport hazard area which interferes with the safe use of the airport by aircraft.

### 2.4 Airport Hazard Area

The term "airport hazard area" means any area of land or water, or both, lying within a ten mile radius from the established center of the \_\_\_\_\_ Airport in which an airport hazard might exist if not prevented by this Ordinance.

### 2.5 Airport Zoning Act

The term "Airport Zoning Act" refers to Act no. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session).

### 2.6 Board

The term "Board" means the Board of Appeals as hereinafter created and designated below.

### 2.7 Land-Use Guidance Zone

The term "land-use guidance zone" means an area or zone in which certain types of land uses are recommended due to noise, vibrations, fumes, dust, fuel particles and other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at the \_\_\_\_\_ Airport.

## 2.8 Above Mean Sea Level

The term "above mean sea level" denotes elevations above sea level based upon and determined by reference to United States Coast and Geodetic Survey datum.

## 2.9 Non-Conforming Use

The term "non-conforming use" means any structure, tree or use of land which does not conform to a regulation prescribed in this Ordinance or any amendment as of the effective date of such regulation.

## 2.10 Person

The term "person" means any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic, including any trustee, receiver, assignee or other similar representative.

## 2.11 Structure

The term "structure" means any object constructed or installed by man, including but without limitation, buildings, towers, smokestacks, overhead transmission lines, and radio and television aeriels and antennae, but not including highways and their appurtenances.

## 2.12 Tree

The term "tree" means any object of natural growth.

## 2.13 Zoning Administrator

"Zoning Administrator" means the Director of Aeronautics of the Airport, or his designee, who is designated and charged with the administration and enforcement of this Ordinance.

# **ARTICLE 3 ZONES**

## 3.1 Airport Hazard Areas

An airport hazard area is established, which area or zone consists of all the lands within \_\_\_\_\_County lying beneath the approach, transitional, 149 feet horizontal, conical and 500 feet horizontal surfaces, said land being located within a circle having a radius extending horizontally 10 miles (see attached Sheet \_\_\_) from the established center of the usable landing areas of the airport, known as the airport reference point. The boundaries of the hazard areas are shown on the airport zoning plans numbered 1 through \_\_, which maps are attached and made a part of this Ordinance.

### 3.2 Airport Zoning Plans

The height limitations shown on the attached airport zoning plans are imposed on the lands in the airport hazard areas, the same being based upon the elevations above mean sea level at the ends of the respective airport runways and the established elevation of the airport, which elevations are shown on sheets \_\_\_\_\_ of the zoning plans.

### 3.3 Legal Height Limitations

No person may erect or maintain any structure to a height in excess of the limitations prescribed by the terms of this Ordinance and the attached maps, or to plant or allow any tree to grow to a height in excess of the limitations prescribed by the terms of this Ordinance and the attached maps; or to establish any use of lands contrary to the provisions of this Ordinance.

### 3.4 Unlawful Land Use

Notwithstanding any other provisions of this Ordinance, no person may use any lands within any airport hazard area which:

- (a) Would create electrical interference with radio communications between the airport and aircraft or create interference with navigational aids employed by aircraft;
- (b) Would make it difficult for flyers to distinguish between airport lights and others or result in glare to the eyes of flyers using the airport;
- (c) Would create air pollution in such amounts as to impair the visibility of flyers in the use of the airport;
- (d) Would locate or permit the operation of a dump, waste disposal site, sanitary landfill, hazardous waste facility, solid waste transfer station or recycling facility within 10,000 feet of any runway at the airport, unless the construction, location and operation of the site is approved or authorized by the Federal Aviation Administration as not being in violation of its orders, rules or regulations applicable to the airport, or unless a waiver is issued by the Federal Aviation Administration.
- (e) Would otherwise endanger the landing, taking off, or maneuvering of aircraft;
- (f) Would attract birds.

- (g) Would raise the descent minimums of any instrument approach procedure to the airport, or otherwise limit operations at the airport, as determined by an airspace study conducted by the Federal Aviation Administration.

### 3.5 Non-Conforming Existing Uses

The provisions of Section 3.3 of this Ordinance shall not apply to structures, trees or other nonconforming uses existing in an airport hazard area on the effective date of this Ordinance, unless the Zoning Administrator determines it to be abandoned, or 80% torn down, destroyed, deteriorated, or decayed. The definition of abandon shall be the same as that definition used by each respective local land use zoning agency.

### 3.6 Alterations to Non-Conforming Land Use

The provisions of Section 3.3 of this Ordinance shall apply to changes or alterations which increase the height of existing structures, trees or other non-conforming uses after the effective date of this Ordinance, with the same force and effect as though the same were new uses.

### 3.7 Land-Use Guidance Zone

- (a) Purpose. The purpose of land-use guidance zones defined in Section 2.7, is to designate areas in which certain types of land uses are recommended due to undesirable effects that may be caused by the operation of aircraft. See the land-use guidance chart I, as shown on Sheets \_\_\_\_\_ of the airport zoning plans, for recommended land uses.
- (b) Acceptable Land-Use. The uses of land within the areas shown on the zoning plans are acceptable land-uses as outlined in land-use guidance chart II, as shown on Sheets \_\_\_\_\_ of the airport zoning plans.

## **ARTICLE 4 ORDINANCE ADMINISTRATION**

### 4.1 Approach Standards

The approach, transitional, conical and inner horizontal surfaces which establish the height limitations under this Ordinance are denoted on sheets \_\_\_\_\_ of the zoning plans, and are established in conformance with approach standards or regulations of the Michigan Aeronautics Commission or the Federal Aviation Administration. In acting upon applications for permits the Zoning Administrator will arrive at proper height limitations by interpolating between contours shown on the zoning plans.

#### 4.2 Zoning Administrator as Administrative Agency

\_\_\_\_\_ is designated the Zoning Administrator charged with the duty of administering and enforcing this Ordinance. The Zoning Administrator shall act as the "administrative agency" referred to in the Airport Zoning Act. The duties of the Zoning Administrator shall include those of issuing permits as provided below, but the Zoning Administrator shall not have or exercise any of the powers or duties delegated to the Board of Appeals. The Zoning Administrator is granted sole authority to approve land uses on airport property in accordance with State and Federal guidelines. The Zoning Administrator may adopt such rules of procedure as may be necessary in connection with the administration and enforcement of this Ordinance.

#### 4.3 Board of Appeals

There is hereby created a Board of Appeals consisting of five members, each to be appointed for a term of 3 years and until his or her successor is appointed and qualified, one of whom shall be designated as Chair and one of whom shall be designated as Vice-Chair, which appointments shall be made by the County Board of Commissioners and provided that upon such appointments being initially made, one member of the Board shall be appointed for a term of 1 year, two for terms of 2 years each, and two for terms of 3 years each. Board members shall be removable by the appointing body for cause shown, upon written charges and after notice and opportunity to be publicly heard. The Board of Appeals has the powers set forth in Section 28 of the Airport Zoning Act and shall exercise such powers as are conferred upon it in the Airport Zoning Act and in this Ordinance.

- (a) Official Name: The Board of Appeals shall be officially known as the \_\_\_\_\_ Airport Zoning Board of Appeals.
- (b) Compensation: The Board of Appeals shall receive such compensation and expense reimbursement for attendance at meetings and hearings, and may employ such necessary personnel, as may be provided for by resolution of the Board of Commissioners.
- (c) Rules and Procedures: The Board of Appeals shall adopt rules concerning its organization and procedure, including appeal forms, and other authorized matters, consistent with the provisions of the Airport Zoning Act and this Ordinance. Such rules shall include, but not be limited to, providing a reasonable period of time from which appeal may be taken to it from an action of the Zoning Administrator. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine, and notice of all meetings shall be given to all members. An annual meeting shall be held during the month following the anniversary date of this Ordinance. The Chair, or in his or her absence the Vice-Chair, may administer oaths or affirmations and issue subpoenas to compel the attendance of

witnesses. All hearings of the Board of Appeals shall be public, and it shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, then so indicating, and the Board shall keep records of its examinations and other official acts, all of which shall be immediately filed in the offices of the Board and shall be a public record.

- (d) Powers: The Board of Appeals, by the concurring vote of a majority of its members, shall have the power to issue certificates of variance under the provisions of this Ordinance, or to otherwise decide appeals from any order, requirement, rule, regulation, decision or determination made by the Zoning Administrator under the powers conferred upon it by this Ordinance.
- (e) Who May Appeal: Any person, including the governing body of any political subdivision, aggrieved by any decision of the Zoning Administrator made in the administration of this Ordinance, may appeal to the Board of Appeals.
- (f) Appeal Procedure: All appeals from actions of the Zoning Administrator shall be taken within the time and in the manner provided by the rules of the Board of Appeals, by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds of appeal. The Zoning Administrator shall promptly transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, 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 Zoning Administrator's opinion, cause imminent peril to life or irreparable damage to property. In that case, proceedings shall not be stayed otherwise than by order of the Board and on due cause shown. The Board shall fix a time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. The Board may, in conformity with the provisions of this Ordinance, reverse, affirm or modify, wholly or partly, the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator.
- (g) Certificates of Variance: An application for certificate of variance is to be submitted on the form provided for by the rules of the Board of Appeals. If the application is granted, the applicant will receive a certificate of variance in the form prescribed by such rules. The certificate shall provide that it is not effective for a period of thirty (30)

affected by the certificate. In acting upon applications for variance, variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest and approach protection, but would do substantial justice and be in accordance with the spirit of the regulations of this Ordinance; provided, however, that any variance may be allowed subject to any reasonable condition or conditions subsequent that the Board of Appeals may deem necessary to effectuate the purpose of this Ordinance. Nothing in this section shall be construed to permit a use which would conflict with any general zoning ordinance or regulation of any political subdivision applicable to the same area.

## **ARTICLE 5 PERMITS**

### 5.1 Permit Maps (optional)

There is attached hereto as Sheets \_\_\_\_\_ of the airport zoning maps, a "permit map \_\_\_\_\_(s)" showing applicable height limitations within the airport hazard areas above which permits are required under this Ordinance. \_\_\_\_\_(other description as needed)\_\_\_\_\_ The permit maps are affixed to this Ordinance for the information of and consultation by all persons proposing to make uses of land within the airport hazard areas, whether the same be new uses or changes in existing uses, and it shall not be a defense in any action that a person charged with violation of this Ordinance, whether in a criminal or civil action, failed to consult this Ordinance or the permit maps prior to the action giving rise to the violation.

### 5.2 Application for Permits

Applications for permits shall be made to the Zoning Administrator in three (3) copies upon forms furnished by the Zoning Administrator, and the Zoning Administrator shall, within 15 days from the application, determine whether the height limitations as designated by the airport zoning maps and this Ordinance, would or would not be violated if the application were granted and shall grant or deny the application accordingly (the Zoning Administrator not being vested with authority to permit a variance). The Zoning Administrator shall advise applicant of its action within three (3) days after the action has been taken. In the event of a denial, the applicant may apply to the Board of Appeals for a certificate of variance. The Zoning Administrator is authorized and directed to approve all applications for permits for uses not exceeding 25 feet in height above the existing ground level as the same may exist on the effective date of this Ordinance, notwithstanding anything to the contrary herein contained, it being intended that the minimum height limitation to be imposed by this Ordinance shall be 25 feet above ground level existing on the date of this Ordinance. The issuance of a permit shall not be construed to permit a use that violates section 3.5 of this Ordinance or any general zoning Ordinance or regulations of any political subdivision applicable to the same area.

### 5.3 Permit Procedures

Persons desiring to create new uses, or to change existing uses, must file an application for a permit if the proposal involves objects that exceed 25' within 6.32 miles of the airport or exceed 100' between 6.32 miles and 10 miles from the airport or in any case where an object may be in violation of section 3.4 or 3.7 of this ordinance.

[With optional permit maps]

Persons desiring to create new uses, or to change existing uses, shall proceed with one of the following after consulting the applicable permit map:

- (a) Procedure One: If it appears, after consulting the permit map, that the proposed new use, or changed existing use, clearly would not violate the terms of this Ordinance, then the new use may be created, or existing use changed, without applying for a permit hereunder or taking any further action under this Ordinance.
- (b) Procedure Two: If it appears, after consulting the permit map, that the proposed new use, or changed existing use may violate the terms of this Ordinance, then the new use shall not be created, or existing use changed, until a proper permit has first been obtained from the Zoning Administrator in accordance with the provisions of this Ordinance. Inasmuch as the height limitations imposed in the airport hazard area steadily incline from the airport center, and at various rates according to location of approaches, the permit maps are only approximations for any given segment of the airport hazard area and therefore a height limitation may be somewhat greater than accorded by the maps, depending upon the particular plat of land involved. The purpose of this second procedure is, therefore, to enable the Zoning Administrator to make exact mathematical determinations and enable users of the land within the hazard area to avoid violations of this Ordinance.
- (c) Procedure Three: If it appears, after consulting the permit map, that the proposed new use, or change in existing use, will violate the provisions of this Ordinance, then no such new or changed use shall be undertaken unless the person proposing to undertake it shall first apply to the Board of Appeals and obtain a certificate of variance in accordance with the procedures contained in this Ordinance.

5.4 Exception for Emergency Repairs

No permit is required for the emergency repair or emergency replacement of nonconforming public utility structures, other than buildings, when the height of such structures will not be increased by such repairs or replacement. It is intended that in the application of this provision any combination of circumstances calling for immediate action or remedy in the repair or replacement of such non-conforming public utility structures shall be deemed an emergency.

**ARTICLE 6  
JUDICIAL ACTION**

6.1 Appeals to Circuit Court

Any person, including the Michigan Aeronautics Commission on behalf of and in the name of the State, aggrieved by any decision of the Board of Appeals, may appeal to the Circuit Court of the County of \_\_\_\_\_ as provided in Section 30 of the Airport Zoning Act.

6.2 Penalties

Any person who violates this Ordinance or any regulations, orders or rulings made pursuant to this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500.00 or imprisoned for a term not to exceed 90 days, or both. Each day a violation continues to exist after notice shall constitute a separate offense. Such notice may be given by the Zoning Administrator by certified mail, return receipt requested, addressed to the person maintaining the violation at the last known address.

6.3 Appearance Ticket Authorization

Unless prohibited by state law, the following persons are empowered to issue and serve appearance tickets for violations of this Ordinance, pursuant to Act No.175 of the Public Acts of 1927, as amended by Act No.506 of the Public Acts of 1980, Act No.366 of the Public Acts of 1984 and Act No.49 of the Public Acts of 1988, being sections 764.9c and 764.9f of the Michigan Compiled Laws:

The \_\_\_\_\_ County Sheriff and all other Deputy \_\_\_\_\_ County Sheriffs

6.4 Civil Action Available

The \_\_\_\_\_, on behalf of and in the name of the County of \_\_\_\_\_, may, in addition to any criminal action taken, institute in the Circuit Court of \_\_\_\_\_ County, an action to prevent, restrain, correct or abate any violation of

this Ordinance or the Airport Zoning Act, or of airport zoning regulations adopted under this Ordinance or under the Airport Zoning Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to effectuate fully the purposes of this Ordinance or the Airport Zoning Act and the regulations adopted and orders and rulings made pursuant thereto.

**ARTICLE 7  
FEDERAL LAWS  
FEDERAL AVIATION REGULATIONS**

7.1 Federal Laws (Part 77, 14 C.F.R. §77.1 et seq.)

The airport zoning ordinance is not intended to conflict with existing federal approach protection laws. The Federal Aviation Administration requires that it be given notice of any construction or alteration:

- (a) That would be more than 200 feet above ground level at its site.
- (b) That would be above an imaginary surface extending outward and upward at 100:1 slope within 20,000 feet of the nearest point of a runway more than 3200 feet in length.
- (c) That would be above an imaginary surface extending outward and upward at 50:1 slope within 10,000 feet of the nearest point of a runway less than 3200 feet in length.

**ARTICLE 8  
SEVERABILITY OF PROVISIONS**

8.1 Severability of Provisions

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

**ARTICLE 9  
AMENDMENTS**

9.1 Amendments

This Ordinance, and the regulations prescribed herein, may be amended by the Board of Commissioners after a public hearing is held in relation to the proposed amendment, pursuant to Section 19 of the Airport Zoning Act.

**ARTICLE 10**  
**REPEAL OF PRIOR ZONING ORDINANCE**

10.1 Repeal

The Board of Commissioners of the County of \_\_\_\_\_ hereby repeals the \_\_\_\_\_ County Airport-Cascade Zoning Ordinance, effective August\_\_\_\_, 1961.

**ARTICLE 11**  
**EFFECTIVE DATE**

11.1 Effective Date

This Ordinance shall take effect on \_\_\_\_\_.

Chairperson, \_\_\_\_\_ County Board  
of Commissioners

Attest:

\_\_\_\_\_  
County Clerk