

ORDINANCE NO. 7

An Ordinance regulating the height of structures and trees and the use of the property in the vicinity of Lake Elmo Airport.

WHEREAS, the Minneapolis-Saint Paul Metropolitan Airports Commission considers it necessary for the purpose of promoting public health, safety, order, convenience and general welfare by protecting the lives and property of users of the Lake Elmo Airport and of owners and occupants of land in its vicinity to adopt the following airport zoning ordinance applicable to Lake Elmo Airport as authorized by Minnesota Laws 1945, Chapter 303 as amended, M.S.A. 360.061-360.074.

The Minneapolis-Saint Paul Metropolitan Airports Commission does ordain:

Section 1. Definitions. As used in this ordinance, unless the context otherwise requires:

- (1) "Airport" means the Lake Elmo Airport, a public airport owned and being operated, maintained and developed by the Commission.
- (2) "Airport hazard" means any structure or tree or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to such landing or taking off of aircraft.
- (3) "Airport hazard area" means the area of land or water or both upon which an airport hazard might exist if not prevented as provided in this ordinance.
- (4) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.
- (5) "Nonconforming use" means any structure, tree or use of land, which does not conform to a regulation prescribed in this ordinance or any amendment thereto as of the effective date of such regulation or amendment.
- (6) "Structure" means any object constructed or installed by man including but without limitation buildings, towers, smoke stacks and overhead transmission lines.
- (7) "Tree" means and includes any object of natural growth.
- (8) Zoning "map" means the Lake Elmo Airport Zoning Map hereto attached and made a part of this ordinance.
- (9) "Master Plan" means the established airport layout as shown by Commission's Plan #3975, Drawing 4, hereto attached and made a part of this ordinance.
- (10) "Airport reference point" means the center point of the airport hazard area, as designated on the zoning map.
- (11) "Commission" means Minneapolis-Saint Paul Metropolitan Airports Commission, herein referred to as MAC.

- (12) "Committee" means the MAC Airport Zoning Committee.
- (13) "Board" means the MAC Airport Zoning Appeal Board.
- (14) "Public notice" shall mean notice published at least twice with an interval of at least seven days between publication dates in the official newspaper of the cities of Minneapolis and Saint Paul, and of the county in which the airport is located.

Section 2. Airport Hazard Area, Airport Reference Point And Zones. The airport hazard area is the area surrounding the airport reference point as designated on the zoning map and is divided into zones as shown on the zoning map, in respect to which zones height limits as hereinafter set forth will apply:

- (1) The landing zones are strips within the confines of the airport boundaries, designated in black on the map, and along which landings and take-offs are made and taxiing is done.
- (2) The approach zones are trapezoidal areas which extend beyond the ends of all landing zones as indicated on the zoning map.
- (3) The horizontal surface zones are areas having radii of 5,000 feet from the airport reference point and are shown on the zoning map.
- (4) The conical surface zones are areas lying immediately beyond the horizontal surface zones having to their outer limits a radius of 8,000 feet from the airport reference point as shown on the zoning map.
- (5) The transition zones are irregular areas lying just outside of approach zones as shown on the zoning map.

Section 3. Height Limits. Except as otherwise provided in this ordinance, no structure shall be located, constructed, altered or maintained, and no tree shall be allowed to grow above height limits hereinafter established within any landing zone, approach zones, horizontal surface zones, conical surface zone or transition zone, said heights being measured in feet above established elevations as follows:

- (1) Within landing zones - the elevation of the surface of the landing strips except as required and as necessary and incidental to airport operations or as may be recommended by or be in accordance with rules of the Civil Aeronautics Administration.
- (2) Within approach zones - the established elevation for the beginning of each approach zone as shown on the Master Plan, plus one foot of height for every 30 feet of horizontal distance measured along the centerline of the approach zone from the end nearest the landing zone to a point on said centerline at right angles to the structure or tree in question.
- (3) Within horizontal surface zones - 150 feet above the established elevation of the airport, said established airport elevation being mean sea level elevation 869 feet.

- (4) Within conical surface zones - The elevation of the horizontal surface zone at 5,000 feet from the airport reference point plus one foot of height for every 20 feet of horizontal distance to 8,000 feet from the airport reference point.
- (5) Within transition zones - The height limit permitted at a point on the centerline of the nearest approach zone at right angles to the structure or tree in question plus one foot in height for every seven feet of horizontal distance from the nearest side boundary of said landing or approach zone to such structure or tree measured along a line at right angles to the centerline of such landing or approach zone.
- (6) Where zones overlap, the height limit shall be that of the zone imposing the more stringent height limit.

Section 4. Use Restrictions. Except as provided in Section 8 hereof, from and after the taking effect of this ordinance it shall be unlawful to put any land located within the airport hazard area to any of the following uses:

- (1) Any use which would create unreasonable interference with radio communication between aircraft and the airport or communication facilities in the vicinity thereof, or which would unreasonably interfere with other navigational aid or devices used by the airport or by aircraft using said airport, or with electronic navigational aids that may at the time of such interference be established for the vicinity thereof.
- (2) Any use which would materially reduce the visibility within the aforementioned airport hazard area or which would make it difficult for flyers in the vicinity of or on the airport to distinguish between airport lights or markers or other navigational lights or markers in the vicinity of the airport, or which would result in glare in the eyes of flyers using the airport.
- (3) The conduct of any business or occupation, or any use, which business, occupation or use, by its very nature is inherently dangerous or hazardous as respects likelihood of causing or resulting in injury or damage to aircraft or the occupants thereof flying to and from or in the vicinity of said airport, or persons present at or in the vicinity of said airport or lawfully in the vicinity thereof.
- (4) Any other use or uses which would be dangerous or hazardous to the safety of aircraft using the airport or maneuvering in the vicinity thereof or to the health, safety or general welfare of airport personnel and other persons using said airport.

Section 5. Existing Nonconforming Uses. The height limits and use restrictions as provided herein or as may hereafter be provided in any amendment hereto, except as hereinafter provided in Section 6, subdivision 2 and Section 9, subdivision 2 shall in no event be construed to interfere with the continuance of any nonconforming use or to require the removal, lowering or other change or alteration of any existing nonconforming tree, or of any nonconforming structure the construction or alteration of which was begun through the letting of contracts therefor prior to the effective date of this ordinance or amendment thereto and where such construction or alteration is prosecuted with reasonable diligence; provided that the provisions hereof shall not be construed as a limitation upon the rights conferred upon MAC by M.S.A. 360.074.

Section 6. Permits. Application shall be made and permit procured from the MAC Zoning Committee created hereunder in each of the following instances and subject to the following conditions:

- (1) Where it is desired to erect or locate structures, to increase the height of existing structures or to plant or transplant trees within the airports hazard area to a height in excess of ten feet below the height limit herein provided with respect thereto.
- (2) Where it is desired to replace, substantially alter or repair, rebuild or relocate any nonconforming structure or tree within the airport hazard area, provided, however, that whenever the Committee determines that a nonconforming structure or tree within the airport hazard area has been abandoned or more than 80% torn down, destroyed, deteriorated or decayed no permit shall be granted.
- (3) No permit shall be granted that would allow the establishment or creation of an airport hazard or that would permit a nonconforming structure or tree or nonconforming use to be made or to become higher or to become a greater airport hazard than was the case under the applicable zoning regulations at the time when the application for permit was made.
- (4) In granting any permit, the Committee may, if it deems such action advisable to effectuate the purpose of this ordinance and reasonable in the circumstances, so condition such permit as to require the owner of a structure or tree in question to permit the MAC 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.
- (5) Whenever any person prior to erection, alteration or relocation of structures or planting or transplanting of trees within the airport hazard area makes a report of the contemplated erection, alteration or relocation of structures or the contemplated planting or transplanting of trees within said airport hazard area, to the committee, the committee shall promptly investigate and determine whether or not there would be a violation of the ordinance; and if a violation be found, the committee shall so advise such person, who shall thereupon alter his plans so as to meet the requirements of the ordinance.

Section 7. Variances. Any person desiring to erect or to locate any structure or to increase the height thereof or to permit the growth of any tree or otherwise to use property within the airport hazard area contrary to the provisions of this ordinance may apply to the MAC Airport Zoning Appeal Board created hereunder for variance from the provisions of this ordinance. Such variance shall be allowed where literal application or enforcement of the provisions of this ordinance would result in practical difficulty or unnecessary hardship to the applicant, and where the relief granted would not be contrary to the public interest but would do substantial justice and would be in accordance with the spirit of these provisions. Any variance may be granted, however, subject to such reasonable conditions as the Board may deem necessary to effectuate the purposes of this ordinance, and the granting of such variance may be conditioned upon the owner of a structure or tree granting to the MAC the right at its 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.

- (1) Two copies of an application for variance, indicating the facts surrounding such application in sufficient detail to permit a determination of the application on its merits, shall be filed with the MAC Airport Zoning Committee which shall forthwith transmit one copy to the MAC Airport Zoning Appeal Board, the second copy being retained by the Committee for its files.

Section 8. Administration. For the administration and enforcement of the provisions of this ordinance there is hereby created an administrative agency to be known as the MAC Airport Zoning Committee, the same to consist of three members. The said Committee shall include one member of the Commission appointed by the said Commission to represent the City of Minneapolis, a second member of the Commission appointed by the said Commission to represent the City of Saint Paul and a third member who shall be the Executive Director of the said Commission serving ex officio. The members of the Committee, except the ex officio member, shall serve at the pleasure of the Commission. No compensation shall be paid members of the MAC Zoning Committee except reimbursement of actual expense.

- (1) The powers and duties of said administrative agency shall be as provided by Laws 1945, c. 303, as amended, M.S.A., sections 360.061-. 074.
- (2) Where a nonconforming structure or tree within the airport hazard area has been abandoned or more than 80% torn down, destroyed, deteriorated or decayed, although no application for permit has been made, the Committee may order the owner of such nonconforming structure or tree at the owner's expense to lower, remove, reconstruct or equip the same as may be necessary to conform to this ordinance, in which case the Committee shall give notice thereof to the owner, and if the owner shall neglect or refuse to comply with such order for ten days after notice is given, then the Committee may proceed to have such nonconforming structure or tree lowered, removed reconstructed or equipped and assess the cost and expense thereof against such structure or against the land whereon such structure or tree is or was located. Unless such an assessment is paid within ninety days from the date of service of notice thereof on the owner or upon the person in possession of such structure or tree or of the land upon which the same is or was located, the sum due shall bear interest at the rate of 8% per annum until paid and may be collected either by suit in a court of competent jurisdiction or in the same manner as are general taxes. Notice aforesaid shall be in writing and served in the same manner as a summons in a civil action.
- (3) Applications for permits shall be made to the Committee on forms prepared and furnished by it. The forms shall provide for a statement by applicant of the purpose for which the permit is applied, and for statement of applicant of all facts pertinent to the question whether or not the application should be granted. Such applications shall be promptly considered and the permit granted or denied by the Committee, notice in writing of the Committee's decision to be promptly delivered or mailed to the applicant.
- (4) All reports made pursuant to Section 6 hereof shall be received by the Committee and shall be reviewed by it promptly to determine whether there is an airport hazard, and if found that there is one, notice in writing of such finding setting forth the reasons therefor shall be promptly delivered or mailed to the person making such report.

- (5) All applications for variance shall be received by the Committee, which shall forthwith transmit the copy of such application to the MAC Airport Zoning Appeal Board, retaining a second copy of such application for the Committee's files. The Committee shall be represented at all hearings on applications for variance before the Board unless it shall attach its written approval to the application for variance on transmitting it to the Board.
- (6) The Committee shall have its office at the office of the MAC. It shall keep and file in its said office records of all its proceedings, all applications for permits and reports and of action thereon. The Committee shall also keep on file a record of all variances granted by the MAC Airport Zoning Appeal Board. The files of the Committee shall be open to the public.
- (7) The majority vote of the members shall control on all matters coming before it.

Section 9. Board of Adjustment. There is hereby created a MAC Airport Zoning Appeal Board consisting of five members. Two members shall be appointed by the Commission from the City of Minneapolis, two members shall be appointed by the Commission from the City of Saint Paul, and the fifth member shall be appointed by a majority vote of the other four members. No member of the MAC Airport Zoning Appeal Board may be a member of the MAC Airport Zoning Committee. Each member shall serve for a term of three years and until his successor is appointed, and all members shall be removable by the Commission for cause upon written charges and after notice and opportunity for public hearing before the Commission. The powers and duties of said Board shall be as provided by Laws 1945, c. 303, as amended, M.S.A. Sections 360.061-.074.

Section 10. Appeals.

- (1) Any person aggrieved or taxpayer affected by any decision of the MAC Airport Zoning Committee made in its administration of this ordinance, or the Commission or any governing body or administrative agency of a political subdivision, if of the opinion that a decision of said Committee is an improper application of airport zoning regulations of concern of such Commission, governing body or administrative agency, may appeal to the MAC Airport Zoning Appeal Board from the decision of the Committee.
- (2) All appeals must be taken within a reasonable time, as provided by the rules of the Board, by filing with the Committee and with the Board a notice of appeal specifying the grounds thereof. The Committee shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
- (3) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Committee certifies to the Board after notice of appeal has been filed with it that by reason of the facts set forth in the certificate a stay would in its opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by order of the Board on due notice to the Committee and on due cause shown.

- (4) 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.
- (5) The Board may in conformity with the provisions of this ordinance reverse or affirm wholly or partly or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end the Board shall have all the powers of the MAC Airport Zoning Committee from which the appeal is taken.

Section 11. Judicial Review. Any person aggrieved or taxpayer affected by any decision of the MAC Airport Zoning Appeal Board, or any governing body or administrative agency of a political subdivision which is of the opinion that a decision of the Committee is illegal will have such right of judicial review as is provided in Minnesota Laws 1945, Chapter 303 as amended upon exhausting the administrative remedies herein provided.

- (1) In any case in which provision or provisions of this ordinance 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 of the United States, such holding shall not affect the application of such provisions as to other structures and parcels of land.

Section 12. Violation and Penalties. Every person who within the airport hazard area shall construct, locate or maintain, substantially change or substantially alter or repair any existing structure or plant, transplant or permit the growth of any tree or make use of property contrary to the terms of this ordinance, or who having been granted a permit or variance as herein provided, shall construct, locate, substantially change or substantially alter or repair any existing growth or structure or permit the growth of any tree except as permitted by such permit or variance, or who otherwise shall violate the terms hereof or regulations, orders or rules promulgated hereunder, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$300 or imprisonment for not more than 90 days or by both such fine and imprisonment. Each day a violation continues to exist shall constitute a separate offense, provided, however, that where a report has been made and filed with the MAC Airport Zoning Committee as herein provided, for the purposes of this section there shall be no violation within the meaning of this section until the Committee has given notice that the alteration, erection or location of structures or planting or transplanting of trees, in respect to which such report is made and filed, constitutes an airport hazard in violation of this ordinance, and reasonable opportunity has been given to remove the hazard. (As amended by MAC Ordinance 39 adopted and in effect January 10, 1972)

- (1) In addition, the MAC may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this ordinance or of regulations, orders or rulings promulgated hereunder, and the court shall adjudge to the Commission 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 ordinance and of regulations, orders and rulings promulgated pursuant thereto.

Section 13. Severability. If any of the provisions of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 14. Effective Date. This ordinance shall be in full force and effect from and after its adoption.

Passed by the Minneapolis-Saint Paul Metropolitan Airports Commission on the 25th day of August, 1952.

Filed in the office of the Secretary of State on the 2nd day of September, 1952.

Map filed on the 10th day of September, 1952.