

**AIRPORT SAFETY ZONING  
ORDINANCE  
FOR  
AUSTIN MUNICIPAL AIRPORT**

**Provide Adoption Date**

THIS ORDINANCE AMENDS AND REPLACES

AUSTIN MUNICIPAL AIRPORT ZONING ORDINANCE DATED JANUARY 11, 1978

**Provide Ordinance Number, if one exists**

# Table of Contents

TITLE AND INTRODUCTION.....	2
SECTION I: PURPOSE AND AUTHORITY.....	3
SECTION II: SHORT TITLE.....	3
SECTION III: DEFINITIONS.....	4
SECTION IV: AIR SPACE OBSTRUCTION ZONING.....	7
SECTION V: LAND USE SAFETY ZONING.....	8
SECTION VI: AIRPORT MAP.....	13
SECTION VII: NONCONFORMING USES.....	13
SECTION VIII: PERMITS.....	13
SECTION IX: VARIANCES .....	15
SECTION X: HAZARD MARKING AND LIGHTING .....	15
SECTION XI: AIRPORT ZONING ADMINISTRATOR.....	16
SECTION XII: BOARD OF ADJUSTMENT.....	16
SECTION XIII: APPEALS .....	16
SECTION XIV: JUDICIAL REVIEW .....	17
SECTION XV: PENALTIES .....	17
SECTION XVI: CONFLICTS.....	18
SECTION XVII: SEVERABILITY .....	18
SECTION XVIII: EFFECTIVE DATE.....	18
EXHIBIT A.....	20

## **TITLE AND INTRODUCTION**

### **AUSTIN MUNICIPAL AIRPORT ZONING ORDINANCE CITY OF AUSTIN-MOWER COUNTY JOINT AIRPORT ZONING BOARD**

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE AUSTIN MUNICIPAL AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO THE AUSTIN MUNICIPAL AIRPORT ZONING MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF ADJUSTMENT; AND IMPOSING PENALTIES.

IT IS HEREBY ORDAINED BY THE CITY OF AUSTIN-MOWER COUNTY JOINT AIRPORT ZONING BOARD PURSUANT TO THE AUTHORITY CONFERRED BY MINNESOTA STATUTES SECTION 360.061 THROUGH 360.074, AS FOLLOWS:

## **SECTION I: PURPOSE AND AUTHORITY**

The City of Austin-Mower County Joint Airport Zoning Board, created and established by joint action of the City Council of the City of Austin, the Board of Commissioners of Mower County, and the Town Board of Austin Township, the Town Board of Lansing Township, the Town Board of Red Rock Township, and the Town Board of Windom Township pursuant to the provisions and authority of Minnesota Statutes Section 360.063, hereby finds and declares that:

- A. An airport hazard endangers the lives and property of users of the Austin Municipal Airport, and property or occupants of land in its vicinity; and also, if the obstructive type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of said Airport and the public investment therein.
- B. The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by the Austin Municipal Airport.
- C. For the protection of the public health, safety, order, convenience, prosperity, and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of airport hazards.
- D. The prevention of these airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.
- E. The prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds.
- F. The Austin Municipal Airport is an essential public facility that serves an important public transportation role and provides a public good.

## **SECTION II: SHORT TITLE**

This Ordinance shall be known as the “Austin Municipal Airport Zoning Ordinance.” Those sections of land affected by this Ordinance are indicated in Exhibit “A”, which is attached to this Ordinance.

### SECTION III: DEFINITIONS

As used in this Ordinance, unless the context otherwise requires:

“*AIRPORT*” means the Austin Municipal Airport located in Section 1, Austin Township 102 N, Range 18W of the Fifth Meridian Principal, Mower County, Minnesota.

“*AIRPORT ELEVATION*” means the established elevation of the highest point on the usable landing area which elevation is established to be 1,233.5 feet above mean sea level.

“*AIRPORT HAZARD*” means any structure, tree, or use of land which obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

“*COMMISSIONER*” means the Commissioner of the Minnesota Department of Transportation.

“*CONFORMING USE*” means any structure, tree, or object of natural growth, or use of land that complies with all the applicable provisions of this Ordinance or any amendment to this ordinance.

“*DWELLING*” means any building or portion thereof designed or used as a residence or sleeping place of one or more persons.

“*EXISTING LAND USE*,” means the land use identified in Tables 1 and 2 of Section V.A.4. and consistent with the underlying zoning at the time of the adoption of this ordinance except as provided below in SECTION V B 5, EXEMPTIONS – EXISTING LAND USE.

“*HEIGHT*,” for the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

“*LANDING AREA*” means the area of the airport used for the landing, taking off, or taxiing of aircraft.

“*LOW DENSITY RESIDENTIAL STRUCTURE*” means a single-family or two-family home.

“*LOW DENSITY RESIDENTIAL LOT*” means a single lot located in an area which is zoned for single-family or two-family residences and in which the predominant land use is such type of residences.

“*NONCONFORMING USE*” means any pre-existing structure, tree, natural growth, or land use which is inconsistent with the provisions of this Ordinance or an amendment hereto.

“*NONPRECISION INSTRUMENT RUNWAY*” means a runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal

guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

*“OTHER THAN UTILITY RUNWAY”* means a runway that is constructed for and intended to be used by jet aircraft or aircraft of more than 12,500 pounds maximum gross weight; or is 4,900 feet or more in length.

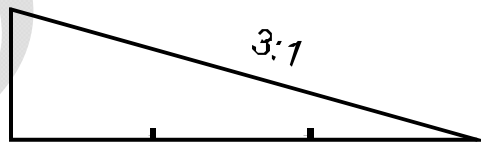
*“PERSON”* means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

*“PLANNED,”* as used in this Ordinance, refers only to those proposed future airport developments that are so indicated on a planning document having the approval of the Federal Aviation Administration, Minnesota Department of Transportation Office of Aeronautics, and the City of Austin.

*“PRECISION INSTRUMENT RUNWAY”* means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), a Microwave Landing System (MLS), or a Precision Approach Radar (PAR), a Transponder Landing System (TLS), or a satellite-based system capable of operating to the same level of precision guidance provided by the other included systems. Also, a runway for which a precision instrument approach system is planned and is so indicated on an approved planning document.

*RUNWAY”* means any existing or planned paved surface or turf covered area of the airport which is specifically designated and used or planned to be used for the landing and/or taking off of aircraft.

*SLOPE”* means an incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude.



Slope = 3:1 = 3 feet horizontal to 1 foot vertical

*“STRUCTURE”* means an object constructed or installed by man, including, but without limitations, buildings, towers, smokestacks, earth formations, and overhead transmission lines.

*“TRAVERSE WAYS,”* for the purpose of determining height limits as set forth in this Ordinance, shall be increased in height by 17 feet for interstate highways; 15 feet for all other public roadways; 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for private roads; 23 feet for railroads; and for waterways and all

other traverse ways not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

“*TREE*” means any object of natural growth.

“*UTILITY RUNWAY*” means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less; and is less than 4,900 feet in length.

“*VISUAL RUNWAY*” means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an approved planning document.

“*WATER SURFACES*” for the purpose of this ordinance, shall have the same meaning as land for the establishment of protected zones.

## **SECTION IV: AIR SPACE OBSTRUCTION ZONING**

A. AIR SPACE ZONES: In order to carry out the purpose of this Ordinance, as set forth above, the following air space zones are hereby established: Primary Zone, Horizontal Zone, Conical Zone, Approach Zone, Precision Instrument Approach Zone, and Transitional Zone, and whose locations and dimensions are as follows:

1. PRIMARY ZONE: All that land which lies directly under an imaginary primary surface longitudinally centered on a runway and extending 200 feet beyond each end of Runway 17/35. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 1,000 feet for Runway 17/35.
2. HORIZONTAL ZONE: All that land which lies directly under an imaginary horizontal surface 150 feet above the established airport elevation, or a height of 1,383.5 feet above mean sea level, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 10,000 feet for Runway 35 and Runway 17.
3. CONICAL ZONE: All that land which lies directly under an imaginary conical surface extending upward and outward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet as measured outward from the periphery of the horizontal surface.
4. APPROACH ZONE: All that land which lies directly under an imaginary approach surface longitudinally centered on the extended centerline at each end of a runway. The inner edge of the approach surface is at the same width and elevation as, and coincides with, the end of the primary surface. The approach surface inclines upward and outward at a slope of 34:1 for Runway 17. The approach surface expands uniformly to a width of 3,500 feet for Runway 17 at a distance of 10,000 feet, then continues at the same rate of divergence to the periphery of the conical surface.
5. PRECISION INSTRUMENT APPROACH ZONE: All that land which lies directly under an imaginary precision instrument approach surface longitudinally centered on the extended centerline at each end of Runway 35, a precision instrument runway. The inner edge of the precision instrument approach surface is at the same width and elevation as, and coincides with, the end of the primary surface. The precision instrument approach surface inclines upward and outward at a slope of 50:1 for a horizontal distance of 10,000

feet expanding uniformly to a width of 4,000 feet, then continues upward and outward for an additional horizontal distance of 40,000 feet at a slope of 40:1, expanding uniformly to an ultimate width of 16,000 feet.

6. **TRANSITIONAL ZONE:** All that land which lies directly under an imaginary surface extending upward and outward at right angles to the runway centerline and centerline extended at a slope of 7:1 from the sides of the primary surfaces and from the sides of the approach surfaces until they intersect the horizontal surface or the conical surface.

Transitional surfaces for those portions of the precision instrument approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the precision instrument approach surface and at right angles to the extended precision instrument runway centerline.

- B. **HEIGHT RESTRICTIONS:** Except as otherwise provided in this Ordinance, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any air space zone created in SECTION IV A so as to project above any of the imaginary air space surfaces described in said SECTION IV A hereof. Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail.

## **SECTION V: LAND USE SAFETY ZONING**

- A. **SAFETY ZONE BOUNDARIES:** In order to carry out the purpose of this Ordinance, as set forth above, to restrict those uses which may be hazardous to the operational safety of aircraft operating to and from the Austin Municipal Airport, and, furthermore, to limit population and building density in the runway approach areas, thereby creating sufficient open space to protect life and property in case of an accident, there are hereby created and established the following land use safety zones:

1. **SAFETY ZONE A:** All land in that portion of the approach zones of a runway, as defined in SECTION IV A hereof, which extends outward from the end of the primary surface a distance equal to two-thirds of the planned length of the runway, which distance shall be 4,333 feet for Runway 17/35.
2. **SAFETY ZONE B:** All land in that portion of the approach zones of a runway, as defined in SECTION IV A hereof, which extends outward from Safety Zone A a distance equal to one-third of the planned length of the runway, which distance shall be 2,167 feet for Runway 17/35.

3. SAFETY ZONE C: All land which is enclosed within the perimeter of the horizontal zone, as defined in SUBSECTION IV A hereof, and which is not included in Safety Zone A or Safety Zone B.
4. EXEMPTIONS – EXISTING LAND USES: The following described properties are designated as Existing Land Uses that do not present an airport hazard so severe that public safety considerations outweigh the public interest in continuing the existing land use as outlined by MN Statutes 360.0655 Subd. 2 (Protection of Existing Land Uses). The following existing land uses were in existence at the time of adoption of this ordinance and are exempt from the USE RESTRICTIONS of SECTIONS V B 2 and V B 3 below and are subject to the provisions of SECTION V B 5 below.

Table 1 - Runway 17 Approach				
Parcel ID	Acres	Safety Zone	Existing Land Use	Note
34.853.0112	4.62	Zone A	Government	STATE OF MN – DEPARTMENT OF MILITARY AFFAIRS
08.036.0015	81.6	Zone A&B	Residential / Agricultural	GAARD LAMOYNE & SHELDON
34.910.0180	1.9	Zone A	Residential	REEVE CATHIE
34.910.0061	61.3	Zone A	Recreational	CITY OF AUSTIN
34.853.0020	15.93	Zone A	Commercial	NEXUS DIVERSIFIED COMMUNITY SERVICES
34.853.0012	1.78	Zone A	Commercial	NEXUS DIVERSIFIED COMMUNITY SERVICES

Table 2 - Runway 35 Approach				
Parcel ID	Acres	Safety Zone	Existing Land Use	Note
20.007.0100	6.03	Zone A	Residential	SHUTE ARTHUR & NICOLE
02.010.0025	2.52	Zone A	Agricultural	CITY OF AUSTIN
20.018.0073	11.56	Zone B	Residential / Agricultural	KLOUSE RANDY
02.010.0010	7.56	Zone B	Residential / Agricultural	PATER WILLIAM
20.018.0070	5.5	Zone A&B	Residential / Agricultural	DELANEY DUANE & DIANE
20.018.0040	33.4	Zone A	Residential / Agricultural	ERICHSON JON & JEAN
20.018.0050	3.77	Zone B	Residential / Agricultural	MATA PANTALEON

**B. USE RESTRICTIONS:**

1. GENERAL: Subject at all times to the height restrictions set forth in SECTION IV B, no use shall be made of any land in any of the safety zones defined in SECTION V A which

creates or causes interference with the operations of radio or electronic facilities on the airport or with radio or electronic communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off, or maneuvering of aircraft.

2. ZONE A: Subject at all times to the height restrictions set forth in Subsection IV B and to the general restrictions contained in Subsection V B 1, areas designated as Zone A shall contain no buildings, temporary structures, exposed transmission lines, or other similar above-ground land use structural hazards and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include, but are not limited to, such uses as agriculture (seasonal crops), horticulture, animal husbandry, raising of livestock, wildlife habitat, light outdoor recreation (non-spectator), cemeteries, and automobile parking.
3. ZONE B: Subject at all times to the height restrictions set forth in Subsection IV B, and to the general restrictions contained in Subsection V B 1, areas designated as Zone B shall be restricted in use as follows:
  - a. Each use shall be on a site whose area shall not be less than three acres.
  - b. Each use shall not create, attract, or bring together a site population that would exceed 15 times that of the site acreage
  - c. Each site shall have no more than one building plot upon which any number of structures may be erected.
    - a. A building plot shall be a single, uniform, and non-contrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

Site Area		Ratio of Site Area to Bldg. Plot Area	Building Plot Area (sq. ft.)	Max. Site Population (15 persons/Acre) At least (Acres)
At least (Acres)	But Less Than (Acres)			
3	4	12:1	10,900	45
4	6	10:1	17,400	60
6	10	8:1	32,600	90
10	20	6:1	72,500	150
20	and up	4:1	218,000	300

- b. The following uses are specifically prohibited in Zone B:  
Churches, hospitals, schools, theaters, stadiums, hotels, motels, trailer courts, campgrounds, and other places of frequent public or semi-public assembly.

4. ZONE C: Zone C is subject only to height restrictions set forth in SECTION IV B, and to the general restrictions contained in SECTION V B 1.
5. EXEMPTIONS – EXISTING LAND USES
  - a. Existing Land Uses which existed at the time of the adoption of this ordinance, and as set forth in SECTION V A 4 above, and as shown on the zoning map, are subject to the height restrictions of SECTION IV B and the general restrictions of SECTION V B 1.
  - b. Existing Land Uses which violate any of the following restrictions are prohibited as safety hazards and must be acquired, altered, or removed at public expense. Those conditions are as follows:
    - (1) The following land uses if they exist in Safety Zones A or B are considered by the Commissioner to constitute airport safety hazards so severe, either to persons on the ground or to the air-traveling public, or both, that they must be prohibited under local airport zoning ordinances;
      - (a) Any structure which a person or persons customarily use as a principal residence and which is located entirely inside Safety Zone A within 1,000 feet of the end of the primary zone;
      - (b) Any structure which a person or persons customarily use as a principal residence and which is located entirely within Safety Zone A or B and which penetrates an imaginary approach surface as defined by SECTION IV A;
      - (c) Any land use in Safety Zone A or B which violates any of the following standards:
        - (i) the land use must not create or cause interference with the operation of radio or electronic facilities on the airport or with radio or electronic communication between the airport and aircraft;
        - (ii) the land use must not make it difficult for pilots to distinguish between airport lights and other lights;
        - (iii) the land use must not result in glare in the eyes of pilots using the airport or impair visibility in the vicinity of the airport.
      - (d) Any isolated residential building lot zoned for single-family or two-family residences on which any structure, if built, would be prohibited by subparagraphs b.(1)(a), (b) or (c) above. An “isolated” residential building

lot is one located in an area in which the predominant land use is single-family or two-family residential structures; and

- (e) Any other land use which presents, in the opinion of the Commissioner, a material danger to the landing, taking off, or maneuvering of aircraft or to the safety of persons on the ground. In making such a determination, the Commissioner shall consider the following factors:
  - (i) possibility that the land use may contribute to or cause a collision of two or more aircraft or an aircraft and some other object;
  - (ii) possibility that the land use may, in case of an aircraft accident, cause an explosion, fire, or the release of harmful or noxious fumes, gases, or substances;
  - (iii) tendency of the land use to increase the number of persons that would be injured in case of an aircraft accident;
  - (iv) effect of the land use on availability of clear areas for emergency landings;
  - (v) flight patterns around the airport, the extent of use of the runway in question, the type of aircraft using the airport, whether the runways are lighted, whether the airport is controlled, and other similar factors.

- c. Since the existing land uses either predate this Ordinance or are otherwise exempted by MN Statutes 360.0655 Subd. 2, the properties as identified and alternatives thereof shall be exempted from the conditions and restrictions of this zoning ordinance provided the existing land use as identified in Tables 1 and 2 of Section V.A.4. and consistent with the underlying zoning of the property remains as-is at of the time of adopting this ordinance. It is the opinion of the JAZB that the continued use of the existing subject parcels in the manner that they are currently used does not present an airport hazard so severe that public safety considerations outweigh the public interest in continuing the existing subject parcels as identified in Tables 1 and 2 of Section V.A.4., preventing disruption to that land use. Exemption of these parcels from the conditions and restrictions of this zoning ordinance shall remain in effect so long as the existing use and zoning of the properties remains unchanged.

## **SECTION VI: AIRPORT MAP**

The several zones herein established are shown on the Austin Municipal Airport Zoning Map consisting of 5 sheets, prepared by Short Elliott Hendrickson (SEH) Inc., and dated July 2, 2023 attached hereto and made a part hereof, which map, together with such amendments thereto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is hereby adopted as part of this Ordinance.

A list of the sheets of the Airport Zoning Map are shown below:

1. Sheet 1: Title Sheet
2. Sheet 2: Airport Airspace Height Zoning Plan
3. Sheet 3: Airport Land Use Zoning Plan
4. Sheet 4: Runway 17 MNDOT Safety Zones
5. Sheet 5: Runway 35 MNDOT Safety Zones

## **SECTION VII: NONCONFORMING USES**

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

## **SECTION VIII: PERMITS**

- A. **FUTURE USES:** Except as specifically provided in Paragraphs 1 and 2 hereunder, no material change shall be made in the use of land and no structure shall be erected, altered, or otherwise established in any zone hereby created unless a permit therefore shall have been applied for and granted by the Planning and Zoning Administrator, hereinafter, provided for. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.
1. However, a permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour, or

topographic features, would extend the height or land use limit prescribed for the respective zone.

2. Nothing contained in this foregoing exception shall be construed as permitting or intending to permit any construction, alteration, or growth of any structure or tree in excess of any of the height limitations established by this ordinance as set forth in SECTION IV and the land use limitations set forth in SECTION V.

- B. **EXISTING USES:** Before any existing use or structure may be replaced, substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
- C. **NONCONFORMING USES ABANDONED OR DESTROYED:** Whenever the Planning and Zoning Administrator determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, 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. Whether application is made for a permit under this paragraph or not, the Planning and Zoning Administrator may order the owner of the abandoned or partially destroyed nonconforming structure, at their own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this Ordinance. In the event the owner of the nonconforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notice of such order, the Planning and Zoning Administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed nonconforming structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the structure is or was located. Unless such an assessment is paid within ninety days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight percent per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes.

## **SECTION IX: VARIANCES**

Any person desiring to erect or increase the height of any structure, permit the growth of any tree, or use their property not in accordance with the regulations prescribed in this Ordinance may apply to the Board of Adjustment through the City of Austin Planning and Zoning Administrator, hereinafter provided for, for a variance from such regulations. If a person submits an application to the City of Austin Planning and Zoning Administrator for a variance by certified mail the Board fails to grant or deny the variance within four months after receiving notice of the application, the variance shall be deemed to be granted by the Board. When the variance is granted by reason of the failure of the Board to act on the variance, the person receiving the variance shall notify the Planning and Zoning Administrator and the Commissioner, by certified mail, that the variance has been granted. The applicant shall include a copy of the original application for the variance with this notice to the Commissioner. The variance shall be effective sixty days after this notice is received by the Commissioner subject to any action taken by the Commissioner pursuant to Minnesota Statutes Section 360.063, Subdivision 6a. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship, and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this Ordinance provided any variance so allowed may be subject to any reasonable conditions that the Board or Commissioner may deem necessary to effectuate the purpose of this Ordinance.

The Board of Adjustment may request review of a variance application by the Mn/DOT Airport Zoning Director prior to making a decision.

## **SECTION X: HAZARD MARKING AND LIGHTING**

- A. **NONCONFORMING USES:** The owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Planning and Zoning Administrator, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Austin.
- B. **PERMITS AND VARIANCES:** Any permit or variance deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, and granted by the Planning and Zoning Administrator or Board, shall require the owner of the structure or

tree in question, at their own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

## **SECTION XI: AIRPORT ZONING ADMINISTRATOR**

It shall be the duty of the Austin City Planning and Zoning Administrator to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to Austin City Planning and Zoning Administrator upon a form furnished by them. Permit applications shall be promptly considered and granted or denied by them in accordance with the regulations prescribed herein. Variance applications shall be forthwith transmitted by the Austin City Planning and Zoning Administrator for action by the Board, hereinafter provided for.

## **SECTION XII: BOARD OF ADJUSTMENT**

A. ESTABLISHMENT: The Austin City Council acts as the Board of Adjustment established in [Austin City Code Section 2.54](#). The Mayor shall act as the chairperson at the pleasure of the Board.

B. POWERS: The Board of Adjustment shall have and exercise the following powers as described in [Austin City Code Section 2.54](#).

C. PROCEDURES: The rules of governance and procedures for the Board of Adjustment are described in [Austin City Code Section 2.54](#). Additional requirements: The City of Austin Planning and Zoning Administrator must also notify the JAZB chair of an application to the Board of Adjustment.

## **SECTION XIII: APPEALS**

A. Any person aggrieved, or any taxpayer affected by any decision of the Planning and Zoning Administrator made in their administration of this Ordinance may appeal to the Board of Adjustment. Such appeals may also be made by any governing body of a municipality, county, or airport zoning board, which is of the opinion that a decision of the Planning and Zoning Administrator is an improper application of this Ordinance as it concerns such governing body or board.

B. All appeals hereunder must be commenced within 30 days of Planning and Zoning Administrator's decision, by filing with the Planning and Zoning Administrator a notice of appeal specifying the grounds thereof. The Planning and Zoning Administrator shall

forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. In addition, any person aggrieved, or any taxpayer affected by any decisions of the Planning and Zoning Administrator made in their administration of this Ordinance who desires to appeal such decision shall submit an application for a variance, by certified mail, to the members of the Planning and Zoning Administrator in the manner set forth in Minnesota Statutes Section 360.068, Subdivision 2.

- C. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Planning and Zoning Administrator certifies to the Board of Adjustment after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment on notice to the Planning and Zoning Administrator and on due cause shown.
- D. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.
- E. The Board of Adjustment may, in conformity with the provisions of this ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination, as may be appropriate under the circumstances, and to that end shall have all the powers of the Planning and Zoning Administrator

#### **SECTION XIV: JUDICIAL REVIEW**

Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or of any action of the commissioner taken under section [360.063](#), subdivisions 6 or 6a, or any governing body of a municipality or county, or any joint airport zoning board, which believes that a decision of a board of adjustment or action of the commissioner is illegal may appeal in accordance with Minnesota Statutes Chapter 14

#### **SECTION XV: PENALTIES**

Every person who shall construct, establish, substantially change, alter or repair any existing structure or use, or permit the growth of any tree without having complied with the provision of this Ordinance or who, having been granted a permit or variance under the provisions of this Ordinance, shall construct, establish, 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, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or imprisonment for not more than 90 days or by both. Each day a violation continues to exist shall constitute a separate offense. The airport Planning and Zoning Administrator may enforce all provisions of this Ordinance through such proceedings for injunctive relief and other relief as may be proper under the laws of Minnesota Statutes Section 360.073 and other applicable law.

#### **SECTION XVI: CONFLICTS**

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or regulation shall govern and prevail.

#### **SECTION XVII: SEVERABILITY**

- A. In any case in which the provision of this Ordinance, although generally reasonable, is 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 this Ordinance as to other structures and parcels of land, and to this end the provisions of this Ordinance are declared to be severable.
- B. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the parts so declared to be unconstitutional or invalid.

#### **SECTION XVIII: EFFECTIVE DATE**

This ordinance shall take effect on the     (replace with a number)     day of     (replace with the month)    , 20     (replace with the year)    .

Copies thereof shall be filed with the Commissioner through the Office of Aeronautics, State of Minnesota, and the Register of Deeds, and Mower County, Minnesota.

Passed and adopted after public hearing by the City of Austin – Mower County Joint Airport Zoning Board this (replace with a number) day of (replace with the month), 20 (replace with the year).

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Chairperson

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Member

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Member

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Member

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Member

## EXHIBIT A

### AUSTIN MUNICIPAL AIRPORT ZONING ORDINANCE

This Ordinance affects all or a portion of the following sections of land:

NAME AND NUMBER OF TOWNSHIP	AIR SPACE OBSTRUCTION ZONING: Section IV of Ordinance; Page(s) <u>  2  </u> of Zoning Map.	LAND USE SAFETY ZONING: Section V of Ordinance; Page(s) <u>  3 - 5  </u> of Zoning Map.
<u>Red Rock</u> Township T    N  103 R    W  17	Sections:    29, 30, 31, 32	Sections:    31
<u>Lansing</u> Township T    N  103 R    W  18	Sections:    34, 35, 36, 25, 26	Sections:    35, 36
<u>Austin</u> Township T    N  102 R    W  18	Sections:    1, 2, 3, 10, 11, 12, 13, 14, 24	Sections:    1, 2, 11, 12, 13
<u>Windom</u> Township T    N  102 R    W  17	Sections:    5, 6, 7, 8, 17, 18, 19	Sections:    6, 7, 18
<u>                  </u> Township T    N R    W	Sections:	Sections: