

CHAPTER 11

AIRPORT HEIGHT LIMITATIONS

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11.01 Title. This Ordinance shall be known as, referred to or cited as "Chapter 11, Manitowoc County Code, Airport Height and Use Limitations."

An ordinance regulating, restricting, and determining the use, location, height, number of stories, and size of buildings, structures, and objects of natural growth in the vicinity of the airport site and for such purpose dividing the territory to be protected into different areas.

11.02 General Provisions. (1) Authority. These regulations are adopted under the authority of Wis. Stat. § 114.136, as amended.

(2) Purpose. It is the purpose of this Ordinance to protect the aerial approaches to the airport site by regulating and restricting the use, location, height, number of stories and size of buildings and structures, and objects of natural growth in the vicinity of the airport in order to promote the public safety, welfare, and convenience.

(3) Jurisdiction. The regulations of this Ordinance shall apply to buildings, structures, objects of natural growth, and for uses that are located not more than three (3) miles from the boundaries of the airport site, and which are in areas included within zones shown on the "Height Limitation Zoning Map, Manitowoc County Airport, Manitowoc, Wisconsin" as adopted pursuant to this ordinance.

(4) Severability. If any of the provisions of this Ordinance or the application thereof to any persons or circumstances 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.

(5) Warning and Disclaimer of Liability. The degree of aerial approach protection provided by this Ordinance is considered reasonable for regulatory purposes only and is based on engineering experience and scientific methods of study. This Ordinance, however, does not imply that buildings, structures, uses, or objects of natural growth permitted will be totally free from the hazards of aircraft, nor shall this Ordinance create a liability on the part of or be a cause of action against the County of Manitowoc, or any officer or employee thereof for any damages that may result from reliance on this Ordinance.

(6) This Ordinance supersedes all provisions of any Manitowoc County Zoning Ordinances which relate exclusively to height limitations adjacent to the airport.

11.03 Definitions. For the purpose of this Ordinance, certain words and terms are defined as follows:

(1) "Airport" means the Manitowoc County Airport located in Sections 12 and 13, Town 19 North, Range 23 East, and Sections 7 and 18, Town 19 North, Range 24 East, Manitowoc County, Wisconsin.

(2) "Airport Hazard" means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

(3) "Non-Conforming Use" means any building, structure, tree, or use of land which does not conform to a regulation prescribed in this Ordinance

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or an amendment thereto, as of the effective date of such regulation.

(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) "Structure" means any object constructed or installed by man.

(6) "Tree" means any object of natural growth, except farm crops which are cut at least once a year, and except shrubs, bushes or plants which do not grow to a height of more than five feet (5').

(7) "Runway" means a level portion of an airport having a surface specially developed and maintained for the landing and take off of aircraft.

(8) Terms Not Defined in this section shall be as defined in any of the Manitowoc County Sanitary or Zoning Ordinances, or Subdivision Regulations, in Wisconsin Statutes, or if not defined in any of the preceding, the terms shall be used with a meaning of common or standard utilization. Words used in the present tense include the future, words in the singular number include the plural numbers, and words in the plural number include the singular number. The word "shall" is mandatory; not permissive.

11.04 Establishment of Zones. (1) To carry out the purpose of this Ordinance, the area within three (3) miles of the Manitowoc County Airport is divided into zones established by this section which are shown on the map entitled "Height Limitation Zoning Map, Manitowoc County Airport, Manitowoc, Wisconsin," dated September 9, 2008, which is adopted, incorporated by reference, and available for inspection at the Planning and Park Department.

(2) Interpretation of Zone Boundaries. Where uncertainty exists with respect to the boundaries of any zone, the following rules shall apply:

(a) Where zone boundaries are indicated as being approximately coterminous with street or highway centerlines, right-of-way lines, platted lot lines, section lines, quarter section lines, or other

survey lines, such lines shall be construed to be said boundaries.

(b) When the boundary of a zone follows the shoreline of a stream, lake, or other body of water, the zone boundary line shall be interpreted as following the high water mark of such shoreline and in the event of a change in shoreline, shall be construed as moving with said shoreline.

(c) The Board of Adjustment shall decide contested cases in which the actual location of a zone is disputed. The Board shall use the following procedure, standard, and/or guidelines:

1. In all cases, the person contesting the location of the zone boundary shall be given a reasonable opportunity to present his case to the Board of Adjustment and to submit his own technical evidence if he so desires. The Board shall not allow deviations from the boundary lines as mapped unless the evidence clearly and conclusively establishes that the mapped location or the interpretation of the mapped location is incorrect.

2. The Board of Adjustment may examine any available evidence that is relevant to determine zone boundaries.

11.05 Zone Regulations. (1) Height Regulations. Except as otherwise provided in this Ordinance, no structure shall be constructed, altered, located, or permitted to remain after such construction, alteration, or location, and no trees shall be allowed to grow, to a height in excess of the height limit indicated on the map referred to in MCC § 11.04 hereof.

(2) Use Restrictions. (a) Activities. Notwithstanding the provisions of MCC § 11.04, no use may be made of land in any zone in such a manner as to create electrical interference with radio communication between the airport and aircraft, or make it difficult for pilots to distinguish between airport lights and others, or result in glare in the eyes of the pilots using the airport, or impair visibility, in the vicinity of the airport, or otherwise endanger the landing, taking off, or maneuvering of aircraft.

(b) Exceptions. The restrictions in this Ordinance shall not apply to objects which are less than thirty-five feet (35') in height above ground

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level at the object site.

11.06 Non-Conforming Uses. (1) Not Retro-active. The regulations prescribed in MCC §§ 11.04 and 11.05 shall not be construed to require the removal, lowering, or other change or alteration of any non-conforming use, or otherwise interfere with the continuance of any non-conforming use, except as otherwise provided by MCC §§ 11.08(3)(b) and (c).

(2) Changes. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, if the construction or alteration of such was begun prior to the effective date of this Ordinance, and if such is diligently prosecuted.

(3) Removal. This section shall not interfere with the removal of non-conforming uses by purchase or the use of eminent domain.

11.07 Board of Adjustment. (1) The Board of Adjustment established under Wis. Stat. § 59.694 (1973), as amended, for the other adopted Manitowoc County Zoning Ordinances shall be the Board of Appeals under this Ordinance and shall have the duties, powers, and functions provided for by Wis. Stat. § 59.69, as amended (All references in this Ordinance to the term "Board of Adjustment" shall mean and be synonymous with the term "Board of Appeals"). The County Board shall allow the same compensation for members of the Board of Adjustment that is allowed County Board members for attendance at committee meetings. The Board of Adjustment shall designate one (1) of its members as chairperson. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The Board of Adjustment may employ a secretary and other employees.

(2) The County Board adopts the following rules for the government and procedure of the Board of Adjustment:

(a) Meetings shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson, or in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All public hearings shall be open to all interested parties.

(b) 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 examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(3) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of Manitowoc County, affected by any decision of the Code Administrator. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken, and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed was taken. The Chairperson shall fix a reasonable time for the hearing of appeals and give public notice thereof and send a copy of the notice to the parties in interest, and see to it that the Board makes a decision upon the appeal within a reasonable time.

(4) Powers of the Board of Adjustment. The Board of Adjustment shall have the following powers:

(a) Appeals. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Code Administrator.

(b) Variances. Upon appeal in special cases the Board of Adjustment may, after investigation and public hearing, grant such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of this Ordinance would result in unnecessary hardship, and such relief will do substantial justice and be in accord with the spirit of this Ordinance, and does not create a hazard to the safe, normal operation of aircraft.

(c) Procedure. Any appeal taken pursuant to this section shall be in conformity with the procedure established by Wis. Stat. § 59.69(4) (1973), as amended.

11.08 Administration and Enforcement.

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(1) This Ordinance shall be administered and enforced by the Manitowoc County Board of Supervisors through its designated agent which is the Manitowoc County Planning and Park Commission.

(2) Administration. It shall be the duty of the Code Administrator to administer the regulations prescribed herein. Applications for permits and variances shall be made to the Code Administrator upon a form furnished by him. Applications which are by this Ordinance to be decided by the Code Administrator shall be granted or denied within ten (10) days of the date of the filing of the application unless Federal Aviation Administration approval is requested. Applications for action by the Board of Adjustment shall be forthwith transmitted by the Code Administrator to the Board for hearing and decision. There shall be no charge for applications or permits.

(3) Permits.

(a) Future Uses. No structure or use shall hereafter be constructed, erected, installed, moved, or structurally altered or permitted in any zone created by MCC § 11.04 until the owner or his agent shall have applied in writing for a permit therefor, and obtained such permit from the Code Administrator, except for structures less than thirty-five feet (35') in height above the ground. Said permit shall be posted in a prominent place on the premises prior to and during the period of construction, erection, installation, or establishment. The Code Administrator shall have the right to trim, prune, or remove at the owner's expense any tree which was planted after adoption of this Ordinance and be found to be in violation of the height restriction for the zone in which it is located. Application for such permit shall indicate the use for which the permit is desired, and shall describe and locate the use with sufficient particularity to permit the Code Administrator to determine whether such use would conform to the regulations herein prescribed. If such determination is in the affirmative, the Code Administrator shall issue the permit applied for.

(b) Existing Uses. Before any non-conforming structure may be replaced, altered, or rebuilt, a permit shall be applied for and secured in the manner prescribed by MCC § 11.08 authorizing such change, replacement, or repair. (No such permit

shall be denied if the structure will not become a greater hazard to air navigation than it was on the effective date of this Ordinance, or than it was when the application for permit was made.)

(c) Hazard Marking and Lighting. Any permit or variance granted under MCC §§ 11.07 and 11.08 may, if such action is deemed advisable by the Board of Adjustment to effectuate the purpose of this Ordinance, and if such is reasonable in the circumstances, be so conditioned as to require the owner of the structures or trees in question to permit the owner of the airport, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to the flyers the presence of an airport hazard.

11.09 Amendments. The County Board may from time to time amend, supplement, or repeal the regulations or change the district boundaries of this Ordinance in accordance with the procedure provided in Wis. Stat. § 114.136(2) (1973), as amended.

11.10 Penalties. Any person violating any of the provisions of this Ordinance shall, upon conviction, forfeit not less than twenty dollars (\$20.00) nor more than two thousand dollars (\$2,000.00) for such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution, shall be imprisoned in the county jail until said forfeiture and costs are paid, but not to exceed thirty (30) days for each violation. Each day that a violation continues to exist shall constitute a separate offense.

11.11 Zoning Map - Attachment. The districts in which this ordinance applies shall be evidenced by the official map on file in the office of the Manitowoc County Planning and Parks Department, 4319 Expo Drive, Manitowoc, WI 54220, as such shall be amended from time to time. Said map shall be deemed to be attached to this Ordinance by reference.

History

11/18/75: Adopted.

11/15/88: Codified.

02/24/09: Secs. 11.02(3) and 11.04(1) amended by Ord. 2008/2009-111 effective 05/05/09.