

MODEL ZONING ORDINANCE
TO PREVENT THE CREATION OR ESTABLISHMENT
OF AIRPORT HAZARDS¹

SECTION 1: SHORT TITLE AND DESCRIPTION

- 1.1 This Ordinance shall be known and may be cited as the _____ (1)* _____ Airport Zoning Ordinance.
- 1.2 AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT TO WHICH STRUCTURES MAY BE ERECTED OR OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY IN THE VICINITY OF THE _____ (2) _____ 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 _____ (2) _____ HEIGHT LIMITATION AND ZONING DISTRICT MAP WHICH IS INCORPORATED IN AND MADE PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; ESTABLISHING A ZONING HEARING BOARD; AND IMPOSING PENALTIES.

SECTION 2: DECLARATION OF POLICY

This Ordinance is adopted pursuant to the authority conferred by 1984 Pa. Laws 164, codified at 74 Pa. Cons. Stat. §§5101 et. seq.

It is hereby found that an obstruction has the potential for endangering the lives and property of users of the _____ (2) _____, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of the _____ (2) _____; and that an obstruction may reduce the size of areas available for the landing, takeoff and maneuvering of aircraft, thus tending to destroy or impair the utility of the _____ (2) _____ and the public investment therein. Accordingly, it is declared:

- 2.1 that the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by the _____ (2) _____;
- 2.2 that it is necessary in the interest of the public health, safety, morals and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented; and
- 2.3 that the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

* The information to be substituted in the numbered blanks is detailed on a page entitled Blank Inserts which immediately follows the Model Zoning Ordinance and Footnotes.

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

IT IS HEREBY _____ (5) _____ BY _____ (7) _____ as follows:

SECTION 3: GENERAL DEFINITIONS

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ORDINANCE SHALL HAVE THE MEANING GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

- 3.1 AIRCRAFT – Any contrivance, except an unpowered hanglider or parachute, used for manned ascent into or flight through the air.²
- 3.2 AIRPORT - _____ (2) _____. Defined as: Any area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with all airport buildings and facilities thereon.³ As used herein, the term “Airport” includes public airports but excludes private airports and heliports. Public and private airports are defined separately in this section.
- 3.3 AIRPORT ELEVATION - _____ (6) _____. Defined as: The highest point of an airport’s useable landing area measured in feet above sea level.
- 3.4 AIRPORT HAZARD – Any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined by “Airport Hazard” in 74 Pa. Cons. Stat. §5102.
- 3.5 AIRPORT HAZARD AREA – Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this Ordinance and the Act 164 of 1984 (Pennsylvania Laws Relating to Aviation).
- 3.6 APPROACH SURFACE – A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach surface zone height limitation slope set forth in Section 4 of this Ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach surface zone.
- 3.7 APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL SURFACE ZONES – These zones are set forth in Section 4 of this Ordinance.
- 3.8 BOARD OF APPEALS OR ADJUSTMENT – A Board appointed by the authority adopting these regulations. The numbers of members, powers, governing rules, etc. of the Board are set forth in Section 9 of this Ordinance. Joint Airport Zoning Board is defined in Section 10.
- 3.9 CONICAL SURFACE – A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
- 3.10 DEPARTMENT – Pennsylvania Department of Transportation.
- 3.11 FAA – Federal Aviation Administration of the United States Department of Transportation.
- 3.12 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.
- 3.13 HORIZONTAL SURFACE – A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal surface zone.
- 3.14 LARGER THAN UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.
- 3.15 NONCONFORMING USE – Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.

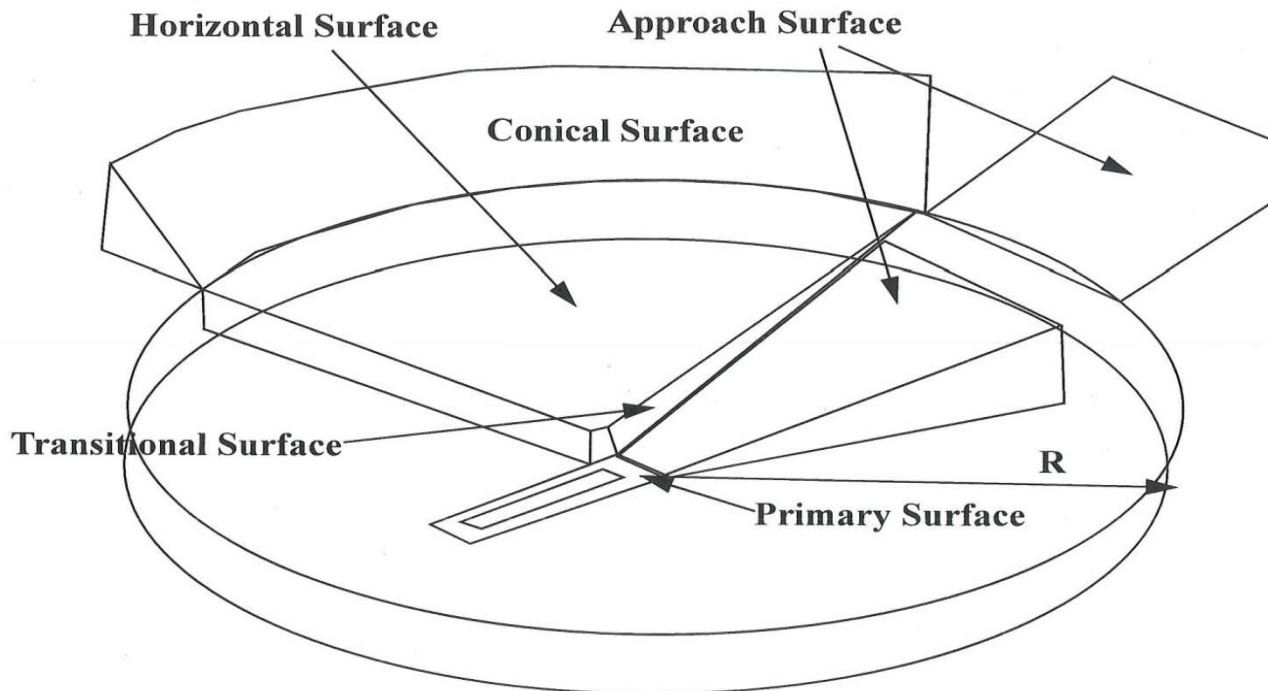
- 3.16 NON-PRECISION INSTRUMENT RUNWAY – A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.
- 3.17 OBSTRUCTION – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 4 of this Ordinance.
- 3.18 PERSON – An individual, firm partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
- 3.19 PRECISION INSTRUMENT RUNWAY – A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.
- 3.20 PRIMARY SURFACE – A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. For military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Section 4 of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
- 3.21 PRIVATE AIRPORT – An airport which is privately owned and which is not open or intended to be open to the public as defined in 74 Pa. Cons. Stat. §5102.
- 3.22 PUBLIC AIRPORT – An airport which is either publicly or privately owned and which is open to the public as defined in 74 Pa. Cons. Stat. §5102.
- 3.23 RUNWAY – A defined area on an airport prepared for landing and takeoff of aircraft along its length.
- 3.24 STRUCTURE – An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.⁴
- 3.25 TRANSITIONAL SURFACES – These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, 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 approach surface and at 90-degree angles to the extended runway centerline.
- 3.26 TREE – Any object of natural growth.
- 3.27 UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.
- 3.28 VISUAL RUNWAY – A runway intended solely for the operation of aircraft using visual approach procedures.

FAR Part 77 Imaginary Surfaces

Surface	Visual		Non-Precision Instrument Runway			Precision Instrument Runway
	A	B	A	C	D	All
Width of Primary Surf. and inner App. Surface	250	500	500	500	1,000	1,000
Radius of Horizontal Surface	5,000	5,000	5,000	10,000	10,000	10,000
Approach Surface at Outer End	1,250	1,500	2,000	3,500	4,000	16,000
Approach Surface Length	5,000	5,000	5,000	10,000	10,000	50,000
Approach Slope	20:1	20:1	20:1	34:1	34:1	50:1 ^a

a. First 10,000 feet the slope is 40:1

Graphical Depiction



SECTION 4: AIRPORT SURFACE ZONES

In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces as they apply to the _____ (2) _____. Such zones are shown on the _____ (2) _____ Height Limitation and Zoning map prepared by _____ (3) _____, and dated _____ (4) _____, 20_____ which is attached to this Ordinance and made a part hereof. An area located in more than one (1) of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

- 4.1 Utility Runway Visual Approach Surface Zone – Established beneath the visual approach surface. The inner edge of this zone coincides with the width of the primary surface and is 250 feet wide. The zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- 4.2 Utility Runway Non-precision Instrument Approach Surface Zone – Established beneath the non-precision instrument approach surface. The inner edge of this zone coincides with the width of the primary surface and is 500 feet wide. The zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the runway.
- 4.3 Runway Larger than Utility Visual Approach Surface Zone – Established beneath the visual approach surface. The inner edge of this zone coincides with the width of the primary surface and is 500 feet wide. The zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- 4.4 Runway Larger than Utility With A Visibility Minimum Greater Than $\frac{3}{4}$ Mile Non-precision Instrument Approach Surface Zone – Established beneath the non-precision instrument approach surface. The inner edge of this zone coincides with the width of the primary surface and is 500 feet wide. The zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- 4.5 Runway Larger Than Utility With A Visibility Minimum As Low As $\frac{3}{4}$ Mile Non-precision Instrument Approach Surface Zone – Established beneath the non-precision instrument approach surface. The inner edge of this zone coincides with the width of the primary surface and is 1,000 feet wide. The zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- 4.6 Precision Instrument Runway Approach Surface Zone – Established beneath the precision instrument approach surface. The inner edge of this zone coincides with the width of the primary surface and is 1,000 feet wide.⁵ The zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- 4.7 Transitional Surface Zones – Established beneath the transitional surfaces adjacent to each runway and approach surface as indicated on the Height Limitation and Zoning District Map.
- 4.8 Horizontal Surface Zone – Established beneath the horizontal surface, 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of _____ (8) _____ feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal surface zone does not include the approach surface and transitional surface zones.
- 4.9 Conical Surface Zone – Established beneath the conical surface. This zone commences at the periphery of the horizontal surface and extends outward there from a horizontal distance of 4,000 feet.

SECTION 5: AIRPORT SURFACE ZONE HEIGHT LIMITATIONS

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

- 5.1 Utility Runway Visual Approach Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- 5.2 Utility Runway Non-precision Instrument Approach Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- 5.3 Runway Larger Than Utility Visual Approach Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- 5.4 Runway Larger Than Utility With a Visibility Minimum Greater Than $\frac{3}{4}$ Mile Non-precision Instrument Approach Surface Zone – Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
- 5.5 Runway Larger Than Utility With A Visibility Minimum As Low As $\frac{3}{4}$ Mile Non-Precision Instrument Approach Surface Zone – Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
- 5.6 Precision Instrument Runway Approach Surface Zone – Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.
- 5.7 Transitional Surface Zones – Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is _____ (6) _____ feet above mean sea level. In addition to the foregoing when an airport has a precision instrument runway approach zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides and at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.
- 5.8 Horizontal Surface Zone – Established at 150 feet above the established airport elevation or at a height of _____ feet above mean sea level.
- 5.9 Conical Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal surface and at 150 feet above the established airport elevation and extending to a height of 350 feet above the established airport elevation or at a height of _____ feet above mean sea level.

5.10 Excepted Height Limitations – Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to _____ (9) feet above the surface of the land.

SECTION 6: AIRPORT ZONING REQUIREMENTS

- 6.1 Reasonableness – All airport zoning regulations adopted under this subchapter shall be reasonable; none shall impose any requirement or restriction unless it is reasonably necessary to effectuate the purpose of this subchapter. In determining what regulations it may adopt, each municipality and joint airport zoning board shall consider, among other factors, the character of the flying operations expected to be conducted 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.⁶
- 6.2 Use Restrictions – Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and the aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.
- 6.3 Nonconforming Uses:
- a) Regulations Not Retroactive – The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of any nonconforming use, except as provided in Section 7 (relating to permits and variances).⁷ Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently executed.
 - b) Marking and Lighting – Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon or nearby of such markers and lights as shall be deemed necessary by the _____ (10) to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of _____ (11).

SECTION 7: PERMITS AND VARIANCES

- 7.1 Future Uses⁸ – Except as specifically provided in a, b, or c hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with this Section 7, Subsection 7.4.
- a) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

- b) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limit prescribed for such approach zones.
- c) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zones, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic feature, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exception shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance, except that no permit is required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.

- 7.2 Existing Uses – Before any nonconforming structure may be replaced substantially altered or rebuilt or tree allowed to grow higher or replanted, a permit must be secured from the municipality authorizing the replacement or change. No permit shall be granted that would allow the establishment or creation of an obstruction or permit 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.
- 7.3 Nonconforming Uses Abandoned or Destroyed – Whenever the _____ (12) _____ determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from this Ordinance.
- 7.4 Variance – Any person desiring to erect any structure or increase the height of any structure or permit the growth of any object of natural growth or otherwise use his property in violation of airport zoning regulations may apply to the Board of Adjustment for a variance from the zoning regulations in question. A variance shall only be granted after the requirements of Section 8 are satisfied. A variance may 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 would be in accordance with the spirit of the regulations and this Ordinance. Any variance may be granted subject to any reasonable conditions that the Board of Adjusters may deem necessary to effectuate the purposes of this Ordinance.⁹ The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Additionally, no application for variance to the requirements of the Ordinance may be considered by the Board of Adjustment unless a copy of the application has been furnished to the Airport Manager (or person of equivalent description) for advice as to the aeronautical effects of the variance. If the Airport Manager (or person of equivalent description) does not respond to the application within fifteen (15) days after receipt, the Board of Adjustment may act without such input to grant or deny said application.
- 7.5 Hazard Marking and Lighting¹⁰ – In granting any permit or variance under this section, the Board shall, if it deems the action advisable to effectuate the purpose of this Ordinance and reasonable under the circumstances, so condition the permit or variance as to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or require the person or persons requesting the permit or variance, to install, operate and maintain thereon such markers and lights as may be required by guidelines or regulations adopted by the FAA.

SECTION 8: ENFORCEMENT/NOTICE

- 8.1 Local Enforcement – It shall be the duty of the _____ (12) _____ to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the _____ (12) _____ upon a form published for that purpose. Applications required by this Ordinance to be submitted to the _____ (12) _____ shall be promptly considered and granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the _____ (12) _____.
- 8.2 Notice to Department – Notwithstanding any other provisions of law, a municipality or board which decides to grant a permit or variance under this Ordinance shall notify the Department of Transportation of its decision. This notice shall be in writing and shall be sent so as to reach the department at least ten days before the date upon which the decision is to issue.¹¹

SECTION 9: BOARD OF ADJUSTMENT

- 9.1 Powers – There is hereby created a Board of Adjustment to have and exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the _____ (12) _____ in the enforcement of this Ordinance; (2) to hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass; and (3) to hear and decide specific variances.
- 9.2 Creation/Members/Removal – Where a zoning board of appeals or adjustment already exists, it may be appointed as the Board of Adjustment. Otherwise, the Board shall consist of five members, each to be appointed for a term of three (3) years by the authority adopting the regulations and to be removable by the appointing authority, for cause, upon written charges and after a public hearing.¹²
- 9.3 Governing Rules – The Board of Adjustment shall adopt rules for its governance and in harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board of Adjustment may determine. For conduct of any hearing or taking of any action, a quorum shall not be less than a majority of all members. The Chairperson or, in the absence of the Chairperson the Acting Chairperson, may administer oaths and compel the attendance of witnesses. All hearings of the Board of Adjustment shall be public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the _____ (12) _____ and due cause shown.
- 9.4 Findings of Fact/conclusions of Law – The board of Adjustment shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this Ordinance.
- 9.5 Voting – The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the _____ (12) _____ or decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect variation to this Ordinance.

SECTION 10: JOINT AIRPORT ZONING BOARD

- 10.1 Joint Airport Zoning Board – Where any airport hazard appertaining to an airport is located outside the territorial limits of the municipality encompassing the airport, all of the municipalities involved may, by ordinance or

resolution, create a joint airport zoning board which shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as the vested (by the police power)¹³ in the municipality within which the area is located. Each joint airport zoning board shall have as members two representatives appointed by each municipality participating in its creation and, in addition, a chairman elected by a majority of the members so appointed.¹⁴

SECTION 11: APPEALS

- 11.1 Right of Appeal – Any person aggrieved or taxpayer affected by any decision of the municipality or joint zoning hearing board may appeal to the Board of Adjustment as provided by law.¹⁵
- 11.2 Reasonable Time Requirement – All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment. The Board shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
- 11.3 Stay of Proceedings – An appeal shall stay all proceedings in furtherance of the action appealed from unless the municipality or Joint Zoning Hearing Board 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 or notice to the municipality or joint zoning appeal board.¹⁶
- 11.4 Power to Reverse, Affirm or Modify Orders – 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.

SECTION 12: ACQUISITION OF AIR RIGHTS

In any case in which it is desired to remove, lower or otherwise terminate a nonconforming structure or use, or the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations, or it appears advisable that the necessary approach protection be provided by acquisition of property rights, rather than be airport zoning regulations, the municipality within which the property or nonconforming use is located, or the municipality or municipal authority owning the airport or served by it, may acquire by purchase, grant or condemnation, in the manner provided by the law under which municipalities are authorized to acquire real property for public purposes, such air right, aviation easement or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purpose of this Ordinance. In the case of the purchase of any property or any easement or estate, or interest therein, or the acquisition thereof by the power of eminent domain, the municipality making the purchase of exercising the power shall, in addition to the damages for the taking injury or destruction of property, also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.¹⁷

SECTION 13: RELATION TO OTHER ZONING REGULATIONS¹⁸

- 13.1 Incorporation – In the event that a municipality 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 the comprehensive zoning regulations and be administered and enforced in connection therewith.
- 13.2 Conflicts – In the event of conflict between any airport zoning regulations adopted under this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height

of structures or trees, and the use of land, or any other matter, and whether the other regulations were adopted by the municipality which adopted the airport zoning regulations or be some other municipality or otherwise, the more stringent limitation or requirement shall govern and prevail.

SECTION 14: JUDICIAL REVIEW

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the Court of Common Pleas as provided by law. In cases where applicable law does not provide an appeal from a municipality to a Board, a person or tax payer may appeal from a decision of a municipality or joint airport zoning board, as provided by law for similar zoning proceedings.¹⁹

SECTION 15: SEVERABILITY

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

SECTION 16: INTERPRETATION OF LANGUAGE AND CAPTIONS

16.1 Use of Language – Words of any gender used in the Ordinance shall be held and construed to include any other gender, and words in the singular shall be used to include the plural, unless the context otherwise requires.

16.2 Use of Captions – The captions or headings of sections in this Ordinance are inserted for convenience only, and shall not be considered in construing the provisions herein if any question of intent should arise.

SECTION 17: PENALTIES

Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon being found liable therefore in a civil enforcement proceeding commenced by a municipality, pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by a municipality as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating the ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over the municipality whose ordinance has been violated.

The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the municipality the right to commence any action for enforcement pursuant to this section.²⁰

SECTION 18: ADOPTION AND AMENDMENT OF ORDINANCE

18.1 Notice and Hearing – No airport zoning regulations shall be adopted, amended or changed except by action of the municipality or the joint airport zoning board after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. The notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or municipalities affected. The

notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days or less than 14 days from the date of the hearing.²¹

18.2 Effective Date – WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, safety, morals and general welfare, an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the municipality and publication and posting as required by Section 18, Item 1.

BLANK INSERTS

- (1): Insert name of municipality which is adopting the ordinance.
- (2): Insert name of airport being zone by the Ordinance.
- (3): Preparer of the Height Limitation and Zoning Map.
- (4): Date of the Height Limitation and Zoning Map.
- (5): Insert a form of enacting clause commonly used by the political subdivision in adopting ordinances.
- (6): Insert elevation of airport being zoned by the Ordinance.
- (7): Insert name of governing body which is enacting the Ordinance.
- (8): The radius of each arc is:
 - (a) 5,000 feet for all runways designated as utility or visual;
 - (b) 10,000 feet for all other runways

The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000 foot arc is encompassed by tangents connecting two adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded on the construction of the perimeter of the horizontal surface (Part 77, Subpart C - §77.25 (a)).

- (9): The adoption of height limits should be reasonable and based on land use considerations in the vicinity of the airport and the nature of the area to be zoned. The adoption of height limits should not be so low as to constitute a taking of private property without due process of law (Advisory Circular No. 150/8190-4, p.3).
- (10): Insert title of appropriate official in charge of marking and lighting necessities.
- (11): Insert name of appropriate political body or subdivision (County).
- (12): Insert name or title of arbitrator, who will review permits and variances.

MODEL ZONING ORDINANCE
TO PREVENT THE CREATION OR ESTABLISHMENT
OF AIRPORT HAZARDS

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HEIGHT LIMITATION AND ZONING MAP

FOOTNOTES

1. The preparation of these regulations was guided by a model zoning ordinance to limit height of objects around airports; published by the Federal Aviation Administration (FAA) of the U.S. Department of Transportation, Advisory Circular No. 150/5190-4 (August, 1977), and 1984 Pa. Laws 164, codified at 74 Pa. Cons. Stat. §§5101 et. Seq. Format of the ordinance was developed by the Southwestern Pennsylvania Regional Planning Commission.
2. 71 Pa. Cons. Stat §5102
3. Id.
4. The definition of “Structure” under 74 Pa. Cons. Stat. §5102 does not include mobile objects such as cranes or immobile objects such as earth formations. However, 74 Pa. Cons. Stat §5913(b) provides that, if adopted, a “more stringent limitation or requirement shall prevail”. See also Section 8, Item 2 of this Ordinance.
5. Appropriate runway type and dimension for the width of the primary surface is set forth in Federal Aviation Regulation Part 77, Objects Affecting Navigable Airspace, Dimensional Standards Table, Page 19, January, 1975.
6. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5915(a)].
7. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5915(b)].
8. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5916(a)].
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17. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5920].
18. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5913(a) and (b)].
19. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5918].
20. 1984 Pa. Laws 164, Chapter 59, Subchapter B [74 Pa. Cons. Stat. §5914(a)].
21. As set forth in Section 617 of the Pennsylvania Municipalities Planning Cod (Act 170).

IMPLEMENTATION PLAN OF AIRPORT ZONING REGULATIONS

Introduction

Act 164 of 1984 (Pennsylvania Laws Relating to Aviation), Subchapter B, “Airport Zoning Act”, Section 5912, grants powers to any municipality that is affected by an airport hazard area to adopt, administer and enforce airport zoning regulations for such airport hazard area.

Zoning is used by municipalities as a tool for controlling certain development and promoting the safety and general welfare of its citizenry. Act 164 has a provision requiring affected municipalities with an airport hazard area within their territorial limits to adopt zoning regulations whether or not they have a zoning plan in effect.

This document will describe a process that affected municipalities should undertake in order to adopt airport zoning regulations to comply with Act 164 (Pennsylvania Laws Relating to Aviation). Also, close examination will be given to differing elements of the adoption process between municipalities which have a zoning plan presently in effect and municipalities that do not currently have a zoning plan in effect.

Act 164 Procedures for Adopting Zoning Regulations

These procedures are found in Subchapter B, Section 5914, Paragraph (a) and (b) and are applicable for all affected municipalities.

1. Notice and Hearing – No airport zoning regulations shall be adopted, amended or changed except by action of the municipality or the joint airport zoning board after a public hearing in relation thereto of which parties in interest and citizens shall have the opportunity to be heard. The notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or municipalities affected. The notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days or less than 14 days from date of hearing.¹
2. Airport Zoning Planning Agency – Prior to the initial zoning of any airport hazard area, the municipality or joint airport zoning board which is to adopt the regulations shall appoint a planning agency, to be known as the Airport Zoning Planning Agency to recommend the boundaries of various zones to be established and regulations to be adopted therefore. The planning agency shall make a preliminary report and, after given notice (notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or municipalities affected. The notice shall state time and place of the hearing and the particular nature of the matter to be considered at the hearing, shall hold public hearing thereon before submitting its final report. The municipality or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of the planning agency. Where a planning agency already exists, it may be appointed as the Airport Zoning Planning Agency.²

Described in the passage are basic procedures used by municipalities to adopt an ordinance. One section will list elements used by municipalities that do have a zoning plan in effect and the other will list elements used by municipalities that do not have a zoning plan in effect.

Municipalities with Zoning Plans

Reference Act 170 (Pennsylvania Municipalities Planning Code), with Regards to enactment of zoning ordinance amendment, preparation of zoning ordinance – county planning agency review and recording of such ordinances.

Municipalities without Zoning Plans

- a. For the information concerning basic adoption mechanisms, please refer to the Pennsylvania Legal Code concerning:
 - 1. First Class Township Code
 - 2. Second Class Township Code
 - 3. Borough Code
 - 4. Third Class City Code

- b. Reference Act 170, (Pennsylvania Municipalities Planning Code), with regards to adoption of official zoning map and county planning agency review process.

¹ Act 164 of 1984, Subchapter B, Section 5914 (a).

² Act 164 of 1984, Subchapter B, Section 5914 (b).

PREFACE

1. This document contains a model airport zoning ordinance, height limitation and zoning district map, and an appendix listing various formulas used to determine airport height limitations. Also, an attachment to this document describes a zoning plan implementation and adoption process.
2. It is recommended that municipalities examine current land uses around airport facilities and initiate a strategy of compatible land uses which will promote coexistence of airport operations with the surrounding environment.
3. Municipalities should keep in mind future airport expansion and development when adopting airport zoning regulations. The regulations within are based upon existing facilities. This ordinance may be adopted or amended to reflect modified regulations or planned facilities as desired.
4. As with adoption of any ordinance, municipalities should allow their solicitor to review this ordinance before final adoption.
5. Municipalities should note in Section 4 (Airport Surface Zones) and Section 5 (Airport Height Limitations), specific provisions of this ordinance which apply to your municipality are highlighted with a bold arrow (→).

THESE REGULATIONS SHALL BECOME EFFECTIVE ON THE _____ DAY OF _____, 200_____.

ORDAINED AND ENACTED THIS: _____ DAY OF _____, 200_____.

(MUNICIPALITY NAME)

BY: _____

(AUTHORIZED OFFICIAL TITLE)

ATTEST: _____

(ATTESTOR TITLE)

PRECISION INSTRUMENT RUNWAY ZONES

ALLOWABLE HEIGHT FORMULAS

	<u>LOCATION ZONE</u>	<u>FORMULA</u>
1	Horizontal Surface	Allowable Height = (Established Airport Elevation) + (150°) - (Ground Elevation)
2	Surface	Conical Allowable Height = (Established Airport Elevation) + (150°) + (A÷20) – (Ground Elevation)
3	Surface	Primary Allowable Height = (Elevation of the Runway Perpendicular to the Location Point) – (Ground Elevation)
4	along Surface	Transitional Allowable Height = (Elevation of the Approach Surface the Runway Centerline Perpendicular to the Location Point) + (B÷7) – (Ground Elevation)
5	along Surface	Transitional Allowable Height = (Elevation of the Approach Surface the Runway Centerline Perpendicular to the Location Point) + (E÷7) – (Ground Elevation)
6	End: Approach Surface	Precision If point Location is less than 10,200° from the Runway Allowable Height = (Runway End Elevation) + ((C-200) ÷ 50) – (Ground elevation If not: Allowable Height = (Runway End Elevation) + (D÷40) – (Ground Elevation)

