

**AN ORDINANCE OF THE MACON COUNTY BOARD OF COMMISSIONERS FOR
AN AMENDED AND RESTATED "AIRPORT HAZARD ORDINANCE OF THE
COUNTY OF MACON, NORTH CAROLINA"**

WHEREAS, the Macon County Board of Commissioners originally adopted the Airport Hazard Ordinance of the County of Macon, North Carolina on October 6, 2003; and

WHEREAS, the Board of Commissioners wishes to make certain specific amendments to the Ordinance in order to bring the Ordinance into compliance with G.S. 160D, and restate such Ordinance in its entirety as set forth hereinafter; and

WHEREAS, the Board of Commissioners has the authority to make such amendments to the Ordinance pursuant to G.S. 160D-601; and

WHEREAS, the required Notice of Public Hearing has been duly given and duly published in accordance with the law and the required Public Hearing in connection with such amendments has been duly held in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the Macon County Board of Commissioners that:

The Airport Hazard Ordinance of the County of Macon, North Carolina, originally adopted on October 6, 2003 is hereby amended and restated so that the same will hereafter read as follows:

See Exhibit A attached hereto which is incorporated herein by reference as if more fully set forth herein.

This the 8th day of March, 2022.



Chairman, Macon County Board of Commissioner

ATTEST:



Clerk to the Macon County Board of Commissioners



AMENDED AND RESTATED AIRPORT HAZARD ORDINANCE

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SECTION I: TITLE AND PURPOSE

This Ordinance shall be known and may be cited as the Macon County Airport Ordinance.

This Ordinance is adopted pursuant to the authority conferred by N.C. General Statutes, Chapter 63, Article 4 and Chapter 160D, Article 2. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Macon County Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of the Macon County Airport; and that an obstruction may in effect reduce the size of areas available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Macon County Airport and the public investment therein, and is therefore not in the interest of the public safety, or general welfare. Accordingly, it is declared:

1. That the creation or establishment of an airport obstruction has the potential of being a public nuisance and may injure the region served by Macon County Airport;
2. That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are hazards to air navigation be prevented; and
3. That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air

navigation or obstructions and the elimination, removal, alteration or mitigation of air hazards to air navigation or obstructions, 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.

SECTION II: DEFINITIONS

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

1. **AIRPORT** – Macon County Airport
2. **AIRPORT ELEVATION** – The highest point of an airport's usable landing area measured in feet from sea level. The Macon County Airport is 2,020 feet above sea level.
3. **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 zone height limitation slope set forth in Section IV or this Ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.
4. **APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES** – These zones are set forth in Section III of this Ordinance.
5. **BOARD OF COMMISSIONERS** – The Board of Commissioners of Macon County.
6. **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.
7. **HAZARD TO AIR NAVIGATION** – An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of navigable airspace.
8. **HEIGHT** – for the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the Height and Hazard Ordinance Map, the datum shall be mean sea level elevation unless otherwise specified.
9. **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 zone.
10. **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.
11. **NONCONFORMING USE** – Any structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance but which was legal prior to the adoption of or any amendment to this Ordinance (i.e. October 6, 2003).
12. **NONPRECISION 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.
13. **OBSTRUCTION** – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section IV of this Ordinance.
14. **ORDINANCE ADMINISTRATOR** – The Macon County Planner or his or her designee as assigned by the Board of Commissioners to enforce this ordinance.

15. **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.
16. **PRECISION INSTRUMENT RUNWAY** – A runway having an existing or planned 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.
17. **PRIMARY SURFACE** – A surface longitudinally centered on the runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; for military 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 III 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.
18. **RUNWAY** – A defined area on an airport prepared for landing and takeoff of aircraft along its length.
19. **STRUCTURE** – An object, including a mobile object, constructed or installed by a man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.
20. **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.
21. **TREE** – Any object of natural growth.
22. **VISUAL RUNWAY** – 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 FAA approved airport layout plan.

SECTION III: AIRPORT 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 Macon County Airport. Such zones are shown on the Macon County Airport Height and Hazard Ordinance Map consisting of one sheet, 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:

1. **Visual Runway Approach 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 center line.

2. **Transitional Zones** – the transitional zones are the areas beneath the transitional surfaces.
3. **Horizontal Zone** – The horizontal zone is established by swinging arcs of 5,000 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 zone does not include the approach and transitional zones.
4. **Conical Zone** – Slopes twenty (2) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 100 feet above the airport elevation and extending to a height of 300 feet above the airport elevation.

SECTION IV: AIRPORT 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:

1. **Visual Runway Approach 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.
2. **Transitional Zones** – Slope 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 2,020 feet above mean sea level.
3. **Horizontal Zone** – Established at 150 feet above the airport elevation or at a height of 2,120 feet above mean seal level.
4. **Conical Zone** – Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 100 feet above the airport elevation and extending to a height of 300 feet above the airport elevation.
5. **Excepted Height Limitations** – Nothing in his Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height of up to seventy (70) feet above the surface of the land. Height shall be measured from the highest point on the ground along the periphery of the structure or tree to the highest point on the structure or tree.

SECTION V: USE RESTRICTIONS

Notwithstanding an 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 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 an aircraft intending to use the airport.

SECTION VI: NONCONFORMING USES

1. **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 (i.e. October 6, 2003), or otherwise interfere with the continuance of a nonconforming use. 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 (i.e. October 6, 2003), and is diligently prosecuted.
2. **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 of such markers and lights as shall be deemed necessary by the Macon County Airport Authority to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstructions. Such markers and lights shall be installed, operated and maintained at the expense of the Airport Authority.

SECTION VII: PERMITS

1. **Future Uses** – Except as specifically provide in a, b, and c hereunder, no material change shall be made in the use of land, and no structure or tree shall be erected, altered, planted or otherwise established 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 Section VII, 4. In a, b, and c below, vertical height shall be measured from the highest point on the ground along the periphery of the structure or tree to the highest point on the structure or tree.
 - 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 (70) 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 (70) feet of vertical height above the ground, except when 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 zone, no permit shall be required for any tree or structure less than seventy (70) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions 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 as set forth in Section IV, 5.

2. **Existing Uses** – No permit shall be granted that would allow the establishment or creation of an airport obstruction that is a hazard to air navigation 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 (i.e. October 6, 2003). Except as indicated, all applications for such a permit shall be granted.

3. **Nonconforming Uses Abandoned or Destroyed** – Whenever the Ordinance Administrator 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 the zoning regulations and may by appropriate action compel the owner of the nonconforming structure or tree, at his own expense, to lower, reconstruct, or equip such object as may be necessary to conform to the regulations, or, if the owner of the nonconforming structure or tree shall neglect or refuse to comply with such written order for ten (10) days after notice thereof, the Ordinance Administrator may proceed to have the object so lowered, removed, reconstructed or equipped. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

4. **Variances**- Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property not in accordance with the regulations prescribed in this Ordinance may apply to the Planning Board for a variance from such regulations. 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 this

Ordinance may be considered by the Planning Board unless a copy of the application has been furnished to the Macon County Airport Authority for advice as to the aeronautical effects of the variance. If the Macon County Airport Authority does not respond to the application within fifteen (15) days after receipt, the Planning Board may act on its own to grant or deny said application.

Pursuant to G.S. 160D-705(d), when unnecessary hardships would result from carrying out the strict letter of the ordinance, the Planning Board shall vary any of the provisions of the ordinance upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

5. **Obstructing Marking and Lighting-** Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the Macon County Airport Authority at its own expense, to install, operate and maintain thereon such marking and lights as may be necessary to indicate to pilots the presence of an airport obstruction.

6. **Construction Progress** – If no substantial construction process has been made within six (6) months of the date of issuance of the zoning permit, or if the work authorized is suspended for a period of one (1) year, the permit becomes invalid.

SECTION VIII: ENFORCEMENT

It shall be the duty of the Macon County Ordinance Administrator to administer and enforce the regulations prescribed herein. Applications for permits shall be made to the Ordinance Administrator on a form published for that purpose. The Ordinance Administrator shall issue a written decision approving or denying an application within forty-five (45) calendar days from

receipt of such application being deemed complete. The written notice shall be delivered by personal delivery, electronic mail or by first class mail in accordance with G.S. 160D-403.

SECTION IX: APPEALS

In the event that such an application is denied by the Ordinance Administrator, then the Applicant shall have the right to appeal the decision to the Macon County Planning Board. Notice of an appeal to the Planning Board shall be in writing, shall state the grounds for the appeal with specificity, and shall be submitted to the Clerk of the Planning Board within thirty (30) calendar days from the receipt of the written decision by the Ordinance Administrator. Notice given pursuant to G.S. 160D-403(b) by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The Ordinance Administrator shall forthwith transmit to the Planning Board all the papers constituting the record upon which the action appealed was taken.

The Chairman of the Macon County Planning Board shall fix a reasonable time and date and time for hearing, give notice thereof to the parties, and shall hear and decide the matter within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney. Hearings shall be held in accordance with G.S. 160D-406. The Planning Board shall give written notice of its decision in accordance with G.S. 160D-406(j).

Pursuant to G.S. 160D-405(f), an appeal shall stay all proceedings in furtherance of the action appealed from unless the Ordinance Administrator certifies to the Planning Board after the appeal has been filed, that by reason of the facts stated in an affidavit, a stay would in the opinion of the Ordinance Administrator cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order, which may be granted by the court.

SECTION X: JUDICIAL REVIEW

Appeals from the Planning Board must be filed with the Superior Court of Macon County in accordance with G.S. 160D-406(k) and subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

SECTION XI: PENALTIES

Each violation of this Ordinance or of any regulation, order or ruling promulgated hereunder shall constitute a civil penalty and shall be punishable by a fine of not more than fifty (50) dollars; and each day a violation continues to exist shall constitute a separate offense. In addition, the County may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Ordinance or of any order or ruling made in connection with its administration

and enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction or otherwise, as may be proper under all the facts and circumstances of this case, in order to fully effectuate the purpose of this Ordinance.

SECTION XII: CONFLICTING REGULATIONS

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 tree, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

SECTION XIII: 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 this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION XIV: EFFECTIVE DATE

This Amended and Restated Ordinance shall take effect and be in force from and after March 8, 2022.