

BISHOP

INTERNATIONAL

AIRPORT

**JOINT
AIRPORT
ZONING
BOARD**

ORDINANCE

98-1

(as amended)

BISHOP INTERNATIONAL AIRPORT
JOINT AIRPORT ZONING BOARD ORDINANCE 98-1

TITLE: An Ordinance amending airport zoning regulations limiting the height of structures and objects of natural growth and otherwise recommending the use of property in the vicinity of the Bishop International Airport; providing for the allowance of variances from such regulations; designating the Zoning Administrator charged with the administration and enforcement of such regulations; establishing an airport zoning board of appeals; providing for enforcement; and imposing penalties for violations of this Ordinance.

PREFACE: Pursuant to the authority conferred by the provisions of the Airport Zoning Act, being Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session as amended) and for the purpose of promoting the health, safety, and general welfare of the inhabitants of the County of Genesee by preventing the establishment of the airport hazards and thereby protecting the general public, users of the Bishop International Airport, and occupants of land in its vicinity, and preventing the destruction and impairment of the utility of said airport and the public investment therein, the Airport Zoning Board appointed and established pursuant to the provisions of Section 17 of Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session as amended), does hereby ordain as follows:

ARTICLE 1

PURPOSE AND LIMITATIONS

1.1 Hazard Area

The Ordinance establishes regulations on land within Genesee County and a 10 mile radius of the Bishop International Airport, which land is also located within Genesee County (see attached Sheet 2/9). This Ordinance establishes a huge air bowl with a maximum height limitation of 500 feet above the established elevation of the airport at the outer edge and has minimum height limitations immediately adjacent to the airport. The height limitations of this Ordinance become less severe as the distance from the airport is increased.

1.2 Hazards

Structures and trees which project above the height limitations under this Ordinance are considered hazards to flying and endanger lives and property. Height limits are based upon the established elevation of the airport or upon the elevation of the end of the nearest runway.

1.3 Existing Non-Conforming Objects

Except as to changes, substantial alterations, replacement and repairs, this Ordinance does not affect existing structures and trees, the height of which exceeded the limits imposed by this

height of existing structures, within the hazard area, must conform to the provisions on height limitations. This Ordinance also restricts such uses of land within the vicinity of the airport as will unreasonably interfere with radio communications systems, navigational aids, or other devices used by the airport and aircraft, or would reduce visibility or would create confusing lights, or would be subject to undesirable effects that may be caused by the operation of aircraft.

1.4 Administration

The Airport Director of the Bishop International Airport shall administer and enforce the provisions of this Ordinance.

1.5 Heights Requiring Permits

To effectively administer the Ordinance, the Joint Airport Zoning Board hereby establishes application heights which are below the allowable height limits of the Ordinance. This is done to make it easier for the local Zoning Boards and the general public to decide whether an application for permit must be filed with the Zoning Administrator. This was also done to give added insurance to those who are constructing the higher, more costly structures. The establishment of application heights reduces the number of those who must make application.

1.6 Land-Use Types Requiring Permits

To promote the general purpose and objectives of this Ordinance and its effective administration, all persons making use of land within the areas shown on sheet 9/9 of the zoning plans are advised to consult Section 3 of this Ordinance as to undesirable land uses within designated airport land-use guidance zones.

1.7 Provisions for Variance

This Ordinance contains provisions for the variance of the regulations in the event of practical difficulty or unnecessary hardship if the relief granted would not be contrary to the public interest and safety of the public, of users of Bishop International Airport, and of occupants of land in the vicinity of Bishop International Airport, and would not destroy or impair the utility of Bishop International Airport. It is the intent of the Joint Airport Zoning Board and Zoning Administrator, with the cooperation of the public, to have this Ordinance administered in a reasonable and just manner in keeping with the responsibilities involved.

1.8 Where to Obtain Copies of this Ordinance

Information regarding height limits and copies of the Ordinance are available at the offices of the Bishop International Airport Authority, or the Michigan Aeronautics Commission, Capital City Airport, Lansing, Michigan 48906. A copy of the Ordinance is on file with the County Clerk of Genesee County.

ARTICLE 2

DEFINITIONS

2.1 Words and Phrases

For the purposes of this Ordinance, the words, terms and phrases set forth in Sections 2.2 through 2.13 inclusive, shall have the meanings prescribed in those sections.

2.2 Airport

The term “Airport” means the Bishop International Airport and all appurtenances used or acquired for airport buildings or other airport facilities, and all other appurtenant rights of way or other existing or future interests.

2.3 Airport Hazard

“Airport Hazard” means any structure or tree within the airport hazard area which exceeds the height limitations established by this Ordinance, any structure or tree of a height that would increase the minimum obstruction clearance altitude, the minimum safe altitude prescribed by the Federal Aviation Administration, or the minimum altitude required for a safe instrument approach, or any use of land or appurtenances within the airport hazard area which interferes with the safe use of the airport by aircraft.

2.4 Airport Hazard Area

The term “airport hazard area” means any area of land or water, or both, lying wholly within Genesee County and a ten mile radius from the established center of the Bishop International Airport in which an airport hazard might exist if not prevented by this Ordinance.

2.5 Airport Zoning Act

The term “Airport Zoning Act” refers to Act No. 23 of the Public Acts of the State of Michigan for the year 1950 (Extra Session as amended).

2.6 Board

The term “Board” means the Board of Appeals as hereinafter created and designated below.

2.7 Land-Use Guidance Zone

The term “land-use guidance zone” means an area or zone in which certain types of land uses are recommended due to noise, vibrations, fumes, dust, fuel particles and other effects that may be

caused by the operation of aircraft landing at, or taking off from, or operating at the Bishop International Airport.

2.8 Above Mean Sea Level

The term “above mean sea level” denotes elevations above sea level based upon and determined by reference to United State Coast and Geodetic Survey datum.

2.9 Non-Conforming Use

The term “non-conforming use” means any structure, tree or use of land which does not conform to a regulation prescribed in this Ordinance or any amendment as of the effective date of such regulation.

2.10 Person

The term “person” means any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic, including any trustee, receiver, assignee or other similar representative.

2.11 Structure

The term “structure” means any object constructed or installed by man, including but without limitation, buildings, towers, smokestacks, cranes, overhead transmission lines, and radio and television aerials and antennae, but not including highways and their appurtenances.

2.12 Tree

The term “tree” means any object of natural growth.

2.13 Zoning Administrator

“Zoning Administrator” means the Airport Director of the Bishop International Airport, or his designee, who is designated and charged with the administration and enforcement of this Ordinance.

ARTICLE 3

ZONES

3.1 Airport Hazard Areas

An airport hazard area is established, which area or zone consists of all the lands within Genesee County lying beneath the approach, transitional, 149 feet horizontal, conical and 500 feet horizontal surfaces, said land being located within a circle having a radius extending horizontally

10 miles (see attached Sheet 2/9) from the established center of the usable landing areas of the airport, known as the airport reference point. The boundaries of the hazard areas are shown on the airport zoning plans numbered 2/9 through 8/9, which maps are attached and made a part of this Ordinance.

3.2 Airport Zoning Plans

The height limitations shown on the attached airport zoning plans are imposed on the lands in the airport hazard areas, the same being based upon the elevations above mean sea level at the ends of the respective airport runways and the established elevation of the airport, which elevations are shown on sheets 2/9 through 8/9 of the zoning plans.

3.3 Legal Height Limitations

No person may erect or maintain any structure to a height in excess of the limitations prescribed by the terms of this Ordinance and the attached maps, or to plant or allow any tree to grow to a height in excess of the limitations prescribed by the terms of this Ordinance and the attached maps; or to establish any use of lands contrary to the provisions of this Ordinance; or that would raise the descent minimums of any instrument approach procedure to the airport, or otherwise limit the operations at the airport, as determined by an airspace study conducted by the Federal Aviation Administration.

3.4 Unlawful Land Use

Notwithstanding any other provisions of this Ordinance, no person may use any lands within any airport hazard area which:

- (a) Would create electrical interference with radio communications between the airport and aircraft or create interference with navigational aids employed by aircraft;
- (b) Would make it difficult for flyers to distinguish between airport lights and others or result in glare to the eyes of flyers using the airport;
- (c) Would create air pollution in such amounts as to impair the visibility of flyers in the use of the airport;
- (d) Would locate or permit the operation of a dump, waste disposal site, sanitary landfill, hazardous waste facility, solid waste transfer station or recycling facility within 10,000 feet of any runway at the airport, unless the construction, location and operation of the site is approved or authorized by the Federal Aviation Administration as not being in violation of its orders, rules or regulations applicable to the airport, or unless a waiver is issued by the Federal Aviation Administration
- (e) Would otherwise endanger the landing, taking off, maneuvering of aircraft;

- (f) Would attract birds.

3.5 Non-Conforming Existing Uses

The provisions of Section 3.3 of this Ordinance shall not apply to structures, trees or other non-conforming uses existing in the airport hazard area on the effective date of this Ordinance, unless the Zoning Administrator determines it to be abandoned, or 80% torn down, destroyed, deteriorated, or decayed.

3.6 Alterations to Non-Conforming Land Use

The provisions of Section 3.3 of this Ordinance shall apply to changes, substantial alterations, repair or replacements, which increase the height of existing structures, trees or other non-conforming uses after the effective date of this Ordinance, with the same force and effect as though the same were new uses.

3.7 Land-Use Guidance Zone

(a) Purpose. The purpose of land-use guidance zones defined in Section 2.7, is to designate areas in which certain types of land uses are recommended due to undesirable effects that may be caused by the operation of aircraft. See the Land-Use Guidance Chart I, as shown on Sheet 9/9 of the airport zoning plans, for the recommended land uses.

(b) Acceptable Land-Use. The uses of land within the areas shown on the zoning plans are recommended land-uses as outlined in Land-Use Guidance Chart II, as shown on Sheet 9/9 of the airport zoning plans.

ARTICLE 4

ORDINANCE ADMINISTRATION

4.1 Approach Standards

The approach, transitional, conical and inner horizontal surfaces which establish the height limitations under this Ordinance are denoted on sheets 2/9 through 8/9 of the airport zoning plans, and are established in conformance with approach standards or regulations of the Michigan Aeronautics Commission and the Federal Aviation Administration. In acting upon applications for permits the Zoning Administrator will arrive at proper height limitations by interpolating between contours shown on the airport zoning plans.

4.2 Zoning Administrator as Administrative Agency

The Airport Director of the Bishop International Airport is designated the Zoning Administrator charged with the duty of administering and enforcing this Ordinance. The Zoning Administrator shall act as the “administrative agency” referred to in the Airport Zoning Act. The duties of the

Zoning Administrator shall include those of issuing permits as provided below, but the Zoning Administrator shall not have or exercise any of the powers or duties delegated to the Board of Appeals. The Zoning Administrator may adopt such rules of procedure and fees as may be necessary in connection with the administration and enforcement of this Ordinance.

4.3 Board of Appeals

There is hereby created a Board of Appeals consisting of five members, each to be appointed for a term of 3 years and until his or her successor is appointed and qualified, one of whom shall be designated as Chair and one of whom shall be designated as Vice Chair, which appointments shall be made by the Joint Airport Zoning Board and provided that upon such appointments being initially made, one member of the Board shall be appointed for a term of 1 year, two for terms of 2 years each, and two for terms of 3 years each. Board members shall be removable by the appointing body for cause shown, upon written charges and after notice and opportunity to be publicly heard. The Board of Appeals has the powers set forth in Section 28 of the Airport Zoning Act and shall exercise such powers as are conferred upon it in the Airport Zoning Act and in this Ordinance.

(a) Official Name: The Board of Appeals shall be officially known as the Bishop International Airport Zoning Board of Appeals.

(b) Compensation: The Board of Appeals shall receive such compensation and expense for reimbursement for attendance at meetings and hearings, and may employ such necessary personnel, as may be established by the Airport Operating Agency.

(c) Rules and Procedures: The Board of Appeals shall adopt rules concerning its organization and procedure, including appeal forms, and other authorized matters, consistent with the provisions of the Airport Zoning Act and this Ordinance. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine, and notice of all meetings shall be given to all members. The Chair, or in his or her absence the Vice-Chair, may administer oaths or affirmations and issue subpoenas to compel the attendance of witnesses. All hearings of the Board of Appeals shall be open to the public, and it shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, then so indicating, and the Board shall keep records of its examinations and other official acts, all of which shall be immediately filed in the offices of the Board and shall be a public record.

(d) Powers: The Board of Appeals, by the concurring vote of a majority of its members, shall have the power to issue certificates of variance under the provisions of this Ordinance, or to otherwise decide appeals from any order, requirement, rule, regulation, decision or determination made by the Zoning Administrator under the powers conferred upon it by this Ordinance.

(e) Who May Appeal: Any person, including the governing body of any political subdivision, aggrieved by any decision of the Zoning Administrator made in the administration of this Ordinance, may appeal to the Board of Appeals.

(f) Appeal Procedure: All appeals from actions of the Zoning Administrator shall be taken within 21 days and in the manner provided by the rules of the Board of Appeals, by filing with the Zoning Administrator and with the Board a notice of appeal specifying the grounds of appeal. The Zoning Administrator shall promptly transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator 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 the Zoning Administrator's opinion, cause imminent peril to life or irreparable damage to property. In that case, proceedings shall not be stayed otherwise than by order of the Board and on due cause shown. The Board shall fix a time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. The Board may, in conformity with the provisions of this Ordinance, reverse, affirm or modify, wholly or partly, the order requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator.

(g) Certificates of Variance: An application for certificate of variance is to be submitted on the form provided for by the Zoning Administrator. If the application is granted, the applicant will receive a certificate of variance in the form prescribed by such rules. The certificate shall provide that it is not effective for a period of thirty (30) days following the date of its issuance. Immediately upon issuance, copies of the certificate shall be filed with the Zoning Administrator, the Michigan Aeronautics Commission and each political subdivision affected by the certificate. In acting upon applications for variance, variances shall 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 and safety of the public, of users of Bishop International Airport, and of occupants of land in the vicinity of Bishop International Airport, and would not destroy or impair the utility of Bishop International Airport and would protect its aerial approaches, but would do substantial justice and be in accordance with the spirit of the regulations of this Ordinance; provided, however, that any variance may be allowed subject to any reasonable condition or conditions subsequent that the Board of Appeals may deem necessary to effectuate the purpose of this Ordinance. Nothing in this section shall be construed to permit a use which would conflict with any general zoning ordinance or regulation of any political subdivision applicable to the same area.

ARTICLE 5

PERMITS

5.1 Permit Maps

There is attached hereto as Sheets 2/9 through 4/9 of the airport zoning maps, "permit maps" showing applicable height limitations within the airport hazard areas above which permits are required under this Ordinance. The permit maps are affixed to this Ordinance for the information of and consultation by all persons proposing to make uses of land within the airport hazard areas, whether the same be new uses or changes in existing uses, and it shall not be a defense in any

action that a person charged with violation of this Ordinance, whether in a criminal or civil action, failed to consult this Ordinance or the permit maps prior to the action giving rise to the violation.

5.2 Application for Permits

Applications for permits, which shall be accompanied by an application for a permit issued pursuant to the Tall Structure Act, being Public Act 259 of 1959 as amended, and an airspace determination issued pursuant to 14 Code of Federal Regulations Part 77, shall be made to the Zoning Administrator in three (3) copies upon forms furnished by the Zoning Administrator, and the Zoning Administrator shall, within 15 days from the application, determine whether the height limitations as designated by the airport zoning maps and this Ordinance, would or would not be violated if the application were granted and shall grant or deny the application accordingly (the Zoning Administrator not being vested with authority to permit a variance). The Zoning Administrator shall advise applicant of its action within three (3) days after the action has been taken. In the event of a denial, the applicant may apply to the Board of Appeals for a certificate of variance. The issuance of a permit shall not be construed to permit a use that violates Section 3.4 of this Ordinance, or violates any general zoning Ordinance or regulations of any political subdivision applicable to the same area. Nothing contained in this Ordinance waives any state or federal notification requirements.

5.3 Permit Procedures

Persons desiring to create new uses, or to change existing uses, shall proceed with one of the following after consulting the applicable permit map:

(a) Procedure One: If it appears, after consulting the permit map, that the proposed new use, or changed existing use, clearly would not violate the terms of this Ordinance, then the new use may be created, or existing use changed, without applying for a permit hereunder or taking any further action under this Ordinance.

(b) Procedure Two: If it appears, after consulting the permit map, that the proposed new use, or changed existing use may violate the terms of this Ordinance, then the new use shall not be changed, until a proper permit has first been obtained from the Zoning Administrator in accordance with the provisions of this Ordinance. Inasmuch as the height limitations imposed in the airport hazard area steadily incline from the airport center, and at various rates according to location of approaches, the permit maps are only approximations for any given segment of the airport hazard area and therefore a height limitation may be somewhat greater than accorded by the maps, depending upon the particular plat of land involved. The purpose of this second procedure is, therefore, to enable the Zoning Administrator to make exact mathematical determinations and enable users of the land within the hazard area to avoid violations of this Ordinance.

(d) Procedure Three: If it appears, after consulting the permit map, that the proposed new use, or change in existing use, will violate the provisions of this Ordinance, then no such new or changed use shall be undertaken unless the person proposing to undertake it shall first apply to

the Board of Appeals and obtain a certificate of variance in accordance with the procedures contained in this Ordinance.

5.4 Exception for Emergency Repairs

No permit is required for the emergency repair or emergency replacement of nonconforming public utility structures, other than buildings, when the height of such structures will not be increased by such repairs or replacement. It is intended that in the application of this provision any combination of circumstances calling for immediate action or remedy in the repair or replacement of such non-conforming public utility structures shall be deemed an emergency. However, notice shall be given to the Bishop International Airport for “NOTAM” (Notice To Airmen) information purposes.

ARTICLE 6

JUDICIAL ACTION

6.1 Appeals to Circuit Court

Any person, including the Michigan Aeronautics Commission on behalf of and in the name of the State, aggrieved by any decision of the Board of Appeals, may appeal to the Circuit Court of the County of Genesee as provided in Section 30 of the Airport Zoning Act.

6.2 Penalties

Any person who violates this Ordinance or any regulations, orders or rulings made pursuant to this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$100.00 or imprisoned for a term not to exceed 90 days, or both. Each day a violation continues to exist after notice shall constitute a separate offense. Such notice may be given by the Zoning Administrator by certified mail, return receipt requested, addressed to the person maintaining the violation at the last known address.

6.3 Appearance Ticket Authorization

Unless prohibited by state law, the following persons are empowered to issue and serve appearance tickets for violations of this Ordinance, pursuant to Act No. 175 of the Public Acts of 1927, as amended by Act No. 506 of the Public Acts of 1980, Act. No. 366 of the Public Acts of 1984 and Act No. 49 of the Public Acts of 1988, being sections 764.9c and 764.9f of the Michigan Compiled Laws:

The Airport Director
The Deputy Airport Director – Operations & Maintenance
The Director of Public Safety – Bishop International Airport
The Genesee County Sheriff and all other Deputy Genesee County Sheriffs
Bishop International Airport Police

6.4 Civil Action Available

The Bishop International Airport Authority in its own name and/or on behalf of and in the name of the Joint Airport Zoning Board, may, in addition to any criminal action taken, institute in the Circuit Court of Genesee County, an action to prevent, restrain, correct or abate any violation of this Ordinance or the Airport Zoning Act, or of airport zoning regulations adopted under this Ordinance or under the Airport Zoning Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to effectuate fully the purpose of this Ordinance or the Airport Zoning Act and the regulations adopted and orders and rulings made pursuant thereto.

ARTICLE 7

SEVERABILITY OF PROVISIONS

7.1 Severability of Provisions

If any of the provisions of this Ordinance or its application to any persons or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications of the Ordinance, and to that end the provisions of this Ordinance are declared to be severable.

ARTICLE 8

AMENDMENTS

8.1 Amendments

This ordinance, and the regulations prescribed herein, may be amended by the Joint Airport Zoning Board after a public hearing is held in relation to the proposed amendment, pursuant to Section 19 of the Airport Zoning Act. This ordinance was amended on December 14, 2011, with an effective date of February 1, 2012 by the Joint Airport Zoning Board after a public hearing. See the Joint Airport Zoning Board Meeting Minutes dated, December 14, 2011.

ARTICLE 9

REPEAL

9.1 This Ordinance repeals an Ordinance establishing Airport Zoning regulations adopted by the Joint Bishop Airport Zoning Board on April 14, 1955, and all Ordinances which may be in conflict.