

**ORDINANCE NUMBER 76**

**CITY OF TOWER, MINNESOTA**

**Tower Municipal Airport**

**Created by the City of Tower and Saint Louis County Joint Airport Zoning Board**

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## Tower Municipal Airport

### Zoning Ordinance

Created by the City of Tower and Saint Louis County Joint Airport Zoning Board

An ordinance regulating and restricting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of the Tower Municipal Airport by creating the appropriate zones and establishing the boundaries thereof, providing for changes in the restrictions and boundaries of such zones; defining certain terms used herein; referring to the Tower Municipal Airport Zoning Map which is incorporated in and made a part of this ordinance; providing for enforcement; establishing a board of adjustment; and imposing penalties.

It is hereby ordained by the City of Tower and Saint Louis County Joint Airport Zoning Board pursuant to the authority conferred by Minnesota Statutes 360.061-360.074, as follows:

#### Section 1. PURPOSE AND AUTHORITY.

The City of Tower and Saint Louis County Joint Airport Zoning Board, created and established by joint action of the Common Council of the City of Tower and the Board of County Commissioners of Saint Louis County pursuant to the provisions and authority of Minnesota Statutes 360.063, hereby finds and declares that:

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

subdivisions may raise and expend public funds.

## SECTION 2: SHORT TITLE.

This ordinance shall be known as “Tower Municipal Airport Zoning Ordinance.”

## SECTION 3: DEFINITIONS.

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

**Airport** – Means the Tower Municipal Airport located in Sections Twenty-nine (29) and Thirty (30), Township Sixty-two (62) North, Range Fifteen (15) West.

**Agricultural Uses** – Means any customary agricultural uses except the raising, keeping, and/or feeding of animals or fowl.

**Airport Elevation** – Means the established elevation of the highest point on the usable landing area which elevation is established to be 1362.50 feet above mean sea level.

**Airport Hazard** – Means any structure or tree or use of land which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

**Commercial or Industrial Uses**- Means any use as defined and permitted by Chapters 10, 11, and 12 of the Uniform Building Code, 1973, as adopted by the State of Minnesota.

**Dwelling** – Means any building or portion thereof designed or used as a residence or sleeping place of one or more persons.

**Height** – For the purposes 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.

**Instrument Runway** – Means a runway equipped or to be equipped with a precision electronic navigation aid or landing aid or other air navigation facilities suitable to permit the landing of aircraft by an instrument approach under restricted visibility conditions.

**Landing Area** – Means the area of the airport used for the landing, taking off, or taxiing of aircraft.

**Landing Strip** – Means any grass or turf covered area of the airport specifically

designated and used for the landing and/or take-off of aircraft. This term shall have the same meaning throughout this Ordinance as does the term “runway”.

Nonconforming Use – Means any pre-existing structure, tree, natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment hereto.

Non-instrument Runway – Means a runway other than an instrument runway.

Person – Means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes receiver, assignee, administrator, executor, guardian, or other representative.

Runway – Means any paved surface of the airport which is specifically designated and used for the landing and/or take off of aircraft.

Service – Means personal service or service by regular United States Mail. Personal service is effective the day of service, service by mail is effective three days after the instrument, letter, or notice has been deposited in the United States Mail.

Site- Means a parcel or several adjoining parcels of land under common ownership.

Slope – Means an incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude.

Structure – Means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, and overhead transmission lines.

Tree – Means any object or vegetation of natural growth.

Water Surfaces – for the purpose of this Ordinance shall have the same meaning as land for the establishment of protected zones.

SECTION 4. AIRPORT ZONING ADMINISTRATOR. The Airport Zoning Administrator shall be appointed biannually by the City of Tower – Saint Louis County Joint Airport Zoning Board. It shall be the duty of the Zoning Administrator or his authorized representative to administer and to enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Zoning Administrator upon a form furnished by him. Permit applications shall be promptly considered and the Zoning Administrator shall serve his notice of decision upon the applicant. Variance applications shall be forthwith transmitted by the Zoning Administrator for action by the Board of Adjustment hereinafter provided for.

Section 5. AIRSPACE OBSTRUCTION ZONING.

A. **Airspace Zones:** The heights of structures and trees must be regulated to protect aircraft from navigational hazards during landing and departures. The following airspace zones are hereby established to provide this regulation: Primary Zone, Horizontal Zone, Approach Zone, and Transitional Zone. The locations and dimensions of said airspace zones are as follows:

1. **Primary Zone:** All that land which lies directly under an imaginary primary surface longitudinally centered on a runway and extending 200 feet beyond each end of a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 250 feet for all runways.
2. **Horizontal Zone:** All that land which lies directly under an imaginary horizontal surface 150 feet above the established airport elevation, or a height of 1512.5 feet above mean sea level, the perimeter of which is constructed by swinging arcs of specified radii from the center of each of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 6,000 feet for all runways.
3. **Approach Zone:** All that land which lies directly under an imaginary approach surface longitudinally centered on the extended centerline at each end of all runways. The inner edge of the approach surface is at the same width and elevation as, and coincides with, the primary surface. The approach surface inclines upward and outward at a slope of 40 to 1, expanding uniformly to a width of 1250 feet at a horizontal distance of 5,000 feet, and then continuing at the same rate of divergence to the zoning limits.
4. **Transitional Zone:** All that land which lies directly under an imaginary transitional surface extending upward and outward at right angles to the runway centerline and the runway centerline extended at slope of 7 to 1 from the sides of the primary surfaces and from the sides of the approach surfaces until they intersect the horizontal surface.
5. Notwithstanding anything to the contrary in Paragraph A. Airspace zones (1) through (4), there is no zoning regulation beyond a distance of two miles from the airport boundary under the approach zones and beyond a distance of one mile from the airport boundary elsewhere.

B. **Height Restrictions:** Except as otherwise provided in this Ordinance, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any airspace zone created in Subsection 5. A. so as to project above any of the imaginary airspace surfaces described in said Subsection 5. A. Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail.

## Section 6. LAND USE SAFETY ZONING.

A. Safety Zone Boundaries: Safety zones are created to protect the surrounding community and assist aircraft in the event of emergency landings. Safety zones seek to limit the population and building density, thereby reducing the chance of loss of life and creating emergency landing areas for aircraft.

1. Safety Zone A: All that land in the approach zones of a runway which is located within a horizontal distance of 2,267 feet from each end of the primary zone.
2. Safety Zone B: All that land in the approach zones of a runway which is located within a horizontal distance of 3,400 feet from each end of the primary zone and is not included in Zone A.
3. Safety Zone C: All that land which is enclosed within the perimeter of the horizontal zone and which is not included in Zone A or Zone B.
4. Notwithstanding anything to the contrary in Section 6, 1 through 3, there is no zoning regulation beyond a distance of the two miles from the airport boundary under the approach zones and beyond a distance of one mile from the airport boundary elsewhere.

B. Use Restrictions:

1. General: Subject at all times to the height restrictions set forth in Subsection 5 B, no use shall be made of any land in any of the safety zones defined in Subsection 6. A. which creates or causes interference with the operations of radio or electronic facilities on the airport or with radio or electronic communications between the airport and aircraft, makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots, using the airport, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, take-off, or maneuvering aircraft.
2. Zone A: Subject at all times to the height restrictions set forth in Subsection 5. B. and to the general restrictions contained in Subsection 5. B-1., areas designed as Safety Zone A shall contain no buildings or temporary structures and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include agriculture, light outdoor recreation, cemeteries, and vehicular parking.
3. Zone B: Subject at all times to the height restrictions set forth in subsection 5. B. and to the general restrictions contained in Subsection 6. B-1., areas designated at Safety Zone B may be used for the following uses and purposes only:

- a. Any use permitted in subsection 6 B-2.
  - b. Residential, provided that there shall be only single family dwellings and not more than one such dwelling per three-acre site. Each residential use may include one detached garage or storage building with a maximum ground area of 1,000 square feet.
  - c. Commercial or industrial use, subject to the following limitations:
    - i. Each use shall not create, attract or bring together an absolute population in excess of fifteen persons per one-acre tract.
    - ii. Each such use site shall contain not less than three acres of land.
    - iii. Each such use site shall contain no dwelling units and shall contain not more than one structure per three acres of land.
    - iv. The maximum ground area covered by all structures within one site shall not exceed one-twelfth of the land area when the site area is ten acres or less and shall not exceed one-eighth of the land area when the site area exceeds ten acres.
  - d. The following uses are specifically prohibited: churches, hospitals, schools, theatres, stadiums, hotels, motels, trailer courts, campgrounds, and any other places of public or semi-public assembly.
4. Zone C: Zone C is subject only to the height restrictions set forth in subsection 5. B; and to the general restrictions contained in Subsection 6. B-1.

Section 7. AIRPORT ZONING MAP. The several zones herein established are shown on the Tower Municipal Airport Zoning Map consisting of three sheets, prepared by Robert Wallace and associates, and dated June, 1975, attached hereto and made a part hereof, which map, together with such amendments thereto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is hereby adopted as part of this ordinance.

Section 8. NONCONFORMING USES. Regulations not retroactive. The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of any non-conforming use. Nothing herein contained shall require any change in the construction, repair, or alteration, or intended use of any structure, the construction, repair, or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted and completed within two years thereof.

Section 9. PERMITS.

A. Future Uses: Except as specifically provided in Paragraphs 1 and 1 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 by the Zoning Administrator, heretofore provided for. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

1. However, a permit for a tree of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree, because of terrain, land contour, or topographical features, would extend above the height limit prescribed for the respective zone.
2. Nothing contained in this foregoing exception shall be construed as permitting or intending to permit any growth of any tree in excess of any of the height limitations established by this Ordinance as set forth in Section 4.

B. Existing Uses: Before any existing use or structure may be replaced, substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto, or than it is when the application for a permit is made. Except as indicated all applications for such a permit shall be granted.

C. Nonconforming uses abandoned or destroyed. Whenever the Zoning Administrator determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, physically deteriorated, or decayed no permit shall be granted that would allow such a structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit under this paragraph or not, the Zoning Administrator may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this ordinance. In the event the owner of the nonconforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notices of such order, the Zoning Administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed nonconforming structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the structure is or

was located. Unless such an assessment is paid within ninety days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight percent per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes.

- D. Fee Schedules. The City of Tower and Saint Louis County Joint Airport Zoning Board shall have the authority to set fees for permit applications, variance applications and appeals. The fee schedules so set shall be kept in a book of fee schedules in the office of the Zoning Administrator.

Section 10. VARIANCES. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment, hereinafter provided for, for a variance from such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this ordinance; provided any variance so allowed may be subject to any reasonable conditions that the Board of Adjustment may deem necessary to effectuate the purposes of this Ordinance.

#### Section 11. HAZARD MARKING AND LIGHTING.

- A. Nonconforming uses: The owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Zoning Administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Tower.
- B. Permits and Variances: If such action is deemed advisable to effectuate the purpose of this Ordinance and is reasonable under the circumstances, the Zoning administrator or the Board of Adjustment, as the case may be, may condition any permit or variance granted so as to require the owner of the structure or tree in question at his own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

#### Section 12. BOARD OF ADJUSTMENT.

- A. Establishment: The Board of Adjustment shall consist of five members appointed by the City of Tower – Saint Louis County Joint Airport Zoning Board, and each shall serve for a term of three years and until his successor is duly appointed and qualified. Of the members first appointed, one shall be appointed for a term of one year, two for a term of two years, and two for a term of three years. Upon

their appointment the members shall select a member to act as chairman at the pleasure of the Board of Adjustment. Members shall be removable by the Joint Airport Zoning Board for cause, upon written charges, after a public hearing. The location of the office of the Board of Adjustment shall be as determined by the Board of Adjustment.

B. Powers: The Board of Adjustment shall have and exercise the following powers:

- a. To hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance.
- b. 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.
- c. To hear and decide specific variances.

C. Procedures:

- a. The Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. The Chairman, or in his absence the acting chairman, 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 Zoning Administrator and shall be a public record.
- b. The Board of Adjustment shall make written findings of fact 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.
- c. 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 Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

### Section 13. APPEALS.

- A. Any person aggrieved, or any taxpayer affected by any decision of the Zoning Administrator made in his administration of this Ordinance may appeal to the Board of Adjustment. Such appeals may also may be made by any governing

body of a municipality, county, or airport zoning board, which is of the opinion that a decision of the Zoning Administrator is an improper application of this Ordinance as it concerns such governing body or board.

- B. All appeals hereunder must be taken within the time limits specified by the rules of the Board of Adjustment, by filing with the Zoning Administrator a Notice of Appeal specifying the grounds thereof.
- C. An appeal shall stay all proceeding in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed except by order of the Board of Adjustment issued after a showing of due cause. Said order shall be served upon appellant forthwith.
- D. The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.
- E. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination, as may be appropriate under the circumstances, and to that end shall have all the powers of the Zoning Administrator. Such order, requirement, decision or determination shall thence be filed in the office of the Board of Adjustment.

Section 14: JUDICIAL REVIEW. Any person aggrieved, or any taxpayer affected by any decision of the Board of Adjustment, or any governing body of a municipality, county, or airport zoning board, which is of the opinion that a decision of the Board of Adjustment is illegal may present to the District Court for the Sixth Judicial District, State of Minnesota, a verified petition setting forth that the decision or action is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the decision is filed in the office of the Board of Adjustment. The petitioner must exhaust the remedies provided in this Ordinance before availing himself of the right to petition a court as provided by this section.

Section 15. PENALTIES. Every person or agent thereof who shall construct, establish, substantially change, substantially alter, or substantially repair any existing structure or use, or permit the growth of any tree without having complied with the provision of this ordinance or who, having been granted a permit or variance under the provisions of this Ordinance, shall construct, establish, substantially change, substantially alter, substantially repair any existing growth or structure or permit the growth of any tree, except as permitted by such permit or variance, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$300 or imprisonment for not more than 90 days or both. Each day a violation continues to exist shall constitute a separate offense.

Section 16. CONFLICTS. Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitations or regulation shall govern and prevail.

Section 17. SEVERABILITY. In any case in which the provisions of this Ordinance, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so erroneous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or of the constitution of the United States, such holding shall not affect the application of this Ordinance as to other structures and parcels of land, and to this end the provisions of this Ordinance are declared to be severable.

Section 18. VALIDITY. In any section, part of a section, provision, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid the remaining provisions hereof shall nevertheless remain in full force and effect.

Section 19. EFFECTIVE DATE. This Ordinance shall be published, with the exception of the attached maps, on the next available date in the Tower News, an official newspaper in Tower, Minnesota, and if that paper will not accept publication, then in the Mesabi Daily News, and shall take effect on the day after publication. Copies thereof shall be filed with the Commissioner of Aeronautics, State of Minnesota, and the Register of Deeds, Saint Louis County, Minnesota.

Passed and adopted after public hearing by the City of Tower – Saint Louis County Joint Airport Zoning Board this 27<sup>th</sup> day of January, 1976.

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Robert Olson, Chairman

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Timothy Riley, Member

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Edward Lavaque, Member