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FEDERAL

DEPARTMENT OF COMMERCE CIVIL AERONAUTICS ADMINISTRATION WASHINGTON

UNIFORM AIRPORT ZONING ENABLING ACT (Preliminary Draft, November 12, 1940)

AN ACT declaring certain structures and other objects within the aerial approaches of airports of the public utility class to be airport hazards and as such not in the public interest; empowering and directing the State Aeronautics Commission (or the State Director of Aeronautics, the State Planning Board, or other official or agency of the State Government, as the case may be) to prepare airport approach plans for such airports, indicating the approach protection necessary; empowering and directing municipalities and other political subdivisions to promulgate, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of such airports; authorizing the acquisition, by purchase, grant, or condemnation, of air rights and other interests in land in cases in which the desired result cannot be obtained by regulation; prescribing certain standards and principles to be followed; making provision for notice, hearing and appeal and prescribing the procedure governing the adoption of airport zoning regulations, applications for permits and variances, and judicial review; and providing penalties and remedies for violations of this Act or any ordinance or regulation made under the authority conferred thereby.

Be It Enacted by the General Assembly of the State of _____:

SECTION 1. DEFINITIONS. As used in this Act, unless the context otherwise requires:

(1) "Airport" means any area of land or water usable for the landing and taking-off of airplanes.

(2) "Airport hazard" means any overhead power line which interferes with radio communication between an airport of the public utility class and airplanes approaching or leaving same, or any structure or object of natural growth which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

(3) An airport is of the "public utility class" if it is available to and utilized by the general public for private flying or otherwise as a point of arrival or departure by air.

(4) "Commission" means the State Aeronautics Commission (or the State Director of Aeronautics, the State Planning Board, or other agency or official of the State Government, as the case may be).

(5) "Person" means any individual, firm, co-partnership, public or private corporation, company, association, joint stock association or body politic, and

includes any trustee, receiver, assignee or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

SECTION 2. AIRPORT HAZARDS NOT IN PUBLIC INTEREST.

It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the area available for landings and taking-off, thus threatening and perhaps destroying the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

SECTION 3. PREPARATION OF AIRPORT APPROACH PLANS.

The Commission is hereby empowered and directed to formulate, and revise from time to time, as may be necessary, an airport approach plan for each airport of the public utility class in the State, which plans shall indicate, in each case, the circumstances in which structures and objects of natural growth are or would be airport hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be. In preparing any such plan, the Commission shall take into consideration, among other things, the character of the flying operations expected to be conducted at the airport in question, the nature of the terrain, the height of existing structures and objects of natural growth above the level of the airport, and the possibility of lowering or removing existing obstructions, and the Commission is hereby empowered to obtain and take into consideration the views of the Civil Aeronautics Authority, or such other agency of the Federal Government as may be charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport in question.

SECTION 4. PROMULGATION AND ADMINISTRATION OF AIRPORT ZONING REGULATIONS.

Every municipality and county or other political subdivision having within its territorial limits an area within which, according to an airport approach plan formulated by the Commission pursuant to Section 3 hereof, measures should be taken for the protection of airport approaches, is hereby empowered and directed to promulgate, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones or districts, and, within such zones, specify the land uses permitted, regulate and restrict the height of existing and future structures and objects of natural growth, and impose such other restrictions and requirements as may be necessary to effectuate the Commission's approach plan for the airport in question.

Any zoning or other regulations applicable to any such area, including not only any airport zoning regulations adopted under this Act but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by this Act, shall be consistent with, and conform to, the Commission's approach plan for such area, and shall be amended from time to time as may be necessary to conform

to any revision of the plan that may be made by the Commission; provided, however, that all such regulations shall be reasonable.

In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this Act, may be incorporated in and made a part of such general zoning regulations, and administered and enforced in connection therewith; provided, that such interrelation of the two types of zoning regulations shall not be construed to limit the effectiveness or scope of those adopted under this Act.

The governing body of any political subdivision authorized to promulgate, administer, and enforce airport zoning regulations under this Act may delegate this power to any zoning board or planning commission under its jurisdiction, and may, if it so desires, authorize one such agency to determine and promulgate the regulations and another to administer and enforce them.

SECTION 5. PERMITS AND VARIANCES.

(a) *Permits for Continuance of Non-conforming Uses.* The owner of any structure or object of natural growth existing at the time of the adoption of airport zoning regulations under authority of this Act, which does not conform to said regulations, shall be granted a permit authorizing continuance of such non-conforming use upon application therefor made by him to the board, commission or agency authorized to administer and enforce the regulations; provided, that if such application is not made within 90 days after the effective date of the regulations in question, such board, commission or agency shall by appropriate action compel the owner of the non-conforming structure or object of natural growth, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations.

(b) *Permits for Change and Repair of Non-conforming Uses.* Before any existing non-conforming structure or object of natural growth for which a permit has been issued in accordance with sub-section (a) hereof may be altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the board, commission, or agency authorized to administer and enforce the regulations, authorizing such change or repair. No such permit shall be granted that would permit the structure or object of natural growth in question to be made higher or become a greater hazard to air navigation than it was when the permit for its continuance was granted under sub-section (a) hereof; and, where the structure or object of natural growth has been more than 50% torn down or destroyed, whether voluntarily, by act of God, or otherwise, or has become more than 50% deteriorated or decayed, no permit shall be granted that would permit said structure or object of natural growth to exceed the applicable height limit or otherwise deviate from the zoning regulations. In all such cases of 50% destruction, deterioration, or decay, whether application is made for a permit for repair or not, the said board or agency shall by appropriate action compel the mowner of the non-conforming structure or object of natural growth, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the said regulations. Except as indicated, all applications for permits for change or repair of non-conforming uses shall be granted.

(c) *Permits for All Uses.* Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this Act, a system for the

granting of permits for all uses and structures within the zoned area may be established.

(d) *Variances.* 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 adopted under this Act, must apply to the board, commission or agency authorized to consider such applications, for a variance from the zoning regulations in question. Such variances shall be allowed upon a showing of practical difficulty or unnecessary hardship.

(e) *Obstruction Marking and Lighting.* In granting any permit or variance in accordance with this Section, the board, commission, or agency authorized to do so, may, if it deems such action advisable to effectuate the purposes of this Act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or object of natural growth in question to install, operate, and maintain suitable obstruction markers and obstruction lights.

(f) *Exhaustion of Remedies.* No person desiring to continue a non-conforming use, to change or repair a non-conforming use, to take any action requiring a variance under sub-section (d) hereof, or to take any other action covered by this Section, shall initiate any action in the courts unless and until he has exhausted the remedies provided by this Section.

SECTION 6. ACQUISITION OF AIR RIGHTS.

In any case in which: (1) the approach protection necessary according to the Commission's airport approach plan cannot, because of constitutional limitations, be provided for in airport zoning regulations under this Act; or (2) a permit for continuance of a non-conforming use has been granted under Section 5 (a) hereof; or (3) a variance has been granted under Section 5 (d) hereof, either the political subdivision having jurisdiction or the Commission may acquire, by purchase, grant or condemnation, such an air right, easement, or other estate or interest in the property or non-conforming use as may be necessary to effectuate the purposes of this Act. In cases of imminent danger to the health, safety, or general welfare of the public the political subdivision and the Commission shall have the power to take such immediate steps as may be necessary to remove or mitigate said danger, and a hearing shall thereafter be held to determine what compensation, if any, should be made to the owner of the property or non-conforming use causing said danger.

SECTION 7. PROCEDURE.

In all cases of applications for permits and variances as provided for in Section 5 hereof, a public notice shall be published in the manner prescribed by law for publication of legal notices, of a public hearing upon the application in question; a public hearing shall be held at which any person having an interest in the proceedings shall have an opportunity to offer evidence for or in opposition to the application in question; and written findings of fact and conclusions of law shall be made by the board, commission or agency authorized to consider such application, based upon the evidence offered at the public hearing.

SECTION 8. JUDICIAL REVIEW.

Any person aggrieved by any zoning regulations adopted pursuant to this Act or by any order or ruling upon an application for a permit or variance,

may, within 30 days thereof, appeal therefrom to the county court of the county within which the property, structure, or object of natural growth in question is located; after such notice as such court shall direct to the parties interested, including all political subdivisions served by the airport affected and the agency promulgating the zoning regulations in question, a hearing may be had before such court at an early and convenient time and place fixed by it, and said court may, by its decree, annul, affirm, or alter the order or ruling complained of, if it finds that the applicable rules of law so require; provided, that, in all cases, any findings of fact that may have been made by the board, commission, or agency authorized to hear and consider applications for permits and variances, if supported by substantial evidence, shall be accepted by the court as conclusive. Appeals from the county court to the court of appeals shall be in accordance with the statutes governing such appeals now in force and effect.

SECTION 9. PENALTIES AND REMEDIES.

Penalties of fines and imprisonment for violations of any regulations, order, or ruling promulgated or made pursuant to this Act, may be prescribed in any airport zoning regulations that may be promulgated under authority of this Act. In addition, either the political subdivision within which the property is located or the Commission may institute in any court of competent jurisdiction, an appropriate action or proceeding to prevent, restrain, correct or abate any violation of airport zoning regulations adopted under this Act, or any order or ruling made in connection with their administration or enforcement, and the court shall adjudge then 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 fully to carry out and effectuate the purposes of this Act and of the regulations adopted and orders and rulings made pursuant to authority herein given.

SECTION 10. SEPARABILITY.

Each separate provision of this Act shall be deemed to be independent of all other provisions herein, and if any provision of this Act is declared to be invalid, all other provisions thereof shall remain valid and enforceable. If any provision of this Act is held invalid with regard to any person or circumstances, it shall not be invalid as to other persons or circumstances.

SECTION 11. INCONSISTENT ACTS REPEALED.

All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SECTION 12. EFFECTIVE DATE OF ACT.

This Act shall become effective on the _____ day of _____, 19—.

SECTION 13. CITATION OF ACT.

This Act shall be known and may be cited as "The Uniform Airport Zoning Enabling Act."