

# MUNICIPAL AIRPORT OBSTRUCTION ZONING ORDINANCE

## Eastport Municipal Airport Obstruction Zoning Ordinance

(AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTIVES OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF EASTPORT MUNICIPAL AIRPORT, BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO THE EASTPORT MUNICIPAL AIRPORT APPROACH AND CLEAR ZONE MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; AND IMPOSING PENALTIES.)

This Ordinance is adopted pursuant to the authority conferred by Maine law and the Eastport City Charter. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Eastport Municipal Airport and property or occupants of land in its vicinity; that an obstruction may affect future instrument approach minimums at Eastport Municipal Airport; and that an obstruction may reduce the areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Eastport Municipal Airport and the public investment therein. It is also found that:

that the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Eastport Municipal Airport.

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 a hazard to air navigation be prevented; and

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

THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF Eastport as follows:

### **Section I: Short Title**

This Ordinance shall be known and may be cited as the Eastport Municipal Airport Obstruction Zoning Ordinance.

### **Section II: Definitions**

1. AIRPORT - An area of land set aside for the landing and taking off of aircraft, and utilized or to be utilized in the interest of the public for such purposes and commonly known as Eastport Municipal Airport.
2. AIRPORT ELEVATION - The highest point of an airport's usable landing area measured in feet above mean sea level. This is 54.6 above mean sea level for the Eastport Municipal Airport.
3. AIRPORT OPERATOR - The City of Eastport whose responsibility it is to maintain and operate the Airport.
4. 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 of this Ordinance. The perimeter of the approach surface coincides with the perimeter of the approach zone.
5. APPROACH, TRANSITIONAL, HORIZONTAL AND CONICAL ZONE  
These zones apply to the area under the approach, transitional, horizontal, and conical surfaces defined in Part 77 of the Federal Aviation Regulations as set forth in Section III of this Ordinance
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 the navigable airspace.
8. HEIGHT - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.
9. HORIZONTAL SURFACE - A horizontal plane 150 feet above the established airport elevation, the perimeter of which coincides with the perimeter of the horizontal zone. This is 204.6 feet above mean sea level for the Eastport Municipal Airport.

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 pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or amendment thereto.
12. NON-PRECISION INSTRUMENT RUNWAY - A runway having an 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. PERSON - An individual, firm, partnership, corporation, company, association, joint stock association, or government entity. It includes a trustee, receiver, assignee, or a similar representative of any of them.
15. PRECISION INSTRUMENT RUNWAY - A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved Airport Layout Plan or any other planning document.
16. PRIMARY SURFACE - A surface longitudinally centered on a runway. When the runway has a specifically prepared or planned hard surface, the primary surface extends 200 feet beyond each end of that runway or planned runway; but when the runway has no specially prepared hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulation (FAR) for the most precise approach existing or planned for either end of that runway as 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.
17. RUNWAY - A defined area on an airport prepared for landing and takeoff of aircraft along its length.
18. STRUCTURE - An object, including a mobile object, constructed or installed by a person, including but without limitation, building, towers, smokestacks, earth formations and overhead transmission lines.
19. TRANSITIONAL SURFACES - Inclined planes parallel to the runway centerline, beginning at the edges of the primary surface. They extend upward and outward from the sides of the primary surface to the horizontal surface and from the sides of the approach surface to the horizontal surface at a 7:1 slope. (For every 7 feet it extends horizontally and it rises one foot.)
20. TREE - Any object of natural growth.
21. UTILITY RUNWAY - A runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.
22. VISUAL RUNWAY - A runway intended solely for the operation of aircraft using visual approach procedure with no straight-in instrument approach procedure.

### **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 Eastport Municipal Airport Imaginary Surface Plan consisting of one sheet dated April, 1986, which is attached to this Ordinance and made a part thereof.

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:

Utility Runway Visual Approach Zone (Runway end 33) - The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

Utility Runway With A Non-Precision Instrument Approach Zone (Runway end 15) - The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

Transitional Zones - The transitional zones are the areas beneath the transitional surfaces.

Horizontal Zone - The horizontal zone is established by swinging arcs of 5,000 feet from the center of each end of the primary surface of the non-precision instrument runways (15-33), and The horizontal zones do not include the approach and transitional zones.

Conical Zone - The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward and upward therefrom at 20:1 for a horizontal distance of 4,000 feet.

### **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:

Utility Runway Visual Approach Zone (Runway end 33) – Slopes twenty (20) feet outward for each foot upward (20:1) 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.

Utility Runway With A Non-Precision Instrument Approach Zone (Runway end 15) - Slopes twenty (20) feet outward for each foot upward (20:1) 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.

Transitional Zones - Slope seven (7) feet outward for each foot upward (7:1) beginning at the sides of and 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 2,046 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward (7:1) beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface.

Horizontal Zone - Established at 150 feet above the airport elevation or at a height of 2,046 feet above mean sea level.

Conical Zone - Slopes twenty (20) feet outward for each foot upward (20:1) for 4,000 feet beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 404.6 feet above the airport elevation. Where an area is covered by more than one (1) height limitation, the more restrictive limitation shall prevail.

#### **Section V: Use Restrictions**

Except as otherwise provided in this Ordinance, no structure or object of natural growth shall be erected, altered, or allowed to grow, or be maintained in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone.

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigation 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 aircraft intending to use the airport.

#### **Section VI: Non-Conforming 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 this Ordinance, or otherwise interfere with the continuance of a non-conforming use, including seasonal 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, and is diligently prosecuted.

Marking and Lighting - Notwithstanding the preceding provision of this Section, the owner of any existing non-conforming 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 City of Eastport to indicate to the operators of aircraft in the vicinity of the airport, the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the Airport Operator.

Non-conforming Uses Abandoned or Destroyed - Whenever the Building Inspector determines that a non-conforming structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit for reconstruction shall be granted that would allow such structure to exceed the applicable height limit to otherwise deviate from the zoning regulations. A non-conforming structure that is abandoned or more than 80 percent deteriorated shall be torn down within one year of the Building Inspector's determination, unless a permit for reconstruction is applied for within the said year. A non-conforming tree that is more than 80 percent deteriorated or decayed shall be removed by the landowner or the Airport Operator, at the landowner's option, within one month of written notice of such action.

#### **Section VII: Permits**

Future Uses - Except as specifically provided in (a) & (b), hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have 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, 3.- In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five (75) 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.

In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topography features, would extend above the height limit prescribed for such transition zone.

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 height limits established by this Ordinance.

Existing Uses - No permit shall be granted that would allow the establishment of creation of an obstruction or permit a non-conforming 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 hereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

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 Zoning Board of Appeals 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. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and, relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Zoning Board of Appeals unless a copy of the application has been furnished to the Airport Owner for advice as to the aeronautical effects of the variance. If the Airport owner does not respond to the application within fifteen (15) days after receipt, the Zoning Board of Appeals may act on its own to grant or deny said application.

Obstruction 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 install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Zoning Board of Appeals, this condition may be modified to require the owner to permit the Airport Owner, at its own expense, to install, operate, and maintain the necessary markings and lights.

### **Section VIII: Enforcement**

It shall be the duty of the City Planning Board to administer and enforce the regulations prescribed herein. The City Council may appoint agents or one or more Hearing Officers to assist the City Planning Board to administer and enforce the regulations prescribed herein. The City Planning Board shall have the duty to administer and approve permits. The Zoning Board of Appeals shall conduct hearings on applications for variances.

### **Section IX: Appeals**

An appeal from a ruling of the director of the Planning Board or his/her authorized agent regarding a requirement of the Ordinance may be made only to the Zoning Board of Appeals. An action or ruling of the Planning Board pursuant to this ordinance may be appealed to the Zoning Board of Appeals within fifteen (15) days after the Planning Board has rendered its decision. Written notice of the appeal shall be filed with the Secretary of the Planning Board. If the appeal is not filed within the fifteen-(15) day period, the decision of the Planning Board shall be final. If the appeal is filed, the Zoning Board of Appeals shall receive a report and recommendation thereon from the Planning Board and shall hold a public hearing on the appeal.

An action or decision of the Hearings Officer may be appealed to the Zoning Board of Appeals within fifteen-(15) days of his/her decision. The appeal must be in writing and filed with the Secretary of the Planning Board. A decision not appealed within fifteen-(15) days shall be final. If an appeal is filed within fifteen (15) days, the Zoning Board of Appeals shall receive the written findings of the Hearings Officer's decision, and a copy of the minutes of the hearing, and shall hold a public hearing on the appeal.

The Zoning Board of Appeals may amend, rescind or affirm the action of the Planning Board.

### **Section X: Filing Fees**

An application required by this Ordinance shall be accompanied by the following filing fees:

Variances:       \$ \_\_\_\_\_  
Amendments:     \$ \_\_\_\_\_

A filing fee under this Ordinance may be waived as follows:

By the Code Enforcement Officer where the strict application of his Ordinance would result in the payment of a double fee for a single event, or where an application has resulted from an apparent staff error.

By the City Council or the Planning Board for good cause at the request of an applicant.

### **Section XI: Public Hearings**

Each notice of hearing authorized by the Ordinance shall be published in a newspaper of general circulation in the City at least ten (10) days (suggested) prior to the date of hearing.

In addition, a Notice of Hearing on a variance or an amendment to the Approach and Clear Zone Map or text shall be mailed to all owners of property within 300 feet of the property for which the variance or map amendment has been requested. The Notice of Hearing shall be mailed at least ten (10) days prior to the date of hearing.

Failure of a person to receive the notice prescribed in this section shall not impair the validity of the hearing.

The notice provisions of this section shall not restrict the giving of notice by other means, including mail, the posting of preview or the use of radio and television. The Planning Board and the Zoning Board of Appeals may recess a hearing in order to obtain additional information or to serve further

notice upon other property owners or persons it decides may be interested in the proposal being considered. Upon recessing, the time and date when the hearing will resume shall be announced.

**Section XII: Penalties**

Each violation of this Ordinance or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and shall be punishable by a fine of not more than \_\_\_\_\_ dollars or imprisonment for not more than \_\_\_\_\_ days or both; and each day a violation continues to exist shall constitute a separate offence.

**Section XIII: 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 structure or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

**Section XIV: Severability**

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

**Section XV: Effective Date**

WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare, an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the City Council and publication and posting as required by law.

Adopted by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.