

ORDINANCE NO. A-492

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 CONWAY MUNICIPAL AIRPORT BY CREATING AIRPORT APPROACH ZONES, TRANSITION ZONES, HORIZONTAL ZONE AND CONICAL ZONE, AND ESTABLISHING THE BOUNDARIES THEREOF: PROVIDING FOR CHANGES IN THE RESTRICTIONS **AND** BOUNDARIES OF SUCH ZONES: DEFINING CERTAIN TERMS USED HEREIN: REFERRING TO THE CONWAY MUNICIPAL AIRPORT ZONING **MAP** WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE: PROVIDING FOR ENFORCEMENT: ESTABLISHING A BOARD OF APPEALS: AND IMPOSING PENALTIES.

This ordinance is adopted pursuant to the authority conferred by The Airport Zoning Enabling Act, being Act 116 of the Acts of Arkansas for 1941. It is hereby found that an airport hazard endangers the lives and property of users of Conway Municipal Airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of Conway Municipal Airport and the public investment therein. Accordingly, it is declared: (1) that the creation or establishment of an airport hazard is a public nuisance and an injury to the region served by Conway Municipal Airport; (2) that it is necessary in the interest of the public health, safety and general welfare that the creation or establishment of airport hazards be prevented, and; (3) that the prevention of these hazards 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 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 and acquire land or interests in land.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE, CITY OF CONWAY, ARKANSAS:

SECTION I: SHORT TITLE,

This ordinance shall be known and may be cited as "Conway Municipal Airport Zoning Ordinance".

SECTION 11: DEFINITIONS

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

- (1) AIRPORT - Means Conway Municipal Airport.
- (2) AIRPORT ELEVATION - Means the established elevation of the highest point on the usable landing area.
- (3) AIRPORT HAZARD - Means any structure, 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.
- (4) AIRPORT REFERENCE POINT - Means the point established as the approximate geographic center of the airport landing area and so designated.
- (5) BOARD OF ADJUSTMENT - Means a board consisting of five (5) members appointed by the City Council of the City of Conway, Arkansas provided in Ordinance No. A-319, adopted August 27, 1957.
- (6) 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.
- (7) LANDING AREA - Means the area of the Airport used for the landing, take-off or taxiing of aircraft.
- (8) NON-CONFORMING USE - Means any structure, tree, or use of land which is lawfully in existence at the time the regulation is prescribed in the Ordinance or an amendment thereto becomes effective and does not then meet the requirements of said regulation.
- (9) NON-INSTRUMENT RUNWAY - Means a runway other than an instrument runway.
- (10) PERSON - Means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.
- (11) RUNWAY - Means the paved surface of an airport landing strip.
- (12) STRUCTURE - Means an object constructed or installed by man including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.
- (13) TREE - Means any object of natural growth.

SECTION 111: 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 within the Non-Instrument Approach Zones, Transition Zones, horizontal Zone and Conical Zone. Such areas and zones are shown on the Conway Municipal Airport Zoning Map consisting of two (2) sheets, prepared by Marion L. Crist & Associates, Inc., and dated June 12, 1969, which is attached to this Ordinance and

made a part hereof. The various zones are hereby established and defined as follows:

- (1) NON-INSTRUMENT APPROACH ZONE - A non-instrument approach zone is established at each end of all non-instrument runways on Conway Municipal Airport for non-instrument landings and take-offs. The non-instrument approach zone shall have a width of 250 feet at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 2,250 feet at a distance of 10,200 feet beyond each end of the runway, its centerline being the continuation of the centerline of the runway.
- (2) TRANSITION ZONES - Transition zones are hereby established adjacent to each non-instrument runway and approach zone as indicated on the zoning map. Transition zones symmetrically located on either side of runways, have variable widths as shown on the zoning map. Transition zones extend outward from a line 125 feet on either side of the centerline of the non-instrument runway, for the length of such runway plus 200 feet on each end; and are parallel and level with such runway center lines. The transition zones along such runways slope upward and outward one (1) foot vertically for each seven (7) feet horizontally to the point where they intersect the surface of the horizontal zone. Further, transition zones are established adjacent to non-instrument approach zones for the entire length of the approach zones. These transition zones have variable widths, as shown on the zoning map. Such transition zones flare symmetrically with either side of the runway approach zones from the base of such zones and slope upward and outward at the rate of one (1) feet vertically for each seven (7) feet horizontally to the points where they intersect the surfaces of the horizontal and conical zones.
- (3) HORIZONTAL ZONE - A horizontal zone is hereby established as the area within a circle with its center at the airport Reference Point and having a radius of 5000 feet. The horizontal zone does not include the non-instrument approach zone and the transition zones.
- (4) CONICAL ZONE - A conical zone is hereby established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a distance of 3000 feet. The conical zone does not include the non-instrument approach zones and transition zones.

#### SECTION IV: HEIGHT LIMITATIONS

Except as otherwise provided in this Ordinance, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this Ordinance to a height in excess of the height limit herein established for such zone. Such height limitations are hereby established for each of the zones in question as follows:

- (1) NON-INSTRUMENT APPROACH ZONES - One (1) foot in height for each twenty (20) feet in horizontal distance beginning at a point 200 feet from and at the elevation of the end of the non-instrument runway and extending to a point 10,200 feet from the end of the runway;

- (2) TRANSITION ZONES - One (1) foot in height for each seven (7) feet in horizontal distance beginning at any point 125 feet normal to and at the elevation of the center line of non-instrument runways extending 200 feet beyond each end thereof, extending to a height of 150 feet above the airport elevation which is 325.9 feet above mean sea level. In addition to the foregoing, there are established height limits of one (1) foot vertical height for each seven (7) feet horizontal distance measured from the edges of all approach zones for the entire length of the approach zones and extending upward and outward to the points where they intersect the horizontal or conical surfaces.
- (3) HORIZONTAL ZONE - One Hundred Fifty (150) feet above the airport elevation or a height of 475.9 feet above mean sea level; and
- (4) CONICAL ZONE- One (1) foot in height for each twenty (20) feet of horizontal distance beginning at the periphery of the horizontal zone, extending to a height of 300 feet above the airport elevation.

Where an area is covered by more than one (1) height limitation, the more restrictive limitations shall prevail.

Nothing in this Ordinance shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to 45 feet above the surface of the land.

SECTION V: USE RESTRICTIONS

Notwithstanding any other provisions of this Ordinance, no use may be made of land within any zone established by this Ordinance in such a manner as to create electrical interference with radio communication between the Airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport or otherwise endanger the landing, taking-off, or maneuvering of aircraft.

SECTION VI: NON-CONFORMING USES

(a) 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, 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.

(b) Marking and Lighting. Notwithstanding the preceding provision of this Section, the owner of any 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 Inspector 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 Conway, Arkansas.

#### SECTION VII: PERMITS

(a) Future Uses - Except as specifically provided in paragraphs 1, 2 and 3 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 therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

- (1) In the area lying within the limits of the Horizontal Zone and the Conical Zone, no permit shall be required for any tree or structure less than 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 zone.
- (2) In the areas lying within the limits of the non-instrument approach zones but at a horizontal distance of not less than **4,200** feet from each end of the **runways**, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such non-instrument approach zone.
- (3) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground except when such tree or structure, because of terrain, land contour or topographic features would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration or growth of any structure or tree in excess of any of the height limits established by this Ordinance except as set forth in Section IV.

(b) Existing Uses. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use, structure, or tree to be made or become higher, or 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) Non-conforming Uses Abandoned or Destroyed. Whenever the City Inspector determines that a non-conforming structure or tree has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

(d) 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 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 the relief granted would not be contrary to the public interest but will do substantial justice and be in accordance with the spirit of this Ordinance.

(e) Hazard Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this ordinance and be reasonably in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the City of Conway at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport **hazard**.

SECTION VIII: ENFORCEMENT

It shall be the duty of the City Inspector to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the City Inspector upon a form furnished by him. Applications required by this Ordinance to be submitted to the City Inspector shall be promptly considered and granted or denied by him. Applications for action by the Board of Adjustment shall be forthwith transmitted by the City Inspector.

SECTION IX: BOARD OF ADJUSTMENT

(a) The Board of Adjustment created under Ordinance No. A-319 of the City of Conway, adopted August 27, 1957, shall further serve as the Board of Adjustment under this ordinance and shall have and exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the City Inspector in the enforcement of this Ordinance; (2) 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; (3) to hear and decide specific variances.

(b) The Board of Adjustment shall consist of the number of members, shall be appointed in the manner and for such term or terms, shall adopt rules for its governance and procedure, shall hold meetings and the members thereof shall be subject to removal, all as set forth in said Ordinance No. A-319.

(c) In addition to the rights, powers and privileges granted under the terms of said Ordinance No. A-319, the Board of Adjustment shall have the following rights, powers, privileges, responsibilities and duties in its administration and procedure under the terms of this ordinance: (1) The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. (2) All hearings of the Board of Adjustment shall be public. (3) 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 Clerk-Treasurer of the City of Conway, and shall be a public record. (4) 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. (5) The concurring vote of a majority of the total members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the City Inspector, 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 X: APPEALS

(a) Any person aggrieved, or any taxpayer affected, by any decision of the City Inspector made in his administration of this Ordinance, if of the opinion that a decision of the City Inspector is an improper application of these regulations, may appeal to the Board of Adjustment.

(b) All appeals hereunder must be taken within thirty (30) days from the date the City Inspector notifies the applicant by certified mail of his decision, by filing with the City Inspector a written notice of appeal specifying the grounds thereof. The thirty (30) day period for filing notice of appeal from any decision shall begin on the date on which the City Inspector mails such decision to the applicant, and no appeal shall be taken thereafter. The City Inspector shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City Inspector 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, proceedings shall not be stayed except by order of the Board of Adjustment on notice to the agency from which the appeal is taken and on due cause shown.

(d) The Board of Adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, 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.

#### SECTION XI: JUDICIAL REVIEW

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the Circuit Court of Faulkner County, Arkansas as provided in Section 6 of said Act No. 116, compiled as Arkansas Statutes (1947) Sec. 74-306.

#### SECTION XII: PENALTIES

Each violation of this Ordinance or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and be punishable by a fine of not more than \$100.00 or imprisonment for not more than 30 days or both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense.

#### SECTION XIII: CONFLICTING REGULATIONS

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulation 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 requirements shall govern and prevail.

#### SECTION XIV: SEVERABILITY

If any of the provisions of this Ordinance or the application thereof to any person or circumstances is 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 and publication.

PASSED: July 8, 1969

APPROVED: Walter Dismaway  
Mayor

ATTEST: Adrian Turner  
Clerk-Treasurer

CERTIFICATE

I hereby certify that I have examined Ordinance No. A-492 of the City of Conway, Arkansas, adopted by the City Council of said City, entitled "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 Conway Municipal Airport by creating airport approach zones, transition zones, horizontal zone and conical zone, and establishing the boundaries thereof: Providing for changes in the restrictions and boundaries of such zones: Defining certain terms used herein: Referring to the Conway Municipal Airport zoning map which is incorporated in and made a part of this Ordinance: Providing for enforcement; Establishing a Board of Appeals; and imposing penalties," and that said Ordinance was enacted pursuant to applicable State and local laws and ordinances, and that in my opinion said Ordinance complies with the covenant set out in the Grant Agreement for Project No. 9-03-038-C702 and all State and local laws.

DATED this 8<sup>th</sup> day of July, 1969.

Robert W. Henry  
City Attorney for the City of  
Conway, Arkansas