

ORDINANCE NO. 14,875

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing all of Article X of Chapter 22 Aviation, and enacting a new Article X of Chapter 22 Aviation and by adding and enacting a new paragraph (7) to Section 134-64 of Chapter 134 Zoning, to replace the existing Des Moines International Airport Height and Hazard Zoning Regulations with new a Airport Zoning Ordinance that protects the airspace required for the safe use of the existing and planned future runways at the Des Moines International Airport, and that restricts the use of the underlying land.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, be and is hereby amended by repealing all of Article X of Chapter 22 Aviation, and enacting a new Article X of Chapter 22 Aviation and by adding and enacting a new paragraph (7) to Section 134-64 of Chapter 134 Zoning, to replace the existing Des Moines International Airport Height and Hazard Zoning Regulations with new a Airport Zoning Ordinance that protects the airspace required for the safe use of the existing and planned future runways at the Des Moines International Airport, and that restricts the use of the underlying land, as follows:

CHAPTER 22. AVIATION
ARTICLE X. AIRPORT ZONING REGULATIONS

Sec. 22-1400. Purpose.

This article is adopted under the authority of Iowa Code chapters 329 and 414, which empower Iowa cities to adopt zoning regulations for the purpose of preventing hazards and non-compatible land uses in the vicinity of airports. The Des Moines International Airport and the Ankeny Regional Airport represent significant public investments that have a substantial ongoing impact upon local commerce and employment and the growth and development of the Des Moines Metropolitan Area. It is the desire of the city council to preserve and protect the safe use and operation of these airports and the associated airspace.

The city council hereby makes the following findings:

1. Obstructions in the pathways of aircraft in flight, and certain uses of the land underlying those pathways may constitute a hazard to the aircraft and to the

health, safety and general welfare of the occupants of the aircraft and the underlying land. The creation, establishment or maintenance of such obstructions or hazards is a public nuisance.

2. Failure to adhere to the established principles and practices for safe use of the airspace and land in the vicinity of the Des Moines International Airport, and Ankeny Regional Airport, could impair or destroy the utility of the airports and the public investment therein.

Accordingly it is declared that:

1. The prevention of obstructions, hazards, and non-compatible land uses should be accomplished, to the extent legally possible, by proper exercise of the police power, without compensation.
2. The mitigation of non-compatible uses, obstructions, and hazards to safe air navigation by prevention, removal, or alteration, or the marking and lighting of obstructions are public purposes for which the city of Des Moines may raise and expend public funds, and acquire land or interests in land.
3. A non-compatible use, obstruction, or hazard created by failure to comply with the provisions of this article may be abated in the manner prescribed by law for the abatement of public nuisances.

Sec. 22-1401. Title.

This article shall be known and may be cited as the "Des Moines Airport Zoning Ordinance" or the "Airport Zoning Ordinance."

Sec. 22-1402. Definitions.

For the purposes of this article, the following definitions shall apply unless the context requires otherwise. In each case the singular shall include the plural and the plural shall include the singular.

- a) *Aircraft* - Any human controlled contrivance used or designed for carrying humans in flight through the air, but not including parachutes.
Airport - The Des Moines International Airport and/or the Ankeny Regional Airport.
Airport hazard - See hazard, below
Aerial navigation - The movement of an aircraft through the air.
Airport elevation - The official airport elevation as is depicted on the approved Airport Layout Plan. The airport elevation for the Des Moines International Airport is 957 feet msl. The airport elevation for the Ankeny Regional Airport is 910 feet msl.
- b) and c) (not used)
- d) *DSM* - The Des Moines International Airport.
- e) (not used)

- f) *Federal Aviation Administration or FAA* - An agency of the United States government that administers the federal regulations that relate to the use and flight of aircraft.
- g) *(not used)*
- h) *Hazard* - Any structure or tree or use of land which would exceed the federal obstruction standards contained in 14 C.F.R. sections 77.21, 77.23 and 77.25, and which obstruct the air space required for the flight of aircraft and landing or take-off at an airport or is otherwise hazardous to such landing or taking off of aircraft or persons or property on the ground.
- i) *IKV* - The Ankeny Regional Airport.

Inner edge - That edge of any zone that is closest to the runway end to which the zone applies. The inner edge is perpendicular to the runway centerline.

j), k) and l) *(not used)*

m) *MSL* - Altitude above mean sea level.

- n) *Notice of proposed construction or alteration* - A requirement of 14 CFR section 77.13 that persons who propose any kind of construction or alteration of the type described in section 77.13 provide notice to the FAA of such action. Types of construction and alteration for which such notice must be given include, but are not limited to, the following:
 - (1) Any construction or alteration of any structure more than 200 feet in height above ground level at its site.
 - (2) Any construction or alteration of a structure with a height greater than an imaginary surface extending outward and upward at a slope of 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway at the Des Moines International Airport and at the Ankeny Regional Airport.

Non-compatible use - Any activity that would degrade the safety of people on the ground, or occupants of aircraft in flight, including but not limited to, storage of hazardous materials, above ground storage of flammable liquids in excess of 660 gallons, wildlife attractants, and those uses that lead to an assembly of people, including, but not limited to, residences, theaters, churches, schools, athletic fields, camp grounds, hospitals, office buildings, shopping centers, hotels and motels, and other uses with similar concentrations of persons.

Non-conforming structure - Any structure or portion of any structure that is located within or underlying any of the zones created by this article and that does not

conform to the height and/or use provisions of this article.

- o) *Obstruction* - Any structure or tree, the height of which exceeds that which is allowed by this article.
- p) *Person* - Any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, assignee or other similar representative thereof.
- q) *(not used)*
- r) *Runway threshold* - A designated line perpendicular to the centerline of an airport runway that establishes one end of the runway. The runway threshold may or may not correspond with the end of the paved portion of the runway.
- s) *Structure* - Any object, whether permanent or temporary, stationary or mobile, constructed or installed by humans, including but not limited to: buildings, towers, smokestacks, scaffolds, lighting fixtures, public and private roads, railways, mechanical cranes and overhead transmission lines, including poles or other structures supporting the same.
- t) *Tree* - Any object of natural growth which exceeds 20-feet in height, or which may, in its natural growth, be reasonably expected to exceed 20-feet in height.

Sec. 22-1403. Runway Locations.

- A. Each runway at the Des Moines International Airport and at the Ankeny Regional Airport is defined by the centerline extending between the midpoints of the runway thresholds at each end.
- B. At the Des Moines International Airport, the intersection of the centerline of each runway with the runway threshold at each end of the runway is located at the following coordinates and elevations, which are referenced to the National Geodetic Survey's state plane coordinate system of 1983.

DSM Runway 5/23:

At the southwest threshold:	Northing -	553,774.90
	Easting -	1,590,141.69
	Elevation -	922.7
At the northeast threshold:	Northing -	560,367.14
	Easting -	1,599,196.10
	Elevation -	934.5

DSM Runway 13L/31R:

At the northwest threshold:	Northing -	563,169.38
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	Easting –	1,592,662.90
	Elevation -	912.2
At the southeast threshold:	Northing -	557,094.35
	Easting -	1,599,303.82
	Elevation	957.5
DSM Runway 13R/31L (planned):		
At the northwest threshold:	Northing -	561,559.24
	Easting –	1,588,052.70
	Elevation -	898.9
At the southeast threshold:	Northing -	555,484.49
	Easting -	1,594,693.29
	Elevation	933.7

C. At the Ankeny Regional Airport, the intersection of the centerline of each runway with the runway threshold is located at the following coordinates and elevations, which are referenced to the National Geodetic Survey's state plane coordinate system of 1983.

IKV Runway 36/18:		
At the North threshold:	Northing -	618,531.01
	Easting -	1,622,440.64
	Elevation -	903.3
At the South threshold:	Northing -	613,030.92
	Easting -	1,622,435.15
	Elevation -	887.7

IKV Runway 4/22		
At the Northeast threshold:	Northing -	618,310.20
	Easting -	1,623,594.24
	Elevation -	902.4
At the Southwest threshold:	Northing -	615,342.68
	Easting -	1,620,621.68
	Elevation -	909.9

Sec. 22-1404. Airport Zones.

In order to carry out the provisions of this article there are hereby created and established certain zones which are described herein. Any structure or tree located in more than one zone is considered to be only in the zone with the more restrictive height and use limitation. The various zones hereby established and defined are as follows:

- A. AO Approach Overlay Zone - Defined. The airspace above a sloping plane extending outward from each end of each runway at the Des Moines International Airport, and at the Ankeny Regional Airport, rising uniformly at a fixed ratio, and of fixed size, through which aircraft commonly operate when arriving at, and departing from, the airport. AO zones vary in size and slope based upon the present or future use that can be expected for each airport runway. The outside edges of each AO zone longitudinal to the centerline of the runway are the base lines for the TO zones at the edges of the AO zone.
1. The AO zones at the Des Moines International Airport are as follows:
 - a. DSM Runway 5/23
 - (1) Runway 5 Approach (Planned) (AO5DSM) - Beginning 200 feet beyond the runway threshold at the southwest end of DSM Runway 5/23, extending southwesterly, and centered on the extended centerline of the runway, the inner edge of the zone is 1,000 feet wide, expanding uniformly to an outer edge width of 16,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 50 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (50:1) for a horizontal distance of 10,000 feet, and then rising, for each 40 feet of horizontal distance, one foot (40:1) for an additional distance of 40,000 feet, for a total horizontal distance of 50,000 feet from the point of beginning.
 - (2) Runway 23 Approach (AO23DSM) - Beginning 200 feet beyond the runway threshold at the northeast end of DSM Runway 5/23, extending northeasterly, and centered on the extended centerline of the runway, the inner edge of the zone is 1,000 feet wide, expanding uniformly to an outer edge width of 4,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 34 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (34:1), for a total horizontal distance of 10,000 feet from the point of beginning.
 - b. DSM Runway 13L/31R
 - (1) Runway 13L Approach (AO13LDSM) - Beginning 200 feet beyond the runway threshold at the northwest end of DSM Runway 13L/31R, extending northwesterly, and centered on the extended centerline of the runway, the inner

edge of the zone is 1,000 feet wide, expanding uniformly to an outer edge width of 16,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 50 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (50:1) for a horizontal distance of 10,000 feet, and then rising, for each 40 feet of horizontal distance, one foot (40:1) for an additional distance of 40,000 feet, for a total horizontal distance of 50,000 feet from the point of beginning.

- (2) Runway 31R Approach (AO31RDSM) - Beginning 200 feet beyond the runway threshold at the southeast end of DSM Runway 13L/31R, extending southeasterly, and centered on the extended centerline of the runway, the inner edge of the zone is 1,000 feet wide, expanding uniformly to an outer edge width of 16,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 50 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (50:1) for a horizontal distance of 10,000 feet, and then rising, for each 40 feet of horizontal distance, one foot (40:1) for an additional distance of 40,000 feet, for a total horizontal distance of 50,000 feet from the point of beginning.

c. DSM Runway 13R/31L

- (1) Runway 13R Approach (Planned) (AO13RDSM) - Beginning 200 feet beyond the runway threshold at the northwest end of DSM Runway 13R/31L, extending northwesterly, and centered on the extended centerline of the runway, the inner edge of the zone is 1,000 feet wide, expanding uniformly to an outer edge width of 16,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 50 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (50:1) for a horizontal distance of 10,000 feet, and then rising, for each 40 feet of horizontal distance, one foot (40:1) for an additional distance of 40,000 feet, for a total horizontal distance of 50,000 feet from the point of beginning.
- (2) Runway 31L Approach (Planned) (AO31LDSM) - Beginning 200 feet beyond the runway threshold at the southeast end of planned DSM Runway 13R/31L, extending southeasterly, and centered on the extended

centerline of the runway, the inner edge of the zone is 1,000 feet wide, expanding uniformly to an outer edge width of 16,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 50 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (50:1) for a horizontal distance of 10,000 feet, and then rising, for each 40 feet of horizontal distance, one foot (40:1) for an additional distance of 40,000 feet, for a total horizontal distance of 50,000 feet from the point of beginning.

2. The AO zone at the Ankeny Regional Airport is as follows:

IKV Runway 18/36 (AO36IKV) - That portion of the following area which overlays the City of Des Moines: Beginning 200 feet beyond the runway threshold at the south end of IKV Runway 18/36, extending southward, centered on the extended centerline of the runway, the inner edge of which is 1,000 feet wide, expanding uniformly to an outer edge width of 16,000 feet. The altitude of the inner edge is the same as the altitude of the runway threshold at the centerline. For each 50 feet of horizontal distance, the floor of the zone rises from the inner edge one foot (50:1) for a horizontal distance of 10,000 feet, and then rising, for each 40 feet of horizontal distance, one foot (40:1) for an additional distance of 40,000 feet, for a total horizontal distance of 50,000 feet from the point of beginning.

3. Height Limitations:

- a. Except as otherwise provided herein, no person shall construct or alter any structure, nor plant or grow any tree, so as to penetrate any AO approach overlay zone created herein.
- b. No person shall establish or maintain any private roadway in any location that would result in penetration of any AO approach overlay zone by any portion of any vehicle that may operate upon such roadway.

- B. CA Controlled Activity Zone - Defined. An area of fixed size, underlying the innermost portion (closest to the runway end) of the AO zone for each runway, descending from the floor of the AO zone to the ground. The width and length of CA zones may vary, and may be different on each runway end.

1. The CA zones for the Des Moines International Airport are as follows:

- a. DSM Runway 5/23
 - (1) Runway 5 Approach (CA05DSM) - Underlying the innermost 2,500 feet of the AO zone at the southwest end of DSM Runway 5/23, the width of the CA zone is 1,000 feet at the inner edge and expands uniformly to a width of 1,750 feet.
 - (2) Runway 23 Approach (CA23DSM) - Underlying the innermost 1,700 feet of the AO zone at the northeast end of DSM Runway 5/23, the width of the CA zone is 1,000 feet at the inner edge and expands uniformly to a width of 1,510 feet.

 - b. DSM Runway 13L/31R
 - (1) Runway 13L Approach (CA13LDSM) - Underlying the innermost 2,500 feet of the AO zone at the northwest end of DSM Runway 13L/31R, the width of the CA zone is 1,000 feet at the inner edge and expands uniformly to a width of 1,750 feet.
 - (2) Runway 31R Approach (CA31RDSM) - Underlying the innermost 2,500 feet of the AO zone at the southeast end of DSM Runway 13L/31R, the width of the CA zone is 1,000 feet at the inner edge and expands uniformly to a width of 1,750 feet.

 - c. DSM Runway 13R/31L
 - (1) Runway 13R Approach (Planned) (CA13RDSM) - Underlying the innermost 2,500 feet of the AO zone at the northwest end of DSM Runway 13R/31L, the width of the CA zone is 1,000 feet at the inner edge and expands uniformly to a width of 1,750 feet.
 - (2) Runway 31L Approach (Planned) (CA31LDSM) - Underlying the innermost 2,500 feet of the AO zone at the southeast end of DSM Runway 13R/31L, the width of the CA zone is 1,000 feet at the inner edge and expands uniformly to a width of 1,750 feet.
2. Use Limitations:
- a. No person shall establish or maintain any non-compatible use in any CA controlled activity zone.
 - b. No structures, other than airport structures the location of which is dictated by function, either permanent or temporary, shall be permitted in any CA controlled activity zone.
- C. HO Horizontal Overlay Zone - Defined. The airspace above a horizontal plane,

the perimeter of which is established by swinging arcs of 10,000 foot radii from the center of each runway threshold, and connecting the adjacent arcs by lines tangent to those arcs. The floor of the HO zone is 150 feet above the airport elevation.

1. The HO zone for the Des Moines International Airport has a floor elevation of 1,107 feet above mean sea level.
2. The HO zone for the Ankeny Regional Airport has a floor elevation of 1,060 feet above mean sea level.
3. Height Limitation:
Except as otherwise provided herein, no person shall construct or alter any structure, or plant or grow any tree so as to penetrate any HO horizontal overlay zone created herein.

D. TO Transitional Overlay Zone - Defined. The airspace above a sloping plane along each side of each runway, and from the sides of each AO zone. For each 7 feet horizontally outward perpendicular to the centerline of the runway or runway approach, the plane rises 1 foot vertically.

1. The TO zones for the Des Moines International Airport are as follows:
 - a. DSM Runway 5/23
 1. Runway 5/23 (TO5/23DSM) – Along each side of DSM Runway 5/23 extending outward and upward from base lines parallel to and 500 feet horizontally distant from the center line of the runway, which base lines extend beyond the thresholds at each end of the runway a distance of 200 feet. The planes extend outward and upward a horizontal distance of 5,000 feet from the base lines.
 2. Runway 5 Approach (TO5DSM) - along each side of the AO zone at the southwest end of DSM Runway 5/23, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
 3. Runway 23 Approach (TO23DSM) – along each side of the AO zone at the northeast end of DSM Runway 5/23, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
 - b. DSM Runway 13L/31R
 1. Runway 13L/31R (TO13L/31RDSM) – along each side of DSM Runway 13L/31R extending outward and upward from base lines parallel to and 500 feet horizontally distant

- from the center line of the runway, which base lines extend beyond the thresholds at each end of the runway a distance of 200 feet. The planes extend outward and upward a horizontal distance of 5,000 feet from the base lines.
2. Runway 13L Approach (TO13LDSM) – along each side of the AO zone at the northwest end of DSM Runway 13L/31R, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
 3. Runway 31R Approach (TO31RDSM) – along each side of the AO zone at the southeast end of DSM Runway 13L/31R, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
- c. Runway 13R/31L
1. Runway 13R/31L (TO13R/31LDSM) – along each side of DSM Runway 13R/31L extending outward and upward from base lines parallel to and 500 feet horizontally distant from the center line of the runway, which base lines extend beyond the thresholds at each end of the runway a distance of 200 feet. The planes extend outward and upward a horizontal distance of 5,000 feet from the base lines.
 2. Runway 13R Approach (TO13RDSM) – along each side of the AO zone at the northwest end of DSM Runway 13R/31L, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
 3. Runway 31L Approach (TO31LDSM) – along each side of the AO zone at the southeast end of DSM Runway 13R/31L, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
2. The TO zone at the Ankeny Regional Airport is as follows:
- IKV Runway 36 Approach (TO36IKV) - That portion of the following area which overlays the City of Des Moines: Along each side of the AO zone at the south end of IKV Runway 18/36, extending outward and upward from the base lines of such AO zone a horizontal distance of 5,000 feet.
3. Height Limitations:
- a. Except as otherwise provided herein, no person shall construct or alter any structure, or plant or grow any tree, so as to penetrate any TO transitional overlay zone created herein.
 - b. No person shall establish or maintain any private roadway in any location that would result in penetration of any TO transitional

overlay zone by any portion of any vehicle that may operate upon such roadway.

- E. Conical Overlay (CO) Zone - Defined. The airspace above a sloped surface which extends outward and upward from the bottom outside edge of the HO zone. For each 20 feet horizontally outward from the bottom outside edge of the HO zone, the floor of the zone rises one foot vertically for a horizontal distance of 4,000 feet.

Height Limitations:

Except as otherwise provided herein, no person shall construct or alter any structure, or plant or grow any tree, so as to penetrate any Conical Overlay zone created herein.

Sec. 22-1405. Des Moines Area Airport Zoning Map.

The boundaries of the zones described in section 22-1404 are shown on the official Des Moines Area Airport Zoning Map, which map and all notations, references and other matters shown thereon is made a part of this article by reference. The official Des Moines Area Airport Zoning Map, which may consist of a number of separate pages, shall be on file for public inspection in the office of the zoning enforcement officer and shall bear the signature of the mayor attested by the city clerk, along with the date of adoption and the certification that it is the official zoning map referred to in section 22-1405 this code.

Sec. 22-1406. General Regulations.

- A. The FAA regulations at 14 C.F.R. section 77.13 require that notice of proposed construction or alteration be given to the FAA whenever certain construction or alteration activities occur. (See definitions in section 22-1402.) No person shall commence construction or alteration of any building or other structure for which a notice of proposed construction or alteration must be given to the FAA unless: i) such notice has been given in the form and manner provided by 14 C.F.R. Part 77; ii) an acknowledgment of such notice is received from the FAA pursuant to 14 C.F.R. section 77.19; iii) a copy of the notice and acknowledgment has been provided to the community development department; and, iv) such acknowledgment identifies that the proposed construction or alteration will not be a hazard to navigation.
- B. No person shall commence any construction or alteration which has been determined by the FAA to exceed any standard in 14 C.F.R. Part 77, Subpart C, unless an exception has been obtained from the board of adjustment pursuant to section 22-1410.
- C. Except as otherwise provided herein, no person shall occupy any structure in or underlying any zone created by this article without having first obtained certificate of occupancy permit from the community development department.

No occupancy permit obtained for a specific use shall apply to any other use.

- D. No person shall be issued an occupancy permit for any non-compatible use in or underlying any CA zone.
- E. No person shall establish or maintain any private roadway in any location that would result in penetration of any zone created by this article by any portion of any vehicle that may be operated upon such roadway.
- F. Within 5,000 feet of the nearest point of the nearest airport runway, no person shall establish or maintain any structure or use that would create a bird strike hazard.
- G. Notwithstanding any other provision of this article, no person shall, in any zone created by this article, or upon any land or water underlying such zones:
 - 1. Create, alter, or maintain any structure or use in such a manner as to create electrical or radio interference with aviation navigational signals or aircraft communications.
 - 2. Install, align or use any lighting devices that make it difficult for pilots to distinguish between airport lights and others, create glare in the eyes of pilots, or otherwise impair visibility.
 - 3. Produce steam, smoke, or other visual hazard that would impair visibility.
 - 4. Create, alter, or maintain any structure or use that would endanger or interfere with landing, takeoff or maneuvering of any aircraft.
 - 5. Plant, or allow the growth of, any tree, which, during the normal life cycle of such tree, can be expected to grow into any zone created by this article.
- H. In the event of any conflict between regulations contained in this article and any other regulations applicable to the same area, whether the conflict be with respect to height of structures or trees, use of structures or land, or any other matter, the more stringent limitation or requirement shall prevail.

Sec. 22-1407. Lighting and Marking.

- A. Notwithstanding any other provision of this article, any person constructing or altering any structure located in any zone created by this article shall install all lighting or markings upon said structure as shall be recommended by the FAA as a part of its review of the applicant's Notice of Proposed Construction or Alteration. Such lighting or markings shall be made in a manner consistent with FAA regulations and advisories.
- B. Any permit or exception granted under the provisions of this article may be so conditioned so as to require the owner of the land, structure, or tree in question to install, operate, and maintain such lighting and/or markings as the city deems necessary to indicate to operators of aircraft the presence of an airport obstruction.

Sec. 22-1408. Administrative Procedures.

- A. The Zoning Enforcement Officer shall administer this article in consultation with the aviation director or the director's designee.
- B. No building permit shall be issued for the construction or alteration of any building or other structure which does not conform with the limitations of section 22-1404.
- C. No building permit shall be issued for the construction or alteration of any building or other structure for which a notice of proposed construction or alteration must be given to the FAA pursuant to 14 C.F.R. section 77.13, unless:
 - i) such notice has been given in the form and manner provided by 14 C.F.R. Part 77;
 - ii) an acknowledgment of such notice is received from the FAA pursuant to 14 C.F.R. section 77.19;
 - iii) a copy of the notice and acknowledgment has been provided to the community development department; and,
 - iv) such acknowledgment identifies that the proposed construction or alteration will not be a hazard to navigation.
- D. No building permit shall be issued for any construction or alteration which has been determined by the F.A.A. to exceed any standards in 14 C.F.R. Part 77, Subpart C, unless an exception has been obtained from the board of adjustment pursuant to section 22-1410.
- E. Notwithstanding any thing to the contrary, no building permit shall be issued for the construction or alteration of any building or other structure if the FAA finds or determines that the proposed construction or alteration:
 - 1. Would create a hazard;
 - 2. Would endanger the general safety, health and welfare of persons in the vicinity of the airport, or occupants of aircraft in flight; or,
 - 3. Would result in the raising of the minimum instrument flight altitude of any Federal Airway, approved off-airway route, or instrument approach procedure to the airport.

Sec. 22-1409. Non-conforming Structures and Trees.

- A. *Nonconforming structures and uses.* If a lawful structure or use exists at the effective date of the ordinance adopting or amending this article that would not be allowed under the terms of this article, the structure or use shall be allowed to remain and continue so long as it remains otherwise lawful, subject to the following:
 - (1) Except when required by law, no such structure shall be enlarged, extended, reconstructed, moved or structurally altered, unless the structure is changed to conform with the requirements of this article.
 - (2) Any existing use of a building prohibited by this article may be extended

throughout any parts of the building which were manifestly arranged or designed for such use on the effective date of the ordinance adopting or amending this chapter. No such use shall be expanded to occupy any land outside such building.

- (3) If an existing use is abandoned, the use of such property shall thereafter conform to the uses permitted in the zone in which it is located. A use shall be deemed abandoned if while such use has been discontinued the owner of the property makes any change to the property inconsistent with the resumption of such use.
- (4) If an existing use is discontinued for more than one year for any reason whatsoever, the use of such property shall thereafter conform to the uses permitted in the zone in which it is located.
- (5) Any existing structure prohibited by this article or devoted to a use prohibited by this article, that is destroyed by any means to an extent of 60 percent or more of its replacement cost at the time of destruction, exclusive of the foundations, shall not be reconstructed and used as before such happening. If the structure be less than 60 percent destroyed above the foundation, it may be reconstructed and used as before, provided it is done within six months of such happening and is built of like or similar materials.

B. *Nonconforming trees.* No pre-existing tree shall be allowed to grow higher, or be replanted so as to constitute a greater airport hazard than it was at the time this article was adopted.

Sec. 22-1410. Board of Adjustment.

A. The board of adjustment created by section 134-61 shall have the following powers in the administration of this article:

1. *Appeals.* Any person aggrieved by any decision of the zoning enforcement officer in the enforcement of this article may appeal such decision to the board of adjustment in the following manner:
 - (a) Each appeal shall be taken within a reasonable time as provided by the rules of the board. The zoning enforcement officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from is taken.
 - (b) An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer certifies to the board after notice of appeal shall have been filed, that because of the facts stated in the certificate, a stay would, in the opinion of the zoning enforcement officer, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the district court.

- (c) The board shall fix a reasonable time for the hearing on the appeal, shall give public notice thereof as well as due notice to the parties in interest, and shall decide the appeal within a reasonable time. At the hearing any party may appear in person or by agent or by attorney. Before an appeal is filed with the board of adjustment, the appellant shall pay a fee to the city treasurer in the amount specified by section 82-2 of this Code.

2. *Exceptions.*

- a) *With FAA approval.* The Board may grant exceptions to the height and use restrictions of this article in favor of an applicant if the applicant has first obtained a written order or determination from the FAA finding that the proposed modification to the height or use limitations will not result in a hazard to any aircraft in flight, and will not result in the raising of the minimum instrument flight altitude of any federal airway, approved off-airway route, or instrument approach procedure to the airport, provided the following conditions are also satisfied:
 - 1) The exception is reasonably necessary due to practical difficulties related to the land in question and such practical difficulties cannot be overcome by any feasible alternative means other than an exception;
 - 2) No use of land shall be permitted that would not be compatible with airport operations;
 - 3) Such exception shall be subject to any reasonable conditions that the Board may deem necessary to effectuate the purposes of this article and of Chapter 329 of the Iowa Code; and
 - 4) Such exception shall be subject to the reservation of the right of the city to order the owner of such structure to install, operate, and maintain thereon such FAA approved markers and lights as may be necessary to indicate to operators of aircraft the existence of an obstruction.
- b) *Without express FAA approval.* The Board may grant exceptions to the requirements of this article if the following conditions are satisfied:
 - 1) A copy of the application has been submitted to the aviation director and the aviation director has been given an opportunity to comment regarding the aeronautical effects of such an exception. If the Aviation Director fails to respond to the Board within forty-five (45) days from receipt of the copy of the application, the Board may proceed with consideration of the application without a response from the director.

- 2) The exception is reasonably necessary due to practical difficulties related to the land in question and such practical difficulties cannot be overcome by any feasible alternative means other than an exception.
- 3) No exception shall be granted which would result in a hazard to any aircraft in flight or to persons or property on the ground, or would result in the raising of the minimum instrument flight altitude of any federal airway, or would otherwise be contrary to the public interest.
- 4) An exception may be granted only if the granting of the exception will do substantial justice and be in accordance with the spirit of this article and Chapter 329 of the Iowa Code.
- 5) Such exception shall be subject to any reasonable conditions that the board may deem necessary to effectuate the purposes of this article and of Chapter 329 of the Iowa Code.
- 6) Such exception shall be subject to the reservation of the right of the city to order the owner of such structure to install, operate, and maintain thereon such FAA approved markers and lights as may be necessary to indicate to operators of aircraft the existence of an obstruction.

B. Any person aggrieved or adversely affected by any decision of the board of adjustment may appeal such decision pursuant to the provisions of the Iowa Code.

Sec. 22-1411. Enforcement.

A. Except as herein provided, it shall be unlawful for any person to construct or alter any structure, use any land, or grow any tree in violation of the provisions of this article.

B. Any person who violates the provisions of this article shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this code.

C. The city may, pursuant to Section 329.5 of the Iowa Code, maintain an action in equity to restrain and abate as a nuisance the creation, establishment or maintenance of a non-compatible use, obstruction, or hazard, in violation of any provision established by this article.

Sec. 22-1412. Severability.

If any section, provision, or part of this article shall be adjudged to be invalid, such adjudication shall not affect the validity of this article as a whole, nor any section, provision or part thereof not adjudged invalid.

CHAPTER 134. ZONING

Sec. 134-64. Powers and duties.

The board of adjustment shall have the power and duty to:

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- (7) Hear and decide applications for appeals and exceptions from the airport zoning ordinance in article X of chapter 22, pursuant to section 22-1410.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 09-1387), passed by the City Council of said City at a meeting held July 27, 2009 signed by the Mayor on July 27, 2009 and published as provided by law in the Business Record on August 10, 2009. Authorized by Publication Order No. 6633.

Diane Rauh, City Clerk