

SEC. 11.39. CHISHOLM-HIBBING RANGE REGIONAL AIRPORT ZONING ORDINANCE.

Subd. 1. Purpose And Authority. The [City Council of the City of Hibbing] pursuant to the provisions and authority of Minnesota Statutes 360.063, hereby finds and declares that:

A. An airport hazard endangers the lives and property of users of the Chisholm-Hibbing Airport Authority, dba, Range Regional Airport, and property or occupants of land in its vicinity, and if of the obstructive type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Chisholm-Hibbing Range Regional Airport and the public investment therein.

B. The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by the Range Regional Airport.

C. For the protection of the public health, safety, order, convenience, prosperity, and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of airport hazards.

D. The prevention of these airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

E. The prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds.

Subd. 2. Short Title. This Section shall be known as "Chisholm-Hibbing Airport Authority Zoning Ordinance". Those sections of land affected by this Section are indicated in "Exhibit A" which is attached to this Section.

Subd. 3. Definitions. As used in this Section, unless the context otherwise requires:

AGRICULTURE - The use of land for agricultural purposes including farming; dairying; pasturage; horticulture; silviculture; animal and poultry husbandry and the necessary accessory uses for treating and storing the produce, provided that the operation of any such accessory uses shall be secondary to that of the principal agricultural activity.

AIRCRAFT - Any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, but excluding parachutes.

AIRCRAFT ACCIDENT - An occurrence incident to flight in which, because of the operation of an aircraft, a person (occupant or non-occupant) receives fatal or serious injury, or an aircraft receives substantial damage. Except as provided below, substantial damage means damage or structural failure that adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure, damage limited to an engine, bent fairings or cowling, dented skin, small puncture holes in the skin or fabric, ground damage to rotor or propeller blades, damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered substantial damage.

"AIRPORT" - The Chisholm-Hibbing Airport located in parts of Section 26, Township 57, Range 20, in the City of Hibbing, St. Louis County, Minnesota.

"AIRPORT ELEVATION" - The established elevation of the highest point on the usable landing area which elevation is established to be 1,353 feet above mean sea level.

"AIRPORT HAZARD" - Any structure or tree or use of land which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

AIRPORT SAFETY ZONE - An area subject to land use zoning controls adopted under Minnesota Statutes sections 360.061 to 360.074 if the zoning controls regulate (1) the size or location of buildings, or (2) the density of population. (Minn. Stat. 394.22, Subd. 1(a)).

BOARD OF ADJUSTMENT (BOA) - City of Hibbing Planning Commission and the Zoning Board of Adjustments & Appeals oversees the City Land Use Ordinance and provides land use recommendations to the City Council.

CHISOLM-HIBBING AIRPORT AUTHORITY (CHAA) - Range Regional Airport governing authority consisting of 6 members (3 from Hibbing and 3 from Chisholm), appointed for a 3-year term. Board members must be residents of the City of Hibbing or Chisholm.

"COMMISSIONER" - The Commissioner of the Minnesota Department of Transportation.

DRONE - See definition for Unmanned Aircraft System.

"DWELLING" - Any building or portion thereof designed or used as a residence or sleeping place of one or more persons.

FEDERAL AVIATION ADMINISTRATION (FAA) - A federal agency charged with regulating air commerce to promote its safety and development; encourage and develop civil aviation, air traffic control, and air navigation; and promoting the development of a national system of airports.

FEDERAL AVIATION REGULATIONS (FAR) - Regulations established and administered by the FAA that govern civil aviation and aviation-related activities.

"HEIGHT" - For the purpose of determining the height limits in all zones set forth in this Section and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

"LANDING AREA" - The area of the airport used for the landing, taking off or taxiing of aircraft.

"LOW DENSITY RESIDENTIAL STRUCTURE" - A single-family or two-family home.

"LOW DENSITY RESIDENTIAL LOT" - A single lot located in an area which is zoned for single-family or two-family residences and in which the predominant land use is such type of residences.

NAVIGABLE AIRSPACE - Airspace at and above the minimum flight altitudes prescribed in the FAR's including airspace needed for safe takeoff and landing (see FAR Part 77 and 91).

"NONCONFORMING USE" - Any preexisting structure, tree, natural growth, or use of land which is inconsistent with the provisions of this Section or an amendment hereto.

"NON-PRECISION INSTRUMENT RUNWAY" - A runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

"PART 77" - Refers to Title 14 Code of Federal Regulations (CFR) Part 77-*Safe, Efficient Use, and Preservation of the Navigable Airspace*, which establishes requirements to provide the FAA notice of certain proposed construction, or alteration of existing structures, for aeronautical evaluation to determine if the structure is, or would be, an obstruction to safe and efficient air navigation.

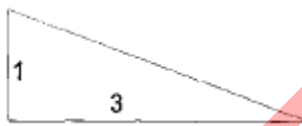
"PERSON" - An individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

"PLANNED"- As used in this Section, refers only to those proposed future airport developments that are so indicated on a planning document having the approval of the Federal Aviation Administration, MN/DOT, Office of Aeronautics, and the Chisholm-Hibbing Airport Authority.

"PRECISION INSTRUMENT RUNWAY" - A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), or a Precision Approach Radar (PAR). Also, a runway for which a precision instrument approach system is planned and is so indicated on an approved planning document.

"RUNWAY" - Any existing or planned paved surface or turf covered area of the airport which is specifically designated and used or planned to be used for the landing and/or taking off of aircraft.

"SLOPE" - An incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude.



slope= 3:1 = 3 feet horizontal to 1 foot vertical

SITE - A parcel or several adjoining parcels of land under common ownership.

"STRUCTURE"- Any object constructed or installed, or any piece of work artificially built up, or composed of parts joined together in some definable manner.

"TRAVERSE WAYS" - Roads, railroads, trails, waterways, or any other avenue of surface transportation.

"TREE" - Any object of natural growth.

UNMANNED AIRCRAFT SYSTEM (UAS) - An unmanned aircraft and the equipment necessary for the safe and efficient operation of that aircraft. An unmanned aircraft is a component of a UAS. It is defined by statute as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft (Public Law 112-95, Section 331(8)).

"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.

"VISUAL RUNWAY" - A runway intended solely for the operation of aircraft using visual approach procedures, with no existing or planned instrument approach procedures.

"WATER SURFACES" - For the purpose of this Section, shall have the same meaning as land for the establishment of protected zones.

ZONING - The partitioning of land parcels in a community by ordinance into sections and the establishment of regulations in the ordinance to govern the land use and the location, height, use and land coverage of buildings within each section.

Subd. 4. Airspace Obstruction Zoning.

A. Airspace Zones. Airspace Zones are established to regulate and protect aircraft from navigational hazards during landings and departures. To carry out the purposes of this Section, as set forth, all relevant airspace surface protection requirements described within Title 14 CFR Part 77 ("Part 77") will be met by establishing a complementary airspace zone. The following airspace zones are hereby established for the Range Regional Airport: Primary Zone, Horizontal Zone, Conical Zone, Approach Zone, Precision Instrument Approach Zone, and Transitional Zone, all whose locations and dimensions are indicated on the Airport Zoning Map.

B. Height Restrictions. Except as otherwise provided in this Section, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any airspace zone created in **Subd. 4. A.** so as to project above any of the federally regulated airspace surfaces described in said **Subd. 4. A.** hereof. Where an area is covered by more than one height limitation, the more restrictive limitations shall prevail.

C. Boundary Limitations. The airspace obstruction height zoning restrictions set forth in this section shall apply for a distance not to exceed one- and one-half miles beyond the perimeter of the airport boundary and in that portion of an airport hazard area under the approach zone created in **Subd. 4. A** for a distance not exceeding two miles from the airport boundary.

Subd. 5. Land Use Safety Zoning.

A. Safety Zone Boundaries. To carry out the purpose of this Section, as set forth in this ordinance, on the Exhibit A-Airport Zoning Map, and legally described in Exhibit B, to restrict those uses which may be hazardous to the operational safety of aircraft operating to and from the Range Regional Airport, and furthermore to limit population and building density in the runway approach areas, thereby creating sufficient open space so as to protect life and property in case of an accident, there are hereby created and established the following land use safety zones:

1. Safety Zone A: All land in that portion of the approach zones of a runway, as defined in **Subd. 4. A.** hereof, which extends outward from the end of the primary surface of the runway, which distance shall be:
 - a. a distance of 4,000 feet for Runway 13/31.
 - b. a distance equal to two-thirds of the planned runway length (2,050 feet) for Runway 4/22.
2. Safety Zone B: All land in that portion of the approach zones of a runway, as defined in **Subd. 4.A.** hereof, which extends outward from Safety Zone A, which distance shall be:
 - a. a distance of 2,000 feet for Runway 13/31.

b. a distance equal to one-third of the planned runway length (1,025 feet) for Runway 4/22.

3. Safety Zone C: All that land which is enclosed within the perimeter of the horizontal zone, as defined in **Subd. 4. A.** hereof, and which is not included in Zone A or Zone B.

B. Use Restrictions.

1. All Safety Zones: Subject at all times to the height restrictions set forth in **Subd. 4. B.**, no use shall be made of any land in any of the safety zones defined in **Subd. 5. A.** which creates or causes interference with the operations of radio or electronic facilities on the airport or with radio or electronic communications between airport and aircraft, makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off, or maneuvering of aircraft.

2. Zone A: Subject at all times to the height restrictions set forth in **Subd. 4. B.** and to the general restrictions contained in **Subd. 5. A. 1.** areas designated as Zone A shall contain no buildings, temporary structures, exposed transmission lines, or other similar aboveground land use structural hazards, and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include, but are not limited to, such uses as agriculture (seasonal crops), horticulture, animal husbandry, raising of livestock, wildlife habitat, light outdoor recreation (non-spectator), cemeteries, and automobile parking.

3. Zone B: Subject at all times to the height restrictions set forth in **Subd. 4. B.**, and to the general restrictions contained in **Subd. 5. A. 1.**, areas designated as Zone B shall be restricted in use as follows:

- a. Each use shall be on a site whose area shall not be less than three acres or such larger area as may be required by this Section.
- b. Each use shall not create, attract, or bring together a site population that would exceed 15 times that of the site acreage.
- c. Each site shall have no more than one building plot upon which any number of structures may be erected.
- d. A building plot shall be a single, uniform and non-contrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

Site Area at Least (Acres)	But Less Than (Acres)	Ratio of Site Area to Bldg. Plot Area	Building Plot Area (Sq. Ft.)	Max. Site Population (15 persons/A)
3	4	12:1 12:1	10,900	45
4	6	10:1 10:1	17,400	60
6	10	8:1 8:1	32,700	90
10	20	6:1 6:1	72,600	150
20	and up	4:1	218,000	300

e. The following uses are specifically prohibited in Zone B: Institutions of religious assembly, hospitals and clinics, schools, theaters, stadiums, hotels and motels, trailer courts, campgrounds, and other places of similar use with frequent public or semi-public assembly.

4. Zone C: Zone C is subject only to height restrictions set forth in **Subd. 4.B** and to the general restrictions contained in **Subd. 5. B. 1.**

Subd. 6. Airport Zoning Map. The several zones herein established are shown on the Range Regional Airport Zoning Map(s) (Exhibit A) attached hereto and made a part hereof, which map, together with such amendments thereto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is hereby adopted as part of this Section.

Subd. 7. Nonconforming Uses. Regulations are not retroactive. The regulations prescribed by this Section shall not be construed to require the removal, lowering, or other changes or alteration of any structure which was lawful prior to the enactment of this Ordinance and not conforming to the regulations as of the effective date of this Section, or otherwise interfere with the continuance of any nonconforming 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 Section, and is diligently prosecuted and completed within two years thereof. If, after the effective date of this Ordinance, a use, lots, structure, or tree which does not conform to this ordinance is substantially altered, said use, lots, structure, or tree shall come into conformity with this Ordinance.

Subd. 8. Acquisition in Safety Zones: The Range Regional Airport is an essential public facility. Land in Safety Zones A or B may be acquired by the City of Hibbing, Chisholm-Hibbing Airport Authority, and St. Louis County, pursuant to the Joint Powers Agreement for the benefit of the Range Regional Airport at their own expense for the purposes of preventing and/or reducing Airport Hazards and Aircraft Accidents.

Subd. 9. Permits and Orders to Remove Use, Structure, or Tree

A. Permit Standards. Permit applications shall be made in the manner and on the form established by the Local Airport Zoning Administrator pursuant to this Ordinance. Each Permit application shall indicate the purpose for which the Permit is desired, with sufficient information with respect to the proposed project to allow a determination as to whether it conforms to the applicable Local Airport Zoning Ordinance. If such determination is in the affirmative, the Permit shall be granted. For areas covered by this ordinance otherwise within the area of the responsibility of St. Louis County Planning and Zoning, any permit requested must first pass record review by the City of Hibbing Airport Zoning Administrator prior to issuance or denial by St. Louis County Planning and Zoning.

B. Permit Required. The following structures or uses shall not be allowed in a Safety Zone B unless a Permit has first been submitted to and granted by the City of Hibbing Airport Zoning Administrator for that jurisdiction. For areas covered by this ordinance otherwise within the area of the responsibility of St. Louis County Planning and Zoning, any permit requested must first pass record review by the City of Hibbing Airport Zoning Administrator prior to issuance or denial by St. Louis County Planning and Zoning.

1. Material expansion of an Existing Structure or Use. Permit required.
2. New structures or uses. Permit required.

3. Abandoned Non-Conforming Structure. Permit required for structure to be reused, rebuilt, or replaced.
4. Substantially Damaged Non-Conforming Structure. Permit required to rebuild, repair, or replace.
5. Material Change in Non-Conforming Use. Permit required before material change in use may occur.

C. Aeronautical Study. In accordance with 14 CFR Part 77, an FAA Aeronautical Study must be conducted for any proposed construction or alteration, even those which are temporary in nature (such as cranes), as part of the permitting process and prior to issuance of any subsequent permit. Aeronautical Studies result in FAA determinations of potential impact of proposed construction or alterations on air navigational safety and provide guidance to local land use regulators on those impacts. Aeronautical Studies shall be initiated through the FAA Obstruction Evaluation/Airport Airspace Analysis process as an element of the permitting process.

D. Future Uses. Except as specifically provided in paragraph 1 and 2 hereunder, no material change shall be made in the use of land and no structure shall be erected, altered, or otherwise established in any zone hereby created unless a permit therefore shall have been applied for and granted by the zoning administrator, hereinafter, provided for. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

1. However, a permit for a tree or structure less than 75 feet of vertical height above the ground shall not be required in Safety Zone C except when such tree or structure, because of terrain, land contour, or topographic features, would extend the height or land use limit prescribed for the respective zone.
2. Nothing contained in this foregoing exception 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 limitations established by this Section as set forth in **Subd. 4.** and the land use limitations set forth in **Subd. 5.**

E. Existing Uses. Before any existing use or structure may be replaced, substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard as determined within the required FAA Aeronautical Study or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Section 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.

F. Order to Remove Use, Structure, or Tree. Except as otherwise provided in this ordinance, no structure or tree or other vegetation shall be erected, altered, allowed to grow, or be maintained in Airport Safety Zones A, B, or C, as created by this ordinance, to a height in excess of the applicable height limit as defined within this ordinance. Whether application is made for a Permit under this subdivision or not, the Local Airport Zoning Administrator, along with legal counsel for the City of Hibbing, may use any penalties or remedies available under local, state or federal law. This includes, but is not limited to, Minn. Stat. §360.073, which makes violation of this ordinance a misdemeanor offense, and allows for civil actions to prevent, restrain, correct, or abate any violations of this ordinance.

G. Nonconforming Uses Abandoned or Destroyed. Whenever the zoning administrator determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, 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. Whether application is made for a permit under this paragraph or not, the zoning administrator may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this Section. In the event the owner of the nonconforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notice of such order, the zoning administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed nonconforming structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the structure is or was located. Unless such an assessment is paid within ninety days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight percent per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes.

Subd. 10. Variances.

A. Application. Any person desiring to erect or increase the height of any structure, permit the growth of any tree, or use property prohibited by this Ordinance may apply to the Board of Adjustment (BOA) for a variance from such regulations. Variance applications shall be made in the manner and on the form established by the Local Airport Zoning Administrator. Variance applications shall be delivered to the Local Airport Zoning Administrator, who shall then deliver the Variance application to the BOA. Variance applications may only be made after attending a meeting with the Local Airport Zoning Administrator and local planning and zoning authority, when applicable. Any variance brought before the BOA shall be presented and reviewed by the CHAA, within 30 calendar days, who shall be allowed to present objections to the proposed permit.

B. Failure of Board to Act on Variance. If a person submits an application for a variance by certified mail to the members of the Board and the Board fails to grant or deny the variance within time deadlines for agency action established under Minn. Stat. §15.99 after the last member receives the application, the variance shall be deemed to be granted by the Board. When the variance is granted by reason of the failure of the Board to act on the variance, the person receiving the variance shall notify the Board and the Minnesota Department of Transportation Commissioner by certified mail that the variance has been granted. The applicant shall include a copy of the original application for the variance with this notice to the Commissioner. The variance shall be effective 60 days after this notice is received by the Commissioner subject to any action taken by the Commissioner pursuant to Minnesota Statute Section 360.063, Subdivision 6(a).

C. Variance Standards. Variances shall only be allowed where it is duly found by the Board of Adjustments that a literal application or enforcement of the regulations would result in practical difficulty or undue hardship, and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this Section, provided any variance so allowed may be subject to any reasonable conditions that the Board or Commissioner may deem necessary to effectuate the purpose of this Section.

Subd. 11. Hazard Marking and Lighting.

A. Nonconforming Uses: The owner of any nonconforming structure is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the zoning administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards.

B. Permits and Variances: Any permit or variance deemed advisable to effectuate the purpose of this Section and be reasonable to effectuate the purpose of this Section and be reasonable in the circumstances, and granted by the zoning administrator or Board, shall require the owner of the structure or tree in question, at his own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

Subd 12: Local Airport Zoning Administrator

A. Designated Airport Zoning Administrator. The Airport Zoning Administrator shall be the City of Hibbing and Zoning Director or his/her designee. The legal counsel for the Local Airport Zoning Administrator shall be the Hibbing City Attorney. Airport Zoning Administrator shall continue to be an employee of the City of Hibbing.

B. Administration and Enforcement. It shall be the duty of the Zoning Administrator to administer and enforce the provisions of this Ordinance. Applications for Airport Zoning Permits shall be made to a Zoning Administrator as provided herein. Airport Zoning Permit applications shall be considered and acted upon by the Zoning Administrator in accordance with the provisions of this Ordinance and within the timelines established by Minn. Stat. §15.99, as it may be amended from time to time. The Zoning Administrator shall remind each applicant that it is the responsibility of the applicant to record any conditions of an Airport Zoning Permit, if required by law.

Regulations prescribed by this Ordinance for which a Permit is not required to be obtained shall be enforced and administered as determined by the Local Airport Zoning Administrator. Permit applications shall be promptly considered and granted or denied pursuant to this Ordinance. Variance applications shall be made to both the Local Airport Zoning Administrator and the BOA.

For areas covered by this ordinance otherwise within the area of the responsibility of St. Louis County Planning & Zoning, any permit requested must first pass record review by the Airport Zoning Administrator prior to issuance or denial by St. Louis County Planning and Zoning.

Subd. 13. Conflicts. Where there exists a conflict between any of the regulations or limitations prescribed in this Section and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or regulation shall govern and prevail.

Subd. 14. Severability.

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

B. Should any section or provision of this Section be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Section as a whole or any part thereof other than the parts so declared to be unconstitutional or invalid.

Subd. 15

For any decisions made by the Airport Zoning Administrator, City of Hibbing Board of Adjustment, or other actions taken under this ordinance, the City of Hibbing agrees to indemnify and hold St. Louis County harmless for any resulting or subsequent legal actions taken related to the administration or enforcement of the Hibbing Airport Zoning Ordinance.

Source: Ordinance No. 323, 2nd Series

Effective date: XX-XX-XXXX

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