

ORDINANCE NO. 1061

**CITY OF MARIANNA LAND DEVELOPMENT CODE
ARTICLE 6 - AIRPORT PROTECTION ZONING REGULATIONS**

AN ORDINANCE OF THE CITY OF MARIANNA, FLORIDA, REGULATING AND RESTRICTING THE HEIGHT OF CERTAIN STRUCTURES AND OBJECTS OF NATURAL GROWTH AND OTHERWISE REGULATING THE USE OF LAND IN THE VICINITY OF THE MARIANNA MUNICIPAL AIRPORT BY CREATING THE APPROPRIATE PROTECTION ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING A TITLE, PROVIDING PURPOSE AND INTENT PROVIDING FOR DEFINITIONS, PROVIDING REGULATIONS; NOTICE AND PERMIT REQUIRED FOR AIRPORT PROTECTION ZONING; PROVIDING AIRPORT CONSTRUCTION PERMIT PROCEDURES AND CRITERIA FOR APPROVAL; PROVIDING RUNWAY PROTECTION ZONES; PROVIDING AN APPEAL PROCESS; PROVIDING FOR AIR RIGHTS, PROVIDING SPECIAL REQUIREMENTS APPLICABLE THROUGHOUT THE CITY, PROVIDING FOR NONCONFORMING USES; PROVIDING FOR ENFORCEMENT; REPEALING CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARIANNA, FLORIDA THAT:

SECTION 1. Authority. The authority for enactment of this ordinance is Article 1, Section 1.06 and 1.07 of the Charter of the City of Marianna.

SECTION 2. Amendment. The Land Development Code of the Code of Ordinances for the City of Marianna, is hereby amended to read as follows:

NOTE: THE FOLLOWING IS ALL NEW LANGUAGE BEING PROPOSED FOR ADDITION INTO THE LAND DEVELOPMENT CODE.

Article 6 - Airport Protection Zoning Regulations

Sec. 6-1. PURPOSE AND INTENT

1. It is hereby found that an airport hazard endangers the lives and property of users

of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the taking off, maneuvering, or landing of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. It is further found that certain activities and uses of land in the immediate vicinity of airports as enumerated in this ordinance and Florida Statute s. 333.03(2) are not compatible with normal airport operations, and may, if not regulated, also endanger the lives of the participants, adversely affect their health, or otherwise limit the accomplishment of normal activities. Accordingly, it is hereby declared:

- A. That the creation or establishment of an airport hazard and the incompatible use of land in airport vicinities are public nuisances and injure the community served by the airport in question;
 - B. That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards and incompatible land uses be prevented; and
 - C. That this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.
2. It is declared that the limitation of land uses incompatible with normal airport operations, 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 property interests therein, or air rights thereover.
 3. It is further declared that Article 6 of the City of Marianna Code of Ordinances, Land Development Code provides additional guidelines for development and does not take away from any other section of the City of Marianna Land Development Code or Comprehensive Plan.

6-2. DEFINITIONS

Aeronautical study. A Federal Aviation Administration study, conducted in accordance with the standards of 14 C.F.R. part 77, subpart C, and Federal Aviation Administration policy and guidance, on the effect of proposed construction or alteration upon the operation of air navigation facilities and the safe and efficient use of navigable airspace.

Airport. Any area of land or water designed and set aside for the landing and taking off of aircraft and used or to be used in the interest of the public for such purpose.

Airport hazard. An obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities.

Airport hazard area. Any area of land or water upon which an airport hazard might be established.

Airport land use compatibility zoning. Airport zoning regulations governing the use of land on, adjacent to, or in the immediate vicinity of airports.

Airport layout plan. A set of scaled drawings that provides a graphic representation of the existing and future development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the airport.

Airport master plan. A comprehensive plan of an airport which typically describes current and future plans for airport development designed to support existing and future aviation demand.

Airport protection zoning regulations. Airport zoning regulations governing airport hazards.

Airport Board. The City of Marianna Industrial Board. The City Building official shall serve as a non-voting member of the Airport Board.

Department. The Department of Transportation as created under s. 20.23.

Educational facility. Any structure, land, or use that includes a public or private kindergarten through 12th grade school, charter school, magnet school, college campus, or university campus. The term does not include space used for educational purposes within a multitenant building.

Landfill. The same meaning as provided in s. 403.703.

Obstruction. Any existing or proposed object, terrain, or structure construction or alteration that exceeds the federal obstruction standards contained in 14 C.F.R. part 77, subpart C. The term includes:

- (1) Any object of natural growth or terrain;
- (2) Permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus; or
- (3) Alteration of any permanent or temporary existing structure by a change in the structure's height, including appurtenances, lateral dimensions, and equipment or materials used in the structure.

Person. Any individual, firm, co-partnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

Political subdivision. The local government of any county, municipality, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

Public-use airport. An airport, publicly or privately owned, licensed by the state, which is open for use by the public.

Runway protection zone. An area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground.

Structure. Any object constructed, erected, altered, or installed, including, but not limited to, buildings, towers, smokestacks, utility poles, power generation equipment, and overhead transmission lines.

Substantial modification. Any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

6-3 REGULATIONS, NOTICE AND PERMIT REQUIRED FOR AIRPORT PROTECTION ZONING

6-3.1. Airport Protection Zoning Regulations

1. Any other political subdivision in the City of Marianna having an airport

hazard area (any area of land or water upon which an airport hazard might be established) within its territorial limits shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed Chapter 333, Florida Statutes.

2. Airport Protection Zoning Regulations adopted under paragraph 333.03(1)(a) require documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study submitted by each person applying for a permit (F.S. 333.03(1)(c)3).

6-3.2. Airport Protection Zoning Permit Requirements

1. A person proposing the construction or alteration of an obstruction must obtain an Airport Protection Zoning permit, which is an additional permit from the City, in accordance with these regulations subject to subsections a, b, c, d, e and f (s. 333.025, F.S):
 - a. Existing, planned, and proposed facilities on public-use airports contained in an airport master plan, in an airport layout plan submitted to the Federal Aviation Administration (FAA), or in comparable military documents shall be protected from airport hazards are exempt.
 - b. An airport protection zoning permit is not required for existing structures that received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards before May 20, 1975; an airport protection zoning permit is not required for any necessary replacement or repairs to such structures if the height and location are unchanged.
 - c. The City has, in compliance with this chapter, adopted adequate airport protection zoning regulations, placed such regulations on file with the department's aviation office, and established a permitting process, and as a result a an airport protection zoning permit for the construction or alteration of an obstruction is not required from the department.
 - d. Upon receipt of a complete airport protection zoning permit

application, the City (local government) shall provide a copy of the application to the department's aviation office by certified mail, return receipt requested, or by a delivery service that provides a receipt evidencing delivery.

- e. To evaluate technical consistency with this subsection, the department shall have a 30-day review period following receipt of the application, which must run concurrently with the City (local government) permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not to exceed 18 consecutive months are exempt from the department's review, unless such review is requested by the department (s. 333.025, F. S.)
 - f. The City has been advised by the Aviation and Spaceports Office, Florida Department of Transportation (ASO) that it waives the requirement to send the permit application by certified mail and that the ASO will accept delivery of the permit application by email to the ASO's dedicated email address at DOTAirportZoning@dot.state.fl.us, at the discretion of the City.
2. A person proposing to construct, alter, or allow an airport obstruction in an airport hazard area is in violation of the airport protection zoning regulations adopted under this chapter must apply for a related permit (F.S. 333.07(1)(a)).

6-3.3. FAA Notice Requirements

- 1. 14 C.F.R. Aeronautics and Space, Part 77 applies to Notice criteria (subpart B) and obstruction standards (subpart C) for any proposed construction or alteration described in 14 C.F.R., Part 77.9 or if requested by the FAA. Adequate notice must be provided to the FAA of the proposed construction or alteration.
- 2. In order to determine if proposed construction or alteration exceeds subpart B Notice criteria requiring the filing of a Notice the FAA has provided a website known as the Notice Criteria Tool, which should be utilized by the applicant to comply with this requirement: <https://oeaaa.faa.gov/oeaaa/external/gisTools/gisAction.jsp?action=showN>

[oNoticeRequiredToolForm](#). The Notice Criteria Tool requires the input of certain information regarding the structure or alteration including: latitude, longitude, site elevation, structure height, and any traverse way, and will provide a response that:

- a. If the Notice Criteria Tool indicates that the proposed construction or alteration does not exceed Notice criteria standards (Part 77, subpart B), the applicant is not required to file a Notice (FAA form 7460-1) with the FAA and the notice criteria tool response should be submitted to the IDA board which will determine whether an airport protection zoning permit may be required due to other airport zoning issues such as land use; or
- b. If the Notice Criteria Tool indicates that the proposed construction or alteration does exceed Notice criteria standards (Part 77, subpart B) and/or that the FAA requests the filing of a notice, the applicant shall prepare and submit the Notice (FAA form 7460-1) manually or by utilizing the electronic submittal process at the FAA website: (https://www.faa.gov/documentLibrary/media/Form/FAA_Form_7460-1_AJV-1-050117.pdf). The Notice form must be submitted at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest (14 C.F.R. s. 77.7).
- c. The filing of the FAA notice will result in the FAA performing an aeronautical study (Determination) of the impact of the proposed construction and/or alteration on the safe and efficient use of navigable airspace.

6-3.4 FAA Aeronautical Study

1. Upon submittal of a FAA Form 7460-1 the FAA will use the standards of 14 C.F.R. Part 77, subpart C to determine obstructions to air navigation that may affect the safe and efficient use of navigable airspace and the operation of planned or existing air navigation and communications facilities (s. 77.15(a)).
2. Objects that are considered obstructions under the standards described in this subpart are presumed hazards to air navigation

unless further aeronautical study concludes that the object is not a hazard. In conducting an aeronautical study the FAA will use the standards of subpart C, along with FAA policy and guidance material to determine if the object is a hazard to air navigation (s. 77.15(b)).

3. The FAA will apply these standards with reference to an existing airport facility, and airport proposals received by the FAA, or the appropriate military service, before it issues a final determination (s. 77.15(c)) The Determination will typically be one of the following:
 - a. The aeronautical study reveals that the structure does not exceed (DNE) obstruction standards and would not be a hazard to air navigation provided certain conditions are met. Therefore, the airport zoning process may proceed in accordance with these regulations subject to the conditions of the determination being met.
 - b. The aeronautical study reveals that the structure does exceed obstruction standards but is not be a hazard to air navigation provided certain conditions are met. Therefore, the airport protection zoning process may proceed in accordance with these regulations subject to the conditions of the Determination being met
 - c. The aeronautical study reveals that the structure is a hazard to air navigation. In accordance with F.S. 333.07(1)(a), “[a] permit may not be issued if it would allow the establishment or creation of an airport hazard . . .” In this situation the City of Marianna may not issue an airport protection zoning permit for the proposed construction or alteration.
4. In accordance with paragraph F.S §333.03(1)(a) must, at a minimum, require that approval of a permit must not be based solely on the determination by the Federal Aviation Administration that the proposed structure is not an airport hazard (F.S. 333.03(1)(c)5).
5. When the applicant has received the aeronautical study from the

FAA indicating the proposed construction or alteration is not a hazard the applicant may complete and submit the Airport Protection Zoning Application, the aeronautical study, a City development order and building permit application and a completed copy of FAA form 7460-1 and a fee of \$1,000 to the IDA board for consideration.

6-4 AIRPORT CONSTRUCTION PERMIT PROCEDURES AND CRITERIA FOR APPROVAL:

6-4.1. Upon receipt of a complete airport protection zoning permit application (which shall consist of a completed City of Marianna Development Order and Building Permit, a finding of DNE, or completed form 7460 and the FAA aeronautical study. The City, through the IDA Board, shall provide a copy of the complete application package to the department's aviation office by certified mail, return receipt requested, or by a delivery service that provides a receipt evidencing delivery. To evaluate technical consistency with this subsection, the department shall have a 30-day review period following receipt of the application.

6-4.2. If the project requires a permit as defined above the IDA board shall consider the following factors:

1. The safety of persons on the ground and in the air.
2. The safe and efficient use of navigable airspace.
3. The nature of the terrain and height of existing structures.
4. The effect of the construction or alteration on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.
5. The character of existing and planned flight operations and developments at public-use airports.
6. Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.
7. The effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.
8. The cumulative effects on navigable airspace of all existing structures and all other known proposed structures in the area.
9. Additional requirements adopted by the political subdivision or

administrative agency pertinent to evaluation and protection of airspace and airport operations.

10. OBSTRUCTION MARKING AND LIGHTING.—In issuing a permit under this section, the City shall require the owner of the obstruction to install, operate, and maintain thereon, at his or her own expense, marking and lighting in conformance with the specific standards established by the Federal Aviation Administration.
11. No permitting of any obstruction hazard shall be allowed.

6-5 RUNWAY PROTECTION ZONE.

Protection Zone Establishment. There is hereby created and established as an overlay zone a Runway Protection Zone that is defined as an area contiguous to the City of Marianna Airport measuring one-half (1/2) the length of the longest active runway on either side of and at the end of each active runway centerline. Within the Runway Protection Zone there shall be the prohibition of residential construction and any educational facility, with the exception of aviation school facilities, provided however that should the construction of a single family residential structure, which will not be an obstruction hazard, may be permitted by the process set forth above

6-6 APPEALS.

6-6.1. Determinations by the IDA Board, relating to use interpretations and applications, may be appealed to the City of Marianna Commission. Appeal to the City of Marianna Commission may be filed by an applicant, any person aggrieved, taxpayer affected, governing body of a political subdivision or FDOT. The appeal shall be filed within 15 days for the rendition of the decision to be appealed. The appeal shall be made in writing and filed with the Municipal Development Director of the City of Marianna, Florida and shall include a description of the issue for the appeal and any documents relevant to the issue. At the next regular meeting following the submission of the appeal, the Marianna City Commission shall take action to set the matter for hearing and direct the Municipal Development Director to provide notice to all parties. The City of Marianna Commission shall issue a decision within 15 days from the appeal hearing. All such appeals to the City commission shall be filed, reviewed and heard in a manner consistent with Sections 333.09 and 333.11 of the Florida Statutes. An appeal shall stay all proceeding unless the IDA Board certifies pursuant to the rules for appeal that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such

cases, proceedings may not be stayed except by order of the City of Marianna Commission on notice to the IDA Board from which the appeal is taken and for good cause shown.

- 6-6.2. Any person, political subdivision, or joint airport zoning board affected by a decision of the City may apply for judicial relief to the Circuit C of the 14th Judicial Circuit in Jackson County, Florida within 30 days after rendition of the decision. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.
- 6-6.3. The Circuit Court has exclusive jurisdiction to affirm, reverse, or modify the decision on the permit or other determination from which the appeal is taken and, if appropriate, to order further proceedings by the City. The findings of fact by the City, if supported by substantial evidence, shall be accepted by the court as conclusive, and an objection to a decision of the City may not be considered by the court unless such objection was raised in the underlying proceeding.
- 6-6.4. If airport zoning protection regulations adopted under this chapter are held by a court to interfere with the use and 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 State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.
- 6-6.5. A judicial appeal to any court may not be permitted under this section until the appellant has exhausted all of its remedies through application for local government permits, exceptions, and appeals.

6-7 AIR RIGHTS.

If a nonconforming obstruction is determined to be an **airport** hazard and the owner will not remove, lower, or otherwise eliminate it, the approach protection necessary cannot, because of constitutional limitations, be provided by airport protection zoning regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the City of Marianna may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such property, air right, aviation easement, or other estate, portion, or interest in the property or nonconforming obstruction, or such interest in the air above such property, in question, as may be necessary to effectuate the purposes of

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this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property, easement, or estate or interest therein or the acquisition of the same by the power of eminent domain, the political subdivision making such purchase or exercising such power shall, in addition to the damages for the taking, injury, or destruction of property, also pay the cost of the removal and relocation of any structure or any public utility that is required to be moved to a new location.

6-8 SPECIAL REQUIREMENTS APPLICABLE THROUGHOUT THE UNINCORPORATED AREA OF THE COUNTY.

Notwithstanding any other provision of this section, no use may be made of land or water operation of an airborne aircraft using a publicly licensed airport. The following special requirements shall apply to proposed developments:

6-8.1. Solid Waste Disposal Sites shall be reviewed in accordance with State of Florida Department of Environmental Regulation (DER) Rule Chapter 72-701, which requires the following:

- within 10,000 feet of any publicly licensed airport active runway used or planned to be used by turbine powered aircraft, or
- within 5,000 feet of any publicly licensed airport active runway used only by piston type aircraft, or
- so that it places the active runways and/or approach and departure patterns of an airport between the solid waste disposal site and bird feeding, water or roosting areas, or
- locations outside the above locations but still within the limits of any airport overlay zone(s) if determined by the FAA to pose a hazard.

6-8.2. Proposed developments which produce lights or illumination, smoke, glare or other visual hazards, or produce electronic interference with airport/airplane navigation signals are subject to the standards specified in the FAA Procedures Manual 7400-2C, consistent with Chapter 333.03(3), Florida Statutes, as may be applied and enforced by the state and/or federal governments.

6-9 NONCONFORMING USES.

6-9.1 The regulations prescribed herein shall not be construed to require the removal, lowering or other change to or alteration of any structure or natural vegetation not

conforming to the regulations as of the effective date of this ordinance, or to otherwise interfere with continuance of any nonconforming use except as provided in 333.07(1) and (3). However, no pre-existing nonconforming structure, natural vegetation or use shall be replaced, rebuilt, altered, or allowed to grow higher, or to be replanted, so as to constitute an increase in the degree of nonconformity with these regulations. Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, where the construction or alteration was begun prior to the effective date of this ordinance and is completed within one year thereafter. Any prior existing non-conforming use shall not require confirmation to this ordinance unless such use to conform to this ordinance unless such use is abandoned for a period of six months or is more than eighty percent destroyed or deteriorated. Any re-permitting of the structure shall not result in a greater hazard than that previously existed.

6-9.2 If the City of Marianna determines that a nonconforming obstruction has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, an airport protection zoning permit may not be granted if it would allow the obstruction to exceed the applicable height limit or otherwise deviate from the airport protection zoning regulations. Whether or not an application is made for an airport protection zoning permit under this subsection, the owner of the nonconforming obstruction may be required, at his or her own expense, to lower, remove, reconstruct, alter, or equip such obstruction as may be necessary to conform to the current airport protection zoning regulations. If the owner of the nonconforming obstruction neglects or refuses to comply with such requirement for 10 days after notice, the administrative agency may report the violation to the IDA Board, which, through the City Commission of Marianna may proceed to have the obstruction so lowered, removed, reconstructed, altered, or equipped and assess the cost and expense thereof upon the owner of the obstruction or the land whereon it is or was located.

6-10 ENFORCEMENT

Each violation of this ordinance or of any regulation, order or ruling, promulgated herein shall constitute a misdemeanor of the second degree and shall be punishable by a fine of not more than \$500 dollars or imprisonment for not more than 60 days, or both; and each day a violation continues shall constitute a separate offense.

The foregoing shall not prevent the City from instituting injunctive action to prohibit any violation of this ordinance or remove the obstruction with City forces. Should a

determination be made to implement City forces in the removal of hazard, the landowner shall be given notice within five days of the next regularly City Commission meeting. If the landowner objects to the proposed action, the landowner shall appear at the next City Commission meeting and state the reasons for the objection. The City Commission shall hear the objection and make a final determination as to the removal of the obstruction.

6-11 REPEAL OF CONFLICTING PROVISIONS

All previous ordinances, resolutions or motions of the City Commissioners of Marianna, Florida, which conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict. All Special Acts of the Legislature applying only to the unincorporated portion of Jackson County and which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

6-12 SEVERABILITY

If any section, part of a sentence, paragraph, phrase or word of this ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the Legislative intent to pass this ordinance without such unconstitutional, invalid or inoperative part. In the event that the City of Marianna has adopted, or hereafter adopts, a comprehensive plan or policy regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive plan or policy, and be administered and enforced in connection therewith.

6-13 EFFECTIVE DATE

The provisions of this ordinance shall become effective upon final passage, as provided by law.

Section 3. Severability. Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or provision of this ordinance is declared invalid, all other provisions there of shall remain valid and enforceable.

Section 4. Effective Date. This Ordinance shall become effective upon its adoption by the City Commission as provided by law.

PRESENTED AND READ BY TITLE TO THE CITY COMMISSION OF THE CITY OF

MARIANNA, FLORIDA ON THE ____ DAY OF DECEMBER, 2017.

PASSED AND ADOPTED BY THE CITY COMMISSION OF MARIANNA, FLORIDA ON THIS THE _____ DAY OF JANUARY, 2018.

Marianna City Commissioners

By: _____
KENNETH HAMILTON, Mayor/Commissioner

ATTEST:

KIMBERLY J. APPLEWHITE, City Clerk