

A RESOLUTION ADOPTING THE MISSOULA COUNTY JOHNSON-BELL FIELD INFLUENCE AREA
RESOLUTION CONCERNING LAND USE REGULATIONS IN THE VICINITY OF THE AIRPORT.

WHEREAS, Section 1-726, R.C.M., 1947, authorizes the Board of County Commissioners to designate an airport influence area; and,

WHEREAS, Section 1-728, R.C.M., 1947, authorizes the Board of County Commissioners to devise criteria and guidelines to control land use within the airport influence area; and,

WHEREAS, the Board of County Commissioners have caused to be defined, based on federal aviation and administration rules and guidelines, an airport influence area for Johnson-Bell Field; and,


WHEREAS, criteria and guidelines to control noise sensitive land uses and the height of structures and trees within the airport influence area for Johnson-Bell Field have been designed to promote the public health, safety, and general welfare; and,

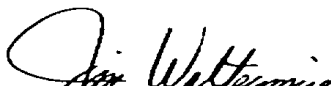
WHEREAS, the Board of County Commissioners duly advertised and held a public hearing to adopt the boundaries and regulations for the Missoula County Johnson-Bell Field Influence Area Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Missoula County, hereby adopts and approves the Missoula County Johnson-Bell Field Airport Influence Area Resolution.

PASSED AND ADOPTED THIS 5th DAY OF JULY 1978.

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana


Ludvig G. Brown, Chairman


Jim Wattermire, Commissioner


Wilfred V. Thibodeau, Commissioner



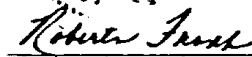

Robert French
Clerk and Recorder

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CHAPTER I GENERAL PROVISIONS

SECTION 1.01 TITLE

This Resolution shall be known and cited as the "Missoula County Johnson-Bell Field Influence Area Resolution". This Resolution accords with and exercises authority conferred to the Missoula County Commissioners by Title 1, Chapter 700, Revised Codes of Montana, 1947.

SECTION 1.02 PURPOSES

- A. To promote the public health, safety and general welfare, to protect the lives and property of users of the airport and of occupants of land in its vicinity, and to preserve the utility of the airport and the public investment in it, this Resolution has been established. Accordingly, it is the purpose of this Resolution to:
1. Restrict or prohibit uses which endanger airport users or persons and property in the vicinity of the airport.
 2. Designate an airport influence area based on Federal Aviation Administration rules and guidelines, within which no person may recover from the local government damages caused by noise and vibrations from normal and anticipated normal airport operations.
 3. Develop criteria and guidelines for noise sensitive land use; such regulation shall be designed to promote the public health, safety and general welfare.

SECTION 1.03 CONFLICT WITH OTHER REGULATIONS

Whenever the provisions of this Resolution are at variance with other adopted rules, regulations or resolutions, the provisions setting the greater restriction shall apply.

SECTION 1.04 SEVERABILITY

The provisions of this Resolution are severable. If a section, sentence, clause, or phrase of this Resolution is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portion of this Resolution.

SECTION 1.05 DEFINITIONS

The following rules of interpretation and definitions apply to this Resolution:

1. Rules of Interpretation - The present tense includes the future tense. All words in the plural number include the singular number unless natural construction of the wording indicates otherwise. The word "shall" is mandatory, the word "may" is permissive.
2. Accessory Use - A use naturally or normally incidental or subordinate to, and devoted exclusively to the main use of the premises.
3. Administrative Officer - The Administrative Officer shall be appointed by the governing body and shall act as an agent of the governing body in the administration and enforcement of this Resolution and of the rules and regulations adopted by the governing body pursuant thereto.
4. Agriculture - Use of the land for such purposes as farming, dairying, pasturage, grazing, animal and poultry husbandry, silviculture, and removal of forest products, floriculture, and horticulture.
5. Airport - Johnson-Bell Field, Missoula, Montana.
6. Airport Administrative Board - The Airport Administrative Board is a five-member board appointed by the governing body. Members serve five (5) year terms. The Airport Administrative Board oversees the management and operation of the airport.
7. Airport Elevation - The highest point of an airport's usable landing area measured in feet from mean sea level.
8. Airport Hazard - Any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near such airport, which obstructs the airspace required for the flight of aircraft in landing or takeoff at such airport or is otherwise hazardous to such landing or takeoff of aircraft.
9. Airport Influence Area - That area extending 10,000 feet out from the thresholds of runways 11 and 29, and one (1) mile in width on each side of the centerline of runways 11 and 29 and their extended centerlines.
10. Alteration - Any change or addition to a structure that either increases the size of the structure or increases its potential as a hazard to the airport is an alteration. Maintenance of a structure is not an alteration. However, the repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the actual cash value of the structure either before the improvement is started, or if the structure has been damaged and is being restored, before the damage occurred, is an alteration and not maintenance.

11. Approach Surface - A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 2.05 of this Resolution. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.
12. Board of Airport Hazard Adjustment - A board consisting of five (5) members appointed by the Missoula County Commissioners as provided in Title 1, Chapter 700, Section 736.3., R.C.M., 1947.
13. Building - Any structure built for the occupancy of persons, or the enclosure of animals, chattels or property of any kind and not including advertising sign boards or fences. Any such structure separated by a party wall without openings shall be deemed a separate building.
14. Building Accessory - A detached subordinate building, excluding a guest house, mobile home or trailer, the use of which is customarily incidental to that of the main building, or to the main use of the premises, and located on the same lot with the main building or use.
15. Building Height - The mean sea level elevation of the highest point of a building or structure.
16. Conical Surface - A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
17. Governing Body - The Board of County Commissioners of Missoula County, Montana.
18. Hazard to Air Navigation - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
19. Height - For the purpose of determining the height limits in all zones set forth in this Resolution and shown on the zoning map, the datum shall be mean sea level elevation (M.S.L.) unless otherwise specified.
20. Horizontal Surface - A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
21. Industry - The manufacture, storage, extraction, fabrication, processing, reduction, destruction, conversion, or wholesaling of any article, substance or commodity or any treatment thereof in such a manner as to change the form, character, or appearance thereof.
22. Larger Than Utility Runway - A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

23. M.S.L. - Mean sea level.
24. Nonconforming Use - A use of land which was a lawful use at the time this Resolution was adopted, but which use because of such adoption, or subsequent changes in district boundaries or regulations, does not conform to the regulations of the district in which the use exists.
25. Obstruction - Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section IV of this Ordinance.
26. Person - An individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative.
27. Primary Surface - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in Part 77 of the Federal Aviation Regulations (FAR) for the most precise approach existing or planned for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
28. Runway - A defined area on an airport prepared for landing and takeoff of aircraft along its length.
29. Nonprecision Instrument Runway - A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned or indicated on an FAA planning document.
30. Precision Instrument Runway - A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an FAA approved airport layout plan, or any other FAA planning document.

31. Threshold - A line at right angles to the runway centerline extending the full width of the runway, established by the governing body for the purpose of identifying the beginning of the runway area or planned runway area.
32. Transitional Surfaces - These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.
33. Utility Runway - A runway that is constructed for and intended to be used by propeller driven aircraft at 12,500 pounds maximum gross weight and less.
34. Visual Runway - A runway intended solely for the operation of aircraft using visual approach procedures with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.
35. Structure - An object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, earth formation, and overhead transmission lines.
36. Tree - A woody plant, the branches of which spring from and are supported upon a trunk or body.

SECTION 1.06 WARNING AND DISCLAIMER OF LIABILITY

This Resolution does not imply that areas outside the identified noise and vibration impact areas or land uses permitted within such areas will be totally free from noise and vibration damage. Nor shall this Resolution create a liability on the part of, or a cause of action against, the County of Missoula or any officer or employee thereof for any damages resulting from noise and vibrations caused by normal or anticipated normal airport operations.

CHAPTER II AIRPORT LAND USE DISTRICTS

SECTION 2.01 PURPOSES

In order to implement the provisions of this Resolution, there are hereby created and established certain Airport Land Use Districts which include all of the land lying within the approach zones, transitional zones, horizontal zones, and conical zones as they apply to the Airport. However, such Airport Land Use Districts shall not extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed one (1) mile in width on each side of the primary instrument approach runway and its extended centerline. Such Airport Land Use Districts are shown on the Official Airport Influence Area Map which is attached to this Resolution and made a part hereof. An area located in more than one (1) of the following Airport Land Use Districts is considered to be subject to the requirements setting the more restrictive standard.

SECTION 2.02 OFFICIAL AIRPORT INFLUENCE AREA MAP, AND OFFICIAL AIRPORT INFLUENCE AREA BOOK OF RECORD.

- A. The Official Johnson-Bell Field Airport Influence Area Map and the Official Airport Influence Area Book of Record shall be displayed at all times in the office of the Administrative Officer and shall bear the signatures of the governing body and the date of the adoption of this Resolution, attested by the County Clerk and Recorder. A copy of the Official Johnson-Bell Airport Influence Area Map shall be filed with the Clerk and Recorder.
- B. The Airport Influence Area Resolution, with amendments, original applications for action and records of action by the Administrative Officer, the Board of Airport Hazard Adjustment and the governing body shall be retained in the Official Airport Influence Area Book of Record.

SECTION 2.03 INTERPRETATION

A. INTERPRETATION OF BOUNDARIES

If uncertainty exists regarding the location of district boundaries as shown on the Official Airport Influence Area Map, it shall be the duty of the Administrative Officer to ascertain all pertinent facts and to provide the interpretation. Citizens requesting boundary interpretation may be required to submit survey data needed by the Administrative Officer in making his interpretation. Thereafter, such interpretation shall govern.

B. INTERPRETATION OF USES

If ambiguity arises concerning the appropriate classification of a particular use within the meaning and purpose of this Resolution or if a specific use is not listed, it shall be the duty of the Administrative Officer upon request of any citizen, to ascertain all pertinent facts and provide the interpretation. Thereafter such interpretation shall govern.

SECTION 2.04 AIRPORT INFLUENCE AREA

- A. The Airport Influence Area for Johnson-Bell Field, as defined in Section 1.05.9 is hereby created. After the effective date of adoption of this Resolution, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations.
- B. Notwithstanding any other provisions of this Resolution, no use may be made of land or water within the Airport Influence Area in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport or otherwise in any way create a hazard or endanger the landing, takeoff, or maneuvering of aircraft intending to use the airport.

SECTION 2.05 HEIGHT RESTRICTIONS WITHIN THE AIRPORT INFLUENCE AREA

Except as otherwise provided in this Resolution, no structure shall be erected, altered or maintained, nor shall any tree be allowed to grow in any zone created by this Resolution to a height in excess of the applicable height limit herein established for each zone. Such zones and applicable height limitations are hereby established.

1. Utility Runway Nonprecision Instrument Approach Zone - This approach zone applies to runways 16 and 25. The inner edge of this approach zone coincides with the width of the primary surface and is five hundred (500) feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline being the continuation of the centerline of the runway. The approach surface slopes upward one (1) foot vertically for each twenty (20) feet horizontally beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline. The primary surface elevation is 3,195 feet M.S.L. for runway 16, and 3,201 feet M.S.L. for runway 25.*

2. Runway Larger Than Utility With a Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone - This approach zone applies to runways 7 and 34. The inner edge of this approach zone coincides with the width of the primary surface and is five hundred (500) feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline being the continuation of the centerline of the runway. The approach surface slopes upward one (1) foot vertically for each thirty-four (34) feet horizontally beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline. The primary surface elevation is 3,193 feet M.S.L. for runway 7 and 3,194 feet M.S.L. for runway 34.*
3. Precision Instrument Runway Approach Zone - This approach zone applies to runways 11 and 29. The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline being the continuation of the centerline of the runway. The approach surface slopes upward one (1) foot vertically for each fifty (50) feet horizontally beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline. The primary surface elevation for runway 11 is 3,188 feet M.S.L., and 3,197 feet M.S.L. for runway 29.*
4. Transitional Zone - These zones are hereby established as the area beneath the transitional surfaces. These surfaces extend outward and upward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional zones for those portions of the precision approach zones which project through and beyond the limits of the conical surfaces, extend a distance of 5,000 feet measured horizontally from the edge of the approach zones and at 90 degree angles to the extended runway centerline. The transitional surface slopes upward and outward one (1) foot vertically for each seven (7) feet horizontally beginning at the sides and at the same elevation as the primary surface and the approach zones, and extending to a height of 150 feet above the airport elevation which is 3,201 feet above mean sea level. In addition to the foregoing, there are established height limits sloping upward and outward one (1) foot vertically for each seven (7) feet horizontally beginning at the sides of and at the same elevation as the approach zones, and extending to where they intersect the conical surface. Where the precision instrument runway approach

* As built elevations after runway improvements, obtained from Missoula County Airport Manager.

zone projects beyond the conical zone, height limits sloping upward and outward one (1) foot vertically for each seven (7) feet horizontally shall be maintained beginning at the sides of and at the same elevation as precision instrument runway approach surface and extending to a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.

5. Horizontal Zone - The horizontal zone is hereby established by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of each runway, and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones. The horizontal zone surface lies one hundred and fifty (150) feet above the airport elevation or a height of 3,351 feet above mean sea level.
6. Conical Zone - The conical zone is hereby established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of 4,000 feet. The conical zone does not include the precision instrument approach zones and the transitional zones. The conical surface slopes upward and outward one (1) foot vertically for each twenty (20) feet horizontally beginning at the periphery of the horizontal zone and at one hundred and fifty (150) feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

SECTION 2.06 RESTRICTIONS ON NOISE SENSITIVE LAND USE WITHIN THE AIRPORT INFLUENCE AREA

A. INTENT

Certain areas in the vicinity of the airport are affected by noise and vibrations from normal and anticipated normal operations of the Airport. It is the intent of this Section to:

1. Minimize the potential for legal action against the local government for noise nuisance. Thereby protecting the public investment in the airport, by restricting noise sensitive land use in those areas affected by noise generated by aircraft utilizing the airport.
2. Protect the public health, safety and general welfare by regulating noise sensitive land use in certain areas affected by noise generated by aircraft utilizing the airport.

B. DISTRICT CREATION

Except as otherwise provided in this Resolution no use of land, structure, or land and structure in combination shall occur in any area zoned according to Title 16, Chapters 41 or 47, Revised Codes of Montana 1947, unless such use conforms to the regulations of the aforementioned districts and is herein identified as not being sensitive to noise and vibrations generated from normal and anticipated normal airport operations.

Areas not zoned under authority of Title 16, Chapters 41 or 47 are subject to the restrictions of the noise and vibration sensitive districts hereby established:

1. DISTRICT A

District A is defined as the area within the N.E.F. 40* noise contour as delineated on the Official Airport Influence Area Map.

PERMITTED USES

Subject to Sections 2.04 and 2.05 of this Resolution the following uses shall be permitted:

1. Agriculture.
2. Airport landing field with related accessory uses, except structures designed for human occupancy.

2. DISTRICT B

District B is defined as the area within the N.E.F. 30 noise contour exclusive of District A.

PERMITTED USES

Subject to Sections 2.04 and 2.05 of this Resolution the following uses shall be permitted:

1. Industrial Use.
2. Wholesale Trade.
3. Retail Trade.
4. Eating and drinking establishment.
5. Agriculture or open space.

New construction or development should not be undertaken unless a detailed analysis of noise reduction requirements is made, and needed noise insulation features included in the design.

*N.E.F. - Noise Exposure Forecast - Technical method used to develop the noise contours for Johnson-Bell Field.

SECTION 3.01 NONCONFORMING STRUCTURES AND TREES

- A. The regulations prescribed by this Resolution shall not be construed to require the removal, lowering or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this Resolution. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Resolution and is diligently being pursued.
1. Land in platted residential subdivisions and on record with the Missoula County Clerk and Recorder at the time of adoption of this Resolution may continue to be used for residential purposes.
 2. No structure may be enlarged or altered in a way which increases its nonconformity unless an enlargement or structural alteration is required by law.
 3. Any structure destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction shall not be reconstructed except in conformity with the provisions of this Resolution.
 4. Any structure moved for any reason for any distance whatever shall thereafter conform to the Regulations for the district in which it is located after it is moved.
 5. Any structure may be altered, if necessary, to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in such building, but any enlargement necessary to adapt to new technologies shall be authorized only by a variance.
 6. Trees in place at the time of adoption or amendment of this Resolution shall be allowed to be maintained by the governing body, at its expense, at heights attained at that time.
 7. The owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the F.A.A. Air Traffic Division Operations Procedures, and Airspace Branch to indicate to the operators of aircraft in the vicinity of the airport, the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the local government.

SECTION 3.02 NONCONFORMING USES OF LAND

A lawful use of land existing on the effective date of adoption or amendment of this Resolution, made no longer permissible by this Resolution as enacted or amended, may be continued so long as it remains otherwise lawful, subject to the following conditions:

1. No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Resolution.
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Resolution.
3. If any such nonconforming use of land ceases for any reason for a period of one hundred eighty (180) days, any subsequent use of such land shall conform to the regulations specified by this Resolution for the zone in which such land is located.

SECTION 4.01 ADMINISTRATIVE OFFICER

A. APPOINTMENT

The governing body shall appoint an Administrative Officer.

B. DUTIES

The Administrative Officer shall:

1. Maintain files and records to document fee receipts, the issuance of permits, petitions, agendas, minutes, record of public hearings and other matters relating to the airport influence area. Such files and records shall be available and open for public inspection during regular business hours, unless otherwise determined by the Missoula County Attorney.
2. Receive and process requests for variances and appeals, in accordance with the provisions of this Resolution, and collect fees for such petitions and requests.
3. Publish notice of public hearings as required by this Resolution and applicable State statutes.
4. Prepare such materials (maps, agendas, property descriptions, survey sheet) as may be necessary for the Board of Airport Hazard Adjustment, or the governing body to properly conduct meetings for the purposes of administering this Resolution.
5. Make written recommendations or requests to the Board of Airport Hazard Adjustment (except on appeals), and governing body and to provide background information to support such recommendations.
6. Ensure all materials and documents relating to the Airport Influence Area are properly filed with the Missoula County Clerk and Recorder as required by applicable statutes.
7. Act as secretary to the Board of Airport Hazard Adjustment.
8. Provide information concerning the Airport Influence Area to the public and government agencies and officials and interpret the meaning and intent of this Resolution and otherwise promote procedural uniformity in the administration of this Resolution.

9. Initiate appropriate investigative action for apparent violations of this Resolution through coordination with the Missoula County Attorney.
10. Inspect the premises in the performance of his duties. The Administrative Officer and authorized representatives of the Administrative Officer shall have the right to enter any building or premises for the purpose of investigation and inspection provided that such entry shall be exercised only at reasonable hours, and in no case shall entry be made without the owner's consent.

SECTION 4.02 BOARD OF AIRPORT HAZARD ADJUSTMENT

A. MEMBERSHIP

The Board of Airport Hazard Adjustment shall be appointed by the governing body (See Section 1.05.12).

B. DUTIES

1. The Board of Airport Hazard Adjustment shall adopt procedures as may be necessary to efficiently administer the provisions of this Resolution.
2. The Board keep minutes of its proceedings showing absences and the vote or failure to vote of each member upon each question, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board and shall be public record.
3. The Board shall hear and decide appeals when it is alleged there has been an error in any order, requirement, decision, or determination made by the Administrative Officer in the enforcement of this Resolution.
4. The Board may authorize a variance from the terms of these regulations (See Section 4.07).

SECTION 4.03 PERMITS

A. REQUIREMENTS

1. Except as specifically provided in a and b, hereunder, no material change may be made in the use of land and no structure may be erected, altered, or otherwise established nor may any tree be planted in the Airport Influence Area, without having first received a permit issued by the Administrative Officer, who shall determine that the permit is issued in compliance with this Resolution.
 - a. In the area lying within the limits of the horizontal zone and conical zone exclusive of Districts A and B as defined in Section 2.06, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed in such zones.

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

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

2. No permit may be granted which would allow the establishment of any airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of adoption of this Resolution.
3. The governing body shall establish from time to time a schedule of fees, charges, and expenses and a collection procedure for permits, appeals and other matters pertaining to this Resolution.

B. PROCEDURE

1. All requests for permits must be initiated by the property owner(s) or the owner's representative with the owner's written consent.
2. Requests for permits to the Administrative Officer, shall present the completed proper application, and the appropriate fee to the Administrative Officer. Each application shall be accompanied by:
 - a. M.S.L. elevation of the property at the identified location of the proposed structure or tree. The elevation shall be determined by a land surveyor registered by the State of Montana. This requirement may be waived by the Administrative Officer.
 - b. A copy of the Airport Influence Area Map on which the exact location of the proposed tree or structure has been indicated. This determination shall be made by a land surveyor registered by the State of Montana. This requirement may be waived by the Administrative Officer.
 - c. A zoning compliance permit issued by the Missoula County Zoning Officer.

- d. Plans drawn to scale showing the actual dimensions of the lot or parcel, the shape, size, height, use and location on the lot or parcel of buildings, structures or trees proposed to be erected or altered, and any other such information as may be necessary to provide for the enforcement of the provisions of this Resolution. The Administrative Officer may waive the requirement for site plans.

C. CRITERIA FOR REVIEW

1. The Administrative Officer shall evaluate the application using the applicable standards contained in this Resolution.
2. The Administrative Officer shall submit a copy of each permit application to the Airport Administrative Board. In reviewing the application the Administrative Officer shall give consideration to recommendations made by the Airport Administrative Board.

D. DECISION

Within thirty (30) days of the receipt of the application and all requested information, the Administrative Officer shall:

1. Deny the application and give reasons for the denial, in writing, to the applicant; or,
2. Approve the application and issue a permit; or,
3. Approve the application with modifications.

SECTION 4.04 NOTICE OF HEARING

When a public hearing is required by this Resolution, the following procedure shall apply:

1. The Administrative Officer shall publish two notices with at least seven (7) days separating each publication. The first publication shall be no more than twenty-one (21) days prior to the action and no less than three (3) days prior to the action.
2. The public notice shall contain:
 - a. The date, time and place at which the hearing or other action will occur.
 - b. A brief statement of the action under consideration.

SECTION 4.05 CREATION AND AMENDMENT OF DISTRICT BOUNDARIES

- A. Whenever the governing body redefines district boundaries or creates new districts, a public hearing is required.

SECTION 4.06 AMENDMENT OF REGULATIONS

- A. The governing body may amend these regulations. A public hearing is required.

SECTION 4.07 VARIANCES

A. INITIATION

Variances are initiated by the property owner or his designated representative.

B. AREAS OR APPLICATION

1. Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use his property in violation of the rules adopted under this Resolution may apply to the Board of Airport Hazard Adjustment for a variance from the regulations. The following criteria shall be met:
 - a. Granting of the variance would not result in the creating of a hazard to safe flying operations or to persons and property in the vicinity of the Airport and where the noise and vibrations from normal and anticipated normal Airport operations would not likely cause structural damage.
 - b. A literal application or enforcement of these regulations would result in:
 1. A substantial practical difficulty to the applicant or unnecessary hardship; and,
 2. Granting the variance would not be contrary to the public interest.
 - c. Within the Airport Influence Area a person who obtains a variance for building a structure, or a person who takes or buys property subject to such a variance is put on notice that the Airport existed before the variance was granted and that normal and anticipated normal operations of the Airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from a local government for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal Airport operations.

C. PROCEDURE

1. Written applications for variances must be received by the Administrative Officer thirty (30) days in advance of a regular meeting of the Board of Airport Hazard Adjustment. Applications for variances from height restrictions shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.*
2. The Board of Airport Hazard Adjustment shall hold a public hearing. The Administrative Officer shall give notice of the hearing in accordance with Section 4.04 of this Resolution.
3. The Administrative Officer shall deliver a copy of the application and a written recommendation to each member of the Board of Airport Hazard Adjustment before the hearing.
4. Prior to the hearing by the Board of Airport Hazard Adjustment, the Administrative Officer shall deliver a copy of the application to each member of the Airport Administrative Board. In reaching a decision, the Board of Airport Hazard Adjustment shall give consideration to any recommendation made by the Airport Administrative Board, concerning the aeronautical effects of the variance.
5. The applicant or his designated representative shall be present at the hearing. Failure to appear is grounds for disapproval.

D. SPECIAL CONDITIONS

1. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Resolution and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree at issue to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Adjustment, this condition may be modified to require the owner to permit the local government at its own expense, to install, operate, and maintain the necessary markings and lights.

*Forms can be obtained from:
Chief Operations, Procedures and Airspace Branch
Air Traffic Division, Federal Aviation Administration,
Aurora, CO 80010

SECTION 4.08 COMPLAINTS AND VIOLATIONS

- A. Whenever a violation of this Resolution occurs, or is alleged to have occurred, any person may file a written complaint, fully stating the causes and basis thereof, with the Administrative Officer. The Administrative Officer shall record the complaint, investigate, and take action thereon as provided by the Resolution. If the Administrative Officer finds that any of the provisions of this Resolution are being violated, he shall submit a written investigation report to the County Attorney.
- B. A violation of this Resolution is a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment in the County Jail not exceeding six (6) months, or both.
- C. A local governing body may institute, in any court of competent jurisdiction, any action to prevent, restrain, correct or abate any violation of this Resolution.

APPENDIX I

1. USE OF THE JOHNSON-BELL INFLUENCE AREA RESOLUTION

A. INTERPRETATION OF ALLOWABLE USES FOR A SPECIFIC LOCATION WITHIN THE AIRPORT INFLUENCE AREA

1. Present a legal description of the property to the Missoula County Zoning Officer. He will determine what uses are allowed under County Zoning Resolution 76-113.
2. Determine the exact location of the proposed use on the Official Airport Influence Area Map. A registered surveyor may be required to make this determination.
3. If the use falls within the N.E.F. 30 noise contour, then, subject to the restrictions imposed by County Zoning Resolution 76-113, the uses listed in Section 2.06.B.1 of this Resolution would be allowed.
4. If the use falls within the N.E.F. 40 noise contour, exclusive of the N.E.F. 30 noise contour, then, subject to the restrictions imposed by County Zoning Resolution 76-113, the uses listed in Section 2.06.B.2 of this Resolution would be allowed.

B. INTERPRETING ALLOWABLE HEIGHTS OF TREES AND STRUCTURES WITHIN THE AIRPORT INFLUENCE AREA

1. Determine the exact location of the proposed tree or structure on the Official Airport Influence Area Map. A registered land surveyor may be required to make this determination.
2. Determine the ground elevation (M.S.L.) at the exact location of the proposed tree or structure. A registered land surveyor may be required to make this determination.
3. The height restrictive zones listed in Section 2.05 of this Resolution are plotted on the Official Airport Influence Area Map. Determine the most limiting height restrictive zone under which the proposed structure or tree will be located. The maximum height to which a structure could be constructed or a tree permitted to grow would be determined by subtracting the ground elevation at the proposed site from the elevation of the appropriate height restrictive zone at the same point.

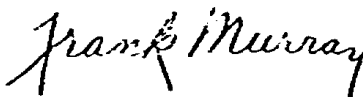
UNITED STATES OF AMERICA,)
State of Montana) ss.

VOL 121 PAGE 1341

I, FRANK MURRAY, Secretary of State of the State of Montana, do hereby certify that the following is a true and correct copy of SENATE Bill No. 198, Chapter No. 551, Montana Session Laws of 1977, enacted by the Forty-fifth Legislature of the State of Montana, approved by Thomas L. Judge, Governor of said State, on the 11th day of May, 1977, and effective July 1, 1977.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great Seal of said State.

Done at the City of Helena, the Capital of said State, this 23rd day of May, 1977.



Frank Murray
Secretary of State

CHAPTER NO. 551
MONTANA SESSION LAWS 1977
SENATE BILL NO. 198

AN ACT REQUIRING LOCAL GOVERNING BODIES TO ADOPT NOISE, HEIGHT, AND LAND USE REGULATIONS FOR AIRPORT INFLUENCE AREAS AND TO IDENTIFY AIRPORT INFLUENCE AREAS AND ESTABLISH CRITERIA FOR THE REGULATION OF NOISE, HEIGHT, AND LAND USE WITHIN THESE AREAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 1-724 that reads as follows:

1-724. Legislative finding. It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft, and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this act to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

Section 2. There is a new R.C.M. section numbered 1-725 that reads as follows:

1-725. Definitions. (1) The definitions in 1-102 apply to this act.

(2) In this act the following definitions also apply:

(a) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(b) "Airport" means, for the purpose of this act, only those airports included on the National Airport System Plan.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

Section 3. There is a new R.C.M. section numbered 1-726 that reads as follows:

1-726. Designation of airport influence areas. (1) A local government with an airport shall designate an airport influence area around the airport within 3 years from the effective date of this act. The designation shall be based on federal aviation administration rules and guidelines. However, no airport influence area may extend more than 16,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing shall be held by the local government following the procedure prescribed in 1-730.

(2) A map of the designation shall be filed with the county clerk and recorder of the affected counties and the city clerk of the affected cities and towns.

Section 4. There is a new R.C.M. section numbered 1-727 that reads as follows:

1-727. Temporary effect of designation. Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this act. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations.

Section 5. There is a new R.C.M. section numbered 1-728 that reads as follows:

1-728. Development of criteria by a local government. (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;
 (e) the future development of the airport;
 (f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

Section 5. There is a new R.C.M. section numbered 1-728 that reads as follows:

1-728. Adoption of rules. Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

Section 7. There is a new R.C.M. section numbered 1-730 that reads as follows:

1-730. Public hearing on rules. Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken.

Section 8. There is a new R.C.M. section numbered 1-731 that reads as follows:

1-731. State lands. When an airport influence area lies partially or entirely on state-owned lands, the department of state lands shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body.

Section 9. There is a new R.C.M. section numbered 1-732 that reads as follows:

1-732. Amendment of criteria -- redesignation of influence areas. (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

Section 10. There is a new R.C.M. section numbered 1-733 that reads as follows:

1-733. Variance. (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use his property in violation of the rules adopted pursuant to this act may apply to board of airport hazard adjustment for a variance from the rules.

(2) A variance shall be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance shall be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this act or a person who takes or buys property subject to such a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from a local government for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

Section 11. There is a new R.C.M. section numbered 1-734 that reads as follows:

1-734. Permit system. (1) The rules adopted pursuant to this act shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

(3) No permit may be granted which would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport influence area or any subsequent revisions to it or than it was prior to the application for a permit.

Section 12. There is a new R.C.M. section numbered 1-735 that reads as follows:

1-735. Conditions on permit or variance. Any permit or variance granted pursuant to this act may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

Section 13. There is a new R.C.M. section numbered 1-736 that reads as follows:

1-736. Board of adjustment. (1) All rules adopted pursuant to this act shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 11-2707.

(2) All of the provisions of 11-2707 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government has appointed a board of adjustment under the provisions of 11-1707 or 16-4706, the local government may designate the members of that board as the board of airport hazard adjustment required by this act in which case the terms of such members for purposes of this act are concurrent with their terms as members of the board of adjustment.

Section 14. There is a new R.C.M. section numbered 1-737 that reads as follows:

1-737. Rules relative to zoning ordinances. (1) If a local government has adopted a zoning ordinance, any rules adopted under this act may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this act.

(2) Where a conflict exists between the rules adopted pursuant to this act and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

Section 15. There is a new R.C.M. section numbered 1-738 that reads as follows:

1-738. Rules to be reasonable -- prior nonconforming uses. All rules adopted under this act shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses, which may continue but rules may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

Section 16. There is a new R.C.M. section numbered 1-739 that reads as follows:

1-739. Penalty -- court action. (1) Any person who violates any provision of this act or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed \$500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.

(2) A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this act or the rules adopted under it.

Section 17. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

426938

I received and filed this instrument for record on the 7 day of July 1978 at 3:30 o'clock P. M. and it
is recorded in Vol. 121 of Micro Records of the County of Missoula, State of Montana, on page 319 Fee 20.00
Paid Return By Rea F. L. Witness my hand, Roberta Frank, County Recorder
Address Rea F. L. By Dennis L. L. Deputy