

Flood Control  
laws repealed.

Section 2. An emergency is hereby declared to exist and this Act shall be in full force and effect immediately upon its passage and approval

Approved March 16, 1943.

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## CHAPTER 23.

### AN ACT

[H. B. 29]

To empower and direct the Highway Engineer to promulgate, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of airports; to authorize the acquisition, by purchase, grant, or condemnation, of air rights and other interests in land; and to provide penalties and remedies for violations of this Act or of any regulation made under the authority conferred herein.

*Be it enacted by the Legislature of the Territory of Alaska:*

Airport Zoning  
Law.

Section 1. DEFINITIONS. As used in this Act, unless the context otherwise requires:

Definitions.

(1) "Airport" means any publicly-owned area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

(2) "Airport hazard" means any overhead power line which interferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

(3) "Highway Engineer" means the Territorial Highway Engineer.

(4) "Person" means 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.

(5) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke-stacks, overhead transmission lines.

(6) "Tree" means any object of natural growth.

Section 2. AIRPORT HAZARDS NOT IN PUBLIC INTEREST. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

Section 3. ADOPTION OF AIRPORT ZONING REGULATIONS.

(1) The Highway Engineer may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for any airport within this Territory, which regulations shall divide the area surrounding the airport into zones, and, within such zones, specify the land uses permitted, and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulation, the Highway Engineer shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing

Declarations.

Highway Engineer to establish airport zoning regulations.

existing obstructions, and the views of the agency of the Federal government charged with fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

Exceptions.

(2) All airport zoning regulations adopted under this Act shall be reasonable, and none shall require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 4 (1).

#### Section 4. PERMITS AND VARIANCES.

Permits to construct.—Powers and duties of Highway Engineer.

(1) PERMITS. Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this Act, a system may be established for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the Highway Engineer authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the Highway Engineer determines that a non-conforming structure or tree has been abandoned or more than 80 percent torn down, destroyed, deteriorated, or decayed: (a) no permit shall be granted that would allow said structure or tree to exceed the applicable height limits or otherwise deviate from the zoning regulations; and (b) whether application is made for a permit under this paragraph or not, the Highway Engineer may by appropriate action compel the owner of the non-conforming structure or tree, at his

own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the Engineer may proceed to have the object so lowered, removed, reconstructed, or equipped and the cost and expense thereof shall constitute a lien upon the object and the land whereon it is or was located. Unless such account is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 10 percent per annum until paid, and shall be collected by foreclosure in the manner provided for the foreclosure of mortgages, all applications for permits for replacement, change or repair of non-conforming uses shall be granted.

(2) VARIANCES. Any person desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this Act, may apply to the Board of Appeals, as provided in Section 5 (3), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations should result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this Act.

Variances  
and appeal.

(3) OBSTRUCTION MARKING AND LIGHTING. In granting any permit or variance under this Section, the Highway Engineer or Board of Appeals may, if he or it deems such action advisable to effectuate the purposes of this Act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the Territory, as its own expense, to install, operate, and

Marking and  
lighting  
obstructions.

maintain suitable obstruction markers and obstruction lights thereon.

#### Section 5. PROCEDURE.

Hearings,  
Notice of

(1) ADOPTION OF ZONING REGULATIONS. No airport zoning regulations shall be adopted, amended, or changed under this Act except by action of the Highway Engineer, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in a paper of general circulation, printed and published nearest the location of the airport concerned.

Appeal Board,  
powers and  
duties.

(2) ADMINISTRATION OF AIRPORT ZONING REGULATIONS — BOARD OF APPEALS. Airport zoning regulations adopted under this Act shall provide for a Board of Appeals which shall be composed of the members of the Territorial Board of Road Commissioners, said Board to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the Highway Engineer in the enforcement of this Act or of any regulation adopted pursuant thereto;

(b) To hear and decide special exceptions to the terms of the regulations upon which such Board may be required to pass under such regulation;

Hearings,  
Procedure, etc.

(c) Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such

fact. and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

Appeals to the Board may be taken by any person aggrieved by any decision of the Highway Engineer. An appeal must be taken within a reasonable time, as provided by the rules of the Board, by filing with the Highway Engineer, a notice of appeal specifying the grounds thereof. The Highway Engineer shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Highway Engineer certifies to the Board, after the notice of appeal has been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a court of record on application and notice to the Highway Engineer and on due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Highway Engineer.

The concurring vote of a majority of the members of the Board shall be sufficient to reverse any order, re-

quirement, decision or determination of the Highway Engineer or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation, or to effect any variation in such legislation.

Appeals from  
Board ruling.

### Section 6. JUDICIAL REVIEW.

(1) Any person aggrieved by any decision of the Board of Appeals, may present to the district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the Board.

(2) Upon presentation of such petition the court shall make an order fixing a time for hearing thereon. The granting of the order shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

(3) The Board of Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the order. The answer of the Board shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Appeals. The findings of fact by the Board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to decision of the Board shall be considered by the court unless such objection shall have

been urged before the Board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the Board of Appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

Section 7. ENFORCEMENT AND REMEDIES. Each violation of this Act or of any regulations, order, or ruling promulgated or made pursuant to this Act, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$100 or imprisonment for not more than ninety days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the Highway Engineer may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Act, or of airport zoning regulations adopted under this Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this Act and of the regulations adopted and orders and rulings made pursuant thereto.

Enforcement  
and penalties.

Section 8. ACQUISITION OF AIR RIGHTS. In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this Act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the Territory may acquire, by purchase, grant or condemnation in the manner provided by the law under which it is authorized to acquire real property for public

Air rights may  
be purchased.

purposes, such an air right, easement, or other estate or interest in the property or non-conforming use in question as may be necessary to effectuate the purposes of this Act.

Saving clause.

Section 9. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Title of Act.

Section 10. SHORT TITLE. This Act shall be known and may be cited as the "Model Airport Zoning Act".

Repeal.

Section 11. REPEAL. All Acts or parts of Acts which are inconsistent with the provision of this Act are hereby repealed.

Approved March 16, 1943.

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## CHAPTER 24.

### AN ACT

[H. B. 45]

To amend Section 964, Compiled Laws of Alaska, 1933, as amended by Section 7 of Chapter 89, Alaska Session Laws, 1935, being an Act entitled "An Act to amend Sections 902, 923, 941, 943, 944, 945, 946, 1017, 1020 and 1021, Compiled Laws of Alaska, 1933, relating to business corporations", and to Authorize the Auditor of Alaska to Grant Extensions of Time to Corporations within Which to File Their Annual Reports, and Declaring an Emergency."

*Be it enacted by the Legislature of the Territory of Alaska:*

Amended.

Section 1. Section 7, Chapter 89, Alaska Session Laws,