

**AN ORDINANCE AMENDING ARTICLE 1329.02 "DEFINITION OF TERMS" OF THE PLANNING AND ZONING CODE AS IT PERTAINS TO "OVERLAY DISTRICT."**

The Morgantown City Council hereby ordains that Article 1329.02 "Definition of Terms" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1329.02 DEFINITION OF TERMS.

For the purpose of this ordinance, the following words and phrases shall have the meaning respectively prescribed to them by this section. If not defined herein, or within other sections of this ordinance, terms used in this ordinance shall have the meanings provided in any standard dictionary or American Planning Association publication as determined by the Planning Director.

~~OVERLAY DISTRICT – A zoning district that extends on top of a base zoning district and is intended to protect certain critical features and resources. Unlike with a planned unit development, overlay districts govern only development standards. The uses permitted in the underlying zoning district remain the same.~~ An area where certain additional requirements are superimposed upon a base zoning district or underlying zoning district and where the requirements of the base or underlay district may or may not be altered. Where the standards of the overlay and base or underlying zoning district are different, the more restrictive standards shall apply.

This Ordinance shall be effective the date of adoption.

FIRST READING:

\_\_\_\_\_  
Mayor

ADOPTED:

FILED:

RECORDED:

\_\_\_\_\_  
City Clerk

AN ORDINANCE TO CREATE AN "AIRPORT OVERLAY DISTRICT" THAT CONSIDERS SAFETY ISSUES AROUND THE MORGANTOWN MUNICIPAL AIRPORT (MGW) TO INCLUDE: RESTRICTING HEIGHTS OF ESTABLISHED USES, CONSTRUCTED STRUCTURES AND OBJECT OF NATURAL GROWTH WITH SAID OVERLAY DISTRICT; CREATING A PERMITTING PROCESS RELATED THERETO WITH SAID OVERLAY DISTRICT; AND, AMENDING THE OFFICIAL ZONING MAP BY ADOPTING AN OFFICIAL SUPPLEMENTARY AIRPORT OVERLAY DISTRICT ZONING MAP.

**WHEREAS**, certain airport hazards, as defined, in effect reduce the size of the area available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Morgantown Municipal Airport and the public investment therein; and

**WHEREAS**, the creation or establishment of an airport hazard, as defined, is a public nuisance and may injure the region served by the Morgantown Municipal Airport; and

**WHEREAS**, it is necessary in the interest of public health, public safety and general welfare that the creation or establishment of airport hazards, as defined, be prevented; and

**WHEREAS**, the prevention of these airport hazards, as defined, should be accomplished, to the extent legally possible, by the exercise of police power without compensation; and

**WHEREAS**, both the prevention of the creation or establishment of airport hazards, as defined, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards, as defined, are public purposes for which political subdivisions may raise and expend public funds and acquire land or interests in land.

**NOW, THEREFORE BE IT ORDAINED** that a new Article 1360 of the Planning and Zoning Code is created as follows (new matter underlined):

ARTICLE 1360 AIRPORT OVERLAY DISTRICT

- 1360.01    Application.
- 1360.02    Purpose and Intent.
- 1360.03    Relation to Other Zone Districts.
- 1360.04    Definitions.
- 1360.05    Establishment of Airport Zones and Height Limitations.
- 1360.06    Height Restrictions.
- 1360.07    Variance from Height Restrictions.
- 1360.08    Use Restrictions.

- 1360.09 Pre-existing Non-conforming Uses.
- 1360.10 Obstruction Marking and Lighting.
- 1360.11 Violations and Penalties.
- 1360.12 Appeals.
- 1360.13 Conflicting Regulations.
- 1360.14 Severability.

1360.01 APPLICATION.

- (A) The regulations and standards contained within this Airport Overlay Districts shall apply to the:
  - (1) Erection of a new structure; and/or,
  - (2) Addition to or increase in the height of an existing structure; and/or,
  - (3) Establishment, erection, and/or maintenance of any use, structure, or object (natural or manmade), within the Airport Overlay District.
- (B) The application of this Airport Overlay District shall be limited to the corporate limits of the City of Morgantown.

1360.02 PURPOSE AND INTENT

- (A) The purpose and intent of this Airport Overlay District are to:
  - (1) Create an overlay district that considers safety issues around the Morgantown Municipal Airport (MGW).
  - (2) Regulate and restrict the heights of established uses, constructed structures, and objects of natural growth.
  - (3) Create a permitting process for certain uses, structures, and objects within said related zones.

1360.03 RELATION TO OTHER ZONING DISTRICTS.

- (A) This Airport District Overlay shall not modify the boundaries of any underlying zoning district or any other overlay district. Where identified, the Airport Overlay District shall impose certain requirements on land use, construction and development in addition to those contained in the applicable underlying zoning district and/or applicable overlay zoning district for the same area.

1360.04 DEFINITIONS.

The following words and phrases when used in Article 1360 shall have the meaning given to them in this section unless the context clearly indicates otherwise.

AIRPORT – MORGANTOWN MUNICIPAL AIRPORT (MGW) – Any area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities for rights-of-way, together with all airport buildings and facilities thereon.

AIRPORT ELEVATION – The highest point of an airport’s useable landing area measured in feet above sea level. The airport elevation of the Morgantown Municipal Airport (MGW) is 1,248 feet above mean sea level.

AIRPORT HAZARD – Any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined in 14 CFR Part 77.

AIRPORT HAZARD AREA – Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this Airport Overlay District.

AIRPORT LAYOUT PLAN (ALP) – An FAA approved plan that shows: 1) Boundaries and proposed additions to all areas owned or controlled by the sponsor for airport purposes; 2) The location and nature of existing and proposed airport facilities and structures; and, 3) The location on the airport of existing and proposed non-aviation areas and improvements thereon.

AIRPORT NOISE IMPACT ZONE – A rectangular shape defined by utilizing the longest existing or planned runway at the airport. This zone is established by offsetting the runway centerline a distance half the length of the longest existing or planned runway in all directions, i.e. from the sides and from the ends of each runway.

APPROACH SURFACE (ZONE) – An imaginary surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of the runway based on the planned approach. The inner edge of the approach surface is the same width as the primary surface and expands uniformly depending on the planned approach. The approach surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the approach surface.

CFR – Code of Federal Regulations.

CONICAL SURFACE (ZONE) – An imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet horizontally to one (1) foot vertically for a horizontal distance of 4,000 feet. The conical surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is based on the conical surface.

DECISION HEIGHT (DH) – Is a specified height above the ground in an instrument approach procedure at which the pilot must decide whether to initiate an immediate missed approach if the pilot does not see the required visual reference, or to continue the approach. Decision height is expressed in feet above ground level.

EDUCATIONAL FACILITY RESTRICTION ZONE – An area extending along the centerline of any runway and measured from the end of the runway and extending for a distance of five (5) miles and having a width equal to one-half of the runway length.

FAA – Federal Aviation Administration of the United States Department of Transportation.

HEIGHT – For the purpose of determining the height limits in all zones set forth in this Airport Overlay District and shown on the Official Supplementary Airport Overlay District Zoning Map, the datum shall be mean sea level elevation unless otherwise specified.

HORIZONTAL SURFACE (ZONE) – An imaginary plane 150 feet above the established airport elevation that is constructed by swinging arcs of various radii from the center of the end of the primary surface and then connecting the adjacent arc by tangent lines. The radius of each arc is based on the planned approach. The horizontal surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the horizontal surface.

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.

MINIMUM DESCENT ALTITUDE (MDA) – Is the lowest altitude specified in an instrument approach procedure, expressed in feet above mean sea level, to which descent is authorized on final approach or during circle-to-land maneuvering until the pilot sees the required visual references for the heliport or runway of intended landing.

MINIMUM OBSTRUCTION CLEARANCE ALTITUDE (MOCA) – Is the lowest published altitude in effect between radio fixes on VOR airways, off-airway routes, or route segments, which meets obstacle clearance requirements for the entire route segment and which ensures acceptable navigational signal coverage only within 25 statute (22 nautical) miles of a VOR.

NONCONFORMING USE – Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Airport Overlay District or an amendment thereto.

NON-PRECISION 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 non-precision instrument approach procedure has been approved or planned.

OBSTRUCTION – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth by this Airport Overlay District.

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 approved airport layout plan or any other planning document.

PRIMARY SURFACE (ZONE) – An imaginary surface longitudinally centered on the runway, extending 200 feet beyond the end of paved runways or ending at each end of turf runways. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The primary surface zone,

as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the primary surface.

RUNWAY – A defined area of an airport prepared for landing and takeoff of aircraft along its length.

RUNWAY PROTECTION ZONE (RPZ) – An area, trapezoidal in shape and centered about the extended runway centerline, designated to enhance the safety of aircraft operations and the safety and protection of people and property on the ground. The RPZ for Runway 18 begins 200 feet beyond the runway end. The inner width is 1,000 feet centered on the extended runway centerline extending to an outer width of 1,750 feet. The length of the Runway 18 RPZ is 2,500 feet. The RPZ for Runway 36 begins 200 feet beyond the runway end. The inner width is 1,000 feet centered on the extended runway centerline extending to an outer width of 1,510 feet. The length of the Runway 36 RPZ is 1,700 feet.

STRUCTURE – An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.

TRANSITIONAL SURFACE (ZONE) – An imaginary surface that extends outward and upward from the edge of the primary surface to the horizontal surface at a slope of seven (7) feet horizontally to one (1) foot vertically (7:1). The transitional surface zone, as shown on the Official Supplementary Airport Overlay District Zoning Map, is derived from the transitional surface.

TREE – Any object of natural growth.

UTILITY RUNWAY – A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

VISUAL RUNWAY – A runway intended solely for the operation of aircraft using visual approach procedures.

#### 1360.05 ESTABLISHMENT OF AIRPORT ZONES.

There are hereby created and established certain zones within the Airport Overlay District, which are based on the FAA-approved Airport Layout Plan (ALP) for the Morgantown Municipal Airport (MGW). Said zones are defined in Section 1360.04 and, with exception of the Educational Facility Restriction Zone, illustrated on the Official Supplementary Airport Overlay District Zoning Map, hereby adopted as part of this Airport Overlay District, which include:

- (A) Airport Noise Impact Zone.
- (B) Approach Surface Zone.
- (C) Conical Surface Zone.
- (D) Educational Facility Restriction Zone.
- (E) Horizontal Surface Zone.
- (F) Primary Surface Zone.

- (G) Runway Protection Zone.
- (H) Transitional Surface Zone.

1360.06 HEIGHT RESTRICTIONS.

- (A) The owner of any proposed construction and/or alteration within this Airport Overlay District shall comply with the provisions of 14 CFR Part 77 Subpart B by filing a Notice of Construction or Alteration (FAA Form 7460-1, as amended or replaced) with the FAA. Construction and/or alteration includes the:
  - (1) Erection of a new structure; and/or,
  - (2) Addition to or increase in the height of an existing structure; and/or,
  - (3) Establishment, erection and/or maintenance of any use, structure, or object (natural or manmade).
- (B) Prior to the issuance of any building permit within this Airport Overlay District, the applicant shall submit documentation to the City demonstrating compliance with the federal requirement for notification of the proposed construction or alteration, a valid aeronautical evaluation, and a copy of the FAA's determinations to said notification.
- (C) If the FAA returns a determination of no penetration of protected airspace, the building permit request shall be considered in compliance with the intent of this Airport Overlay District. If the FAA returns a determination of a penetration of protected airspace, the permit shall be denied, and the applicant may seek a variance from such regulations as outlined in Section 1360.07.
- (D) Exceptions. In the following circumstances, the filing of a Notice of Construction or Alteration with the FAA within the Airport Overlay District shall not be required:
  - (1) To make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.
  - (2) Within the Primary Surface, Approach Surface, and Transitional Surface Zones, when construction and/or alteration of a structure is below 1,248 feet above mean sea level.
  - (3) Within the Horizontal Surface and Conical Surface Zones, when the construction and/or alteration of a structure is below 1,398 feet above mean sea level.
- (E) In addition to the height restrictions of this Airport Overlay District, no structure or obstruction shall be permitted within the corporate limits of the City of Morgantown that would cause a Minimum Obstruction Clearance Altitude, a Minimum Descent Altitude, or a decision height to be raised.

1360.07 VARIANCE FROM HEIGHT RESTRICTIONS.

- (A) In addition to provisions set forth in Article 1381 "Variances" of the City's Planning and Zoning Code, any request for a variance to the height restrictions

of this Airport Overlay District shall include documentation in compliance with 14 CFR Part 77 Subpart B.

- (B) Applicants seeking variance relief to height restrictions of this Airport Overlay District must, as a part of the variance application, submit all documentation concerning the applicant's Notice of Construction or Alteration (FAA Form 7460-1, as amended or replaced) filed with the FAA, a valid aeronautical evaluation, and the FAA's determinations to said notification.
- (C) The Board of Zoning Appeals' considerations of whether to grant a variance to the height restrictions of this Airport Overlay District must include the determinations made by the FAA as to the effect of the proposed construction and/or alteration on the operation of air navigation facilities and the safe, efficient use of navigable air space. In particular, the request for a variance shall consider which of the following categories the FAA has placed the proposed development in:
  - (1) No Objection – The subject construction and/or alteration is determined to not exceed obstruction standards and marking/lighting is not required to mitigate potential hazard. Under this determination a variance shall be granted, as it relates to relief from the height restrictions of this Airport Overlay District.
  - (2) Conditional Determination – The proposed construction and/or alteration is determined to create some level of encroachment into an airport hazard area which can be effectively mitigated. Under this determination, a variance shall be granted, as it relates to relief from height restrictions of this Airport Overlay District, contingent upon implementation of mitigating measures as described in Section 1360.10 – Obstruction Marking and Lighting and in consultation with the FAA.
  - (3) Objectionable – The proposed construction/alteration is determined to be a hazard and is thus objectionable. A variance, as it relates to relief from the height restrictions of this Airport Overlay District, shall be denied and the reasons for this determination shall be outlined to the applicant.
- (D) Such requests for variances from height restrictions of this Airport Overlay District shall be granted where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the intent of this Airport Overlay District.

#### 1360.08 USE RESTRICTIONS.

- (A) Notwithstanding any other provisions of this Airport Overlay District, no use shall be made of land or water within this Airport Overlay District in such a manner as to:
  - (1) Create electrical interference with navigational signals or radio communications between the airport and aircraft;
  - (2) Make it difficult for pilots to distinguish between airport lights and others;

- (3) Impair visibility in the vicinity of the airport;
- (4) Create wildlife hazards; or,
- (5) Otherwise endanger or interfere with the landing, takeoff or maneuvering of aircraft utilizing the Morgantown Municipal Airport (MGW).

(B) Runway Protection Zone (RPZ).

- (1) The following uses are permitted to enter the limits of the RPZ:
  - (a) Agricultural Activity as defined in Section 1329.02 of the Planning and Zoning Code.
  - (b) Irrigation channels, provided wildlife attractant conditions are not formed therefrom.
  - (c) Airport service roads.
  - (d) Underground facilities.
  - (e) Unstaffed NAVAIDs and associated facilities.
- (2) Prior to the granting of any approval or permit for new or modified development not included in Section 1360.08(B)(1), the City shall consult with the FAA Airports District Office to determine whether or not the land use and/or development proposed to enter the limits of the RPZ is acceptable based on a Land Use Compatibility and Alternatives Analysis. Table 1360.08.01 generally identifies development that typically requires analysis.

Table 1360.08.01: Development Typically Requiring Analysis

• <u>Buildings and structures including, but not limited to: residences, schools, churches, hospitals or other medical care facilities, commercial/industrial buildings, etc.</u>
• <u>Recreational land uses including, but not limited to: golf courses, sports fields, amusement parks, other places of public assembly, etc.</u>
• <u>Transportation facilities including, but limited to: rail facilities, public roads/highways, vehicle parking facilities.</u>
• <u>Fuel storage facilities (above and below ground).</u>
• <u>Hazardous material storage (above and below ground).</u>
• <u>Wastewater treatment facilities.</u>
• <u>Above-ground utility infrastructure (i.e. electrical substations), including any type of solar panel installation.</u>

- (3) The land use compatibility and alternatives analysis shall identify and document the full range of alternatives that include:
  - (a) Avoidance of introducing the land use issue within the RPZ.
  - (b) Minimizing the impact of the land use in the RPZ (i.e., routing a new roadway through the controlled activity area, move farther away from the runway end, etc.).

- (c) Mitigating risk to people and property on the ground (i.e., tunneling, depressing and/or protecting a roadway through the RPZ, implement operational measures to mitigate any risks, etc.).
- (4) Documentation of the alternatives should include:
- (a) A description of each alternative including a narrative discussion and exhibits or figures depicting the alternative.
  - (b) Full cost estimates associated with each alternative regardless of potential funding sources.
  - (c) A practicability assessment based on the feasibility of the alternative in terms of cost, constructability and other factors.
  - (d) Identification of the preferred alternative that would meet the project purpose and need while minimizing risk associated with the location within the RPZ.
  - (e) Identification of all Federal, State and local transportation agencies involved or interested in the issue.
  - (f) Analysis of the specific portion(s) and percentages of the RPZ affected, drawing a clear distinction between the Central Portion of the RPZ versus the Controlled Activity Area, and clearly delineating the distance from the runway end and runway landing threshold.
  - (g) Analysis of (and issues affecting) the City's control of the land within the RPZ.
  - (h) Any other relevant factors for FAA consideration.
- (5) Any new or modified development described in Table 1360.09.01 that would enter the limits of the Runway Protection Zone shall be categorized a Type III Site Plan – Major Development of Significant Impact. The land use compatibility and alternatives analysis and FAA's related response must be included with the Type III Site Plan application for it to be considered complete.
- (C) Educational Facilities. No educational facility of a public or private K-12 school shall be permitted within the Educational Facility Restriction Zone. Exceptions approving construction of an educational facility of a public or private K-12 school within the Educational Facility Restriction Zone shall only be granted when the Planning Commission makes specific findings, as a part of a Type III Site Plan for a Development of Significant Impact, detailing how the public policy reasons for allowing the construction outweigh public health and safety concerns prohibiting such a facility.
- (D) Landfills. In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Center (Ford Act) (Pub. L. No. 106-181, April 5, 2000), codified at 49 U.S.C. §40101 et seq., the construction of a new Municipal Solid Waste Landfill (MSWLFs) within six miles of the Morgantown Municipal Airport (MGW) shall be prohibited unless a waiver is granted by the FAA.
- (E) Airport Noise Impact Zone. RESERVED.

1360.09 PRE-EXISTING NON-CONFORMING USES.

- (A) The regulations prescribed by this Airport Overlay District shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Airport Overlay District, or otherwise interfere with the continuance of a non-conforming use. No existing non-conforming use shall be structurally altered or permitted to grow higher, so as to increase the non-conformity, and a non-conforming use, once substantially abated as set forth under Article 1373 "Nonconforming Provisions" of the City's Planning and Zoning Code may only be reestablished consistent with the provisions herein.

1360.10 OBSTRUCTION MARKING AND LIGHTING.

- (A) Any permit or variance granted pursuant to the provisions of this Airport Overlay District may be conditioned according to the process described in Section 1360.07 to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or require the person requesting the permit or variance, to install, operate, and maintain such marking or lighting as deemed necessary to assure both ground and air safety.

1360.11 VIOLATIONS AND PENALTIES.

See Article 1393 "Violations and Enforcement" of the City's Planning and Zoning Code.

1360.12 APPEALS.

See Article 1383 "Administrative Appeals" of the City's Planning and Zoning Code.

1360.13 CONFLICTING REGULATIONS.

See Article 1327.07(B) of the City's Planning and Zoning Code.

1360.14 SEVERABILITY.

See Article 1327.07(C) of the City's Planning and Zoning Code.

This Ordinance shall be effective the date of adoption.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

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Mayor

\_\_\_\_\_  
City Clerk

Official Supplementary  
Airport Overlay  
District  
Zoning Map

MORGANTOWN  
MUNICIPAL AIRPORT



**Legend**

- County Line
- State Line
- Morgantown Corporate Limits
- Roads
- Interstate Highway
- Rivers / Streams
- Water Bodies

**Part 77 Surfaces**

**Surface Name**

- Approach Surface
- Conical Surface
- Horizontal Surface
- Primary Surface
- Transition Surface

