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Flying Cloud Airport Zoning Ordinance

Adopted April 10, 2019

Adopted by the
Flying Cloud Airport Joint Airport Zoning Board

Contact Person:
Flying Cloud Joint Airport Zoning Board
c/o JAZB Secretary
Metropolitan Airports Commission
6040 28th Avenue South
Minneapolis, Minnesota 55450



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**FLYING CLOUD AIRPORT
ZONING ORDINANCE
ADOPTED BY THE
FLYING CLOUD AIRPORT JOINT AIRPORT ZONING BOARD**

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE FLYING CLOUD AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS; REFERRING TO THE FLYING CLOUD AIRPORT ZONING MAP; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF ADJUSTMENT; AND IMPOSING PENALTIES.

THEREFORE, IT IS HEREBY ORDAINED BY THE FLYING CLOUD AIRPORT JOINT AIRPORT ZONING BOARD PURSUANT TO THE AUTHORITY CONFERRED BY MINNESOTA STATUTES §§ 360.061 – 360.074, THAT THE FLYING CLOUD AIRPORT ZONING ORDINANCE BE EFFECTIVE AS FOLLOWS:

SECTION I. PURPOSE AND AUTHORITY

The FLYING CLOUD Airport Joint Airport Zoning Board, created and established by joint action of the Metropolitan Airports Commission and the Cities of Eden Prairie, Shakopee, and Chanhassen, pursuant to the provisions and authority of Minnesota Statutes § 360.063, hereby finds and declares that:

- A.** An Airport Hazard endangers the lives and property of users of the Airport and property or occupants of land in its vicinity, and also, if of the obstructive type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Airport and the public investment therein.
- B.** The creation or establishment of an Airport Hazard is a public nuisance and an injury to the region served by the Airport.

- C. For the protection of the public health, safety, order, convenience, prosperity, and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of Airport Hazards.
- D. The social and economic costs of disrupting land uses around the Airport, however, often outweigh the benefits of a reduction in Airport Hazards requiring a balance between the social and economic costs to surrounding communities and the benefits of strict regulation.
- E. The prevention of these Airport Hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.
- F. Preventing the creation or establishment of Airport Hazards and eliminating, removing, altering, mitigating, or marking and lighting of existing Airport Hazards are public purposes for which political subdivisions may raise and expend public funds, levy assessments against land, and acquire land and property interests therein.

SECTION II. TITLE AND SHORT TITLE

This ordinance shall be known as the "Flying Cloud Airport Zoning Ordinance" or the "FCM Zoning Ordinance."

SECTION III. DEFINITIONS AND RULES OF CONSTRUCTION

- A. **Definitions.** As used in this Flying Cloud Airport Zoning Ordinance, unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall have the meanings indicated. All words and phrases not defined shall have their common meaning.
 - 1. ***Airport.*** "Airport" means Flying Cloud Airport located in Hennepin County, Minnesota.
 - 2. ***Airport Boundary.*** "Airport Boundary" means the boundary shown on Exhibit A – Airport Boundary, attached hereto and made a part hereof.
 - 3. ***Airport Hazard.*** "Airport Hazard" means any Structure, Tree, or use of land that obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the Airport; and any use of land that is hazardous to Persons or property because of its proximity to the Airport.

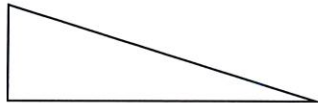
- 4. Airport Zoning Permit.** "Airport Zoning Permit" means zoning permits as required under Section VIII.
- 5. Airspace Surfaces.** "Airspace Surfaces" means the surfaces established in Section IV.A.
- 6. Airspace Zones.** "Airspace Zones" means the land use zones established in Section IV.A.
- 7. Board of Adjustment.** "Board of Adjustment" means the body established in Section XII.
- 8. Bluff.** "Bluff" means a steep cliff, embankment, hill, or outcropping along a river or stream, with an average slope of eighteen (18) percent or greater measured over a horizontal distance of fifty (50) feet or more, and that rises at least twenty-five (25) feet above the ordinary high water mark of the river or stream.
- 9. Commissioner.** "Commissioner" means the Commissioner of the Minnesota Department of Transportation or, if either the position of Commissioner or the Minnesota Department of Transportation shall no longer exist or serve its present functions, such successor state official or officials or entity or entities as shall either singularly or collectively perform or serve such functions.
- 10. Effective Date.** "Effective Date" means the effective date set forth in Section XVIII.
- 11. FAA.** "FAA" means the Federal Aviation Administration or, if the Federal Aviation Administration shall no longer exist or serve its present functions, such successor federal entity or entities as shall either singularly or collectively perform or serve such functions.
- 12. FAA 7460 Obstruction Evaluation.** Established FAA process for conducting aeronautical studies conducted under the provisions of Title 14 CFR, Part 77 (for proposed construction or alteration) or Federal Aviation Act of 1958 (for existing structures), or any successor to this process.
- 13. FCM Zoning Map.** "FCM Zoning Map" means the Flying Cloud Airport Zoning Map as defined in Section VI.C.
- 14. Lot.** [For JAZB Ordinance: "Lot" means a designated parcel, tract, or area of land established by plat or subdivision, or otherwise permitted by law.] [For Eden Prairie

Ordinance: "Lot" means one unit of a recorded plat, subdivision, or registered land survey, or a recorded parcel described by metes and bounds.]

- 15. *Nonconforming Use.*** "Nonconforming Use" means any pre-existing Structure or use of land which is inconsistent with the provisions of this FCM Zoning Ordinance or an amendment hereto.
- 16. *Person.*** "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.
- 17. *Planned.*** "Planned" means proposed future Airport developments and improvements indicated on a planning document having the approval of the FAA, the Minnesota Department of Transportation, Office of Aeronautics, and the Metropolitan Airports Commission.
- 18. *Precision Instrument Runway.*** "Precision Instrument Runway" means a Runway having an existing instrument approach procedure utilizing an instrument landing system (ILS), or a precision approach radar (PAR), and a Runway for which a precision instrument approach procedure is Planned.
- 19. *Runway.*** "Runway" means any existing or planned paved surface of the Airport which is specifically designated and used or planned to be used for the landing and/or taking off of aircraft. The individual Runways at the Airport are defined in this FCM Zoning Ordinance based on the compass heading of landing aircraft.
- 20. *Runway 10R-28L.*** "Runway 10R-28L" means the 5,000-foot runway. Runway 10R is a Precision Instrument Runway and Runway 28L is a Non-precision Runway. Both the Runway 10R and 28L ends are within the City of Eden Prairie.
- 21. *Runway 10L-28R.*** "Runway 10L-28R" means the 3,900-foot Non-precision Runway at the Airport whose 10L and 28R ends are within the City of Eden Prairie.
- 22. *Runway 18-36.*** "Runway 18-36" means the 2,691-foot runway. Runway 18 is a Visual Runway (planned future Non-Precision) and Runway 36 is a Non-Precision Runway. Both the Runway 18 and 36 Ends are within the City of Eden Prairie.
- 23. *Runway Protection Zone.*** "Runway Protection Zone" means a zone mandated by FAA regulations that is longitudinally centered on the extended centerline at each end of

Runways 10R-28L, 10L-28R, 18-36, whose inner edge is at the same width and elevation as, and coincides with, the end of the Primary Surfaces for Runway 10R; starts at a width of 500 feet for Runway 28L and 250 feet for Runways 10L-28R and 18-36; and that extends outward a horizontal distance of 1,000 feet expanding uniformly to a width of 700 feet for Runway 28L; extends outward a horizontal distance of 1,000 feet expanding uniformly to a width of 450 feet for Runways 10L-28R and 18-36; extends outward a horizontal distance of 2,500 feet expanding uniformly to a width of 1,750 feet for Runway 10R.

- 24. Safety Zones.** "Safety Zones" means the land use zones established in Section V.A.
- 25. School.** "School" means any private or public educational institution for people in kindergarten through grade twelve (12) and any private or public day care or pre-school facility that enrolls more than fifty (50) children.
- 26. Slope.** "Slope" means an incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude.



Slope = 3:1 = 3 ft. horizontal to 1 ft. vertical

- 27. Structure.** "Structure" means anything anchored, attached, built, constructed, erected, gathered, located, placed, or piled on the ground or in or over a water body, whether temporary or permanent, moveable or immovable, including antennae, buildings, canopies, cranes, decks, derricks, docks, edifices, equipment, fences, overhead transmission lines, patios, piers, piles, ponds, posts, roadways, signs, smokestacks, towers, utility poles, wires, and anything attached to any of the foregoing either temporarily or permanently.
- 28. Tree.** "Tree" means any object of natural growth.
- 29. Zoning Administrator.** "Zoning Administrator" means the public official in each affected municipality and at the Metropolitan Airports Commission as set forth in Section XI.B.

B. Rules Of Construction. In the construction of this FCM Zoning Ordinance, the following rules shall be observed and applied, except where the context clearly indicates otherwise.

- 1. Computing Time.** In computing the period of time within which an act may or must be done, the first calendar day from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- 2. Conflicts Between Ordinance Provisions.** If a provision of this FCM Zoning Ordinance conflicts with any other provision of this FCM Zoning Ordinance, the more restrictive provision shall prevail.
- 3. Height.** "Height" shall be expressed as elevation in feet above Mean Sea Level, North American Vertical Datum, 1988 Adjustment, except in reference to maximum construction height without an Airport Zoning Permit when it shall be expressed as distance in feet above curb level or above natural grade, as the context and Section VIII.B.1. require, or as distance in feet above ground shown on the Maximum Construction Heights Without Permit Plates in the FCM Zoning Map.
- 4. Including, Not Limited To.** The word "including" means including but not limited to.
- 5. Land To Include Water Surfaces And Bodies.** The word "land" shall include water bodies and surfaces for the purpose of establishing Airspace Zones and Safety Zones.
- 6. May, Permissive.** The word "may" is permissive.
- 7. Shall, Mandatory.** The word "shall" is mandatory and not discretionary.
- 8. Singular And Plural.** The singular shall include the plural, and the plural the singular.
- 9. Tense.** The present tense shall include the future.

SECTION IV. AIRSPACE OBSTRUCTION ZONING

A. Airspace Surfaces And Zones. In order to carry out the purpose of this FCM Zoning Ordinance as set forth in Section I., the following Airspace Surfaces and Airspace Zones are hereby established, subject to the airspace zoning limits in Section VI.A.

- 1. Primary Surface.** An imaginary surface longitudinally centered on each Runway extending two hundred (200) feet beyond each end of Runways 10L-28R, 10R-28L, 18-36, and having a width of five hundred (500) feet for Runways 10L-28R and 18-36 and

one thousand (1,000) feet for Runway 10R-28L. The elevation of any point on the Primary Surface is the same as the elevation of the nearest point on the Runway centerline.

- 2. Primary Zone.** All that land which lies directly under a Primary Surface.
- 3. Horizontal Surface.** An imaginary surface that is one thousand fifty-six (1,056) feet above mean sea level, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the Primary Surface of each Runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is five thousand (5,000) feet for Runways 18-36 and 10L-28R and ten thousand (10,000) feet for Runways 10R-28L.
- 4. Horizontal Zone.** All that land which lies directly under the Horizontal Surface.
- 5. Conical Surface.** An imaginary surface extending upward and outward from the periphery of the Horizontal Surface at a Slope of twenty (20) to one (1) for a horizontal distance of four thousand (4,000) feet as measured radially outward from the periphery of the Horizontal Surface.
- 6. Conical Zone.** All that land which lies directly under the Conical Surface.
- 7. Precision Instrument Approach Surface.** An imaginary surface longitudinally centered on the extended centerline at the end of Runway 10R. The inner edge of this surface is at the same width and elevation as, and coincides with, the end of the Primary Surface. This surface inclines upward and outward at a Slope of fifty (50) to one (1) for a horizontal distance of ten thousand (10,000) feet expanding uniformly to a width of four thousand (4,000) feet, then continues upward and outward for an additional horizontal distance of forty thousand (40,000) feet at a Slope of forty (40) to one (1) expanding uniformly to an ultimate width of sixteen thousand (16,000) feet.
- 8. Precision Instrument Approach Zone.** All that land which lies directly under a Precision Instrument Approach Surface.
- 9. Approach Surface.** An imaginary surface longitudinally centered on the extended centerline at each end of Runways 10L-28R, 28L and 18-36. The inner edge of this surface is at the same width and elevation as, and coincides with, the end of the Primary Surface. For Runway 28L, this surface inclines upward and outward at a Slope

of thirty-four (34) to one (1) for a horizontal distance of ten thousand (10,000) feet expanding uniformly to a width of three thousand five hundred (3,500) feet. For Runways 10L-28R and 18-36, this surface inclines upward and outward at a Slope of twenty (20) to one (1) for a horizontal distance of five thousand (5,000) feet expanding uniformly to a width of two thousand (2,000) feet.

10. Approach Zone. All that land which lies directly under an Approach Surface.

11. Transitional Surface. An imaginary surface extending upward and outward at right angles to the centerline and extended centerline of Runways 10L-28R, 10R-28L, 18-36 at a Slope of seven (7) to one (1) from both sides of each Primary Surface and from both sides of each Precision Instrument Approach Surface for 10R and the Approach Surfaces of 10L-28R, 28L, and 18-36 until it intersects the Horizontal Surface or the Conical Surface.

12. Transitional Zone. All that land which lies directly under a Transitional Surface.

B. Height Restrictions. Except as otherwise provided in this FCM Zoning Ordinance, and except as necessary and incidental to Airport operations, the following height restrictions shall apply. Where a Lot is beneath more than one Airspace Surface, the height of the more restrictive (lower) Airspace Surface shall control.

1. Structures. No new Structure shall be constructed or established; and no existing Structure shall be altered, changed, rebuilt, repaired, or replaced in any Airspace Zone so as to project above any Airspace Surface. Nor shall any equipment used to accomplish any of the foregoing activities be allowed to project above any Airspace Surface.

2. Trees. No Tree shall be allowed to grow or be altered, repaired, replaced, or replanted in any Airspace Zone so as to project above any Airspace Surface. Nor shall any equipment used to accomplish any of the foregoing activities be allowed to project above any Airspace Surface.

a. Public Nuisance; Order. If the whole or any part of any Tree shall be determined to be an Airport Hazard by the FAA, or any successor entity, after proper investigation, the Metropolitan Airports Commission's Executive Director or his designee may issue an order in writing for the owner or owners, agent or occupant

of the property upon which such hazardous tree is located, to forthwith cause such hazardous tree, or portion thereof if the removal of a portion will remove the hazard, to be taken down and removed.

- b. Notice. Said order is to be mailed to the last known address of the owner, agent or occupant and shall be accompanied by a notice setting forth said Executive Director's authority to remove such hazardous Tree at such owner's, agent's or occupant's expense in the event such owner, agent or occupant fails to comply with or file a notice of appeal from said order within ten (10) days of mailing. The notice shall include instructions for filing a notice of appeal from said order.
- c. Removal. If within ten (10) days after said order has been mailed, as above provided for, the owner or owners, agent or occupant of the property upon which such hazardous Tree is located neglects or refuses to comply with said order, or has failed to file a notice of appeal from said order with said Executive Director, then said Executive Director or his designee(s) may enter upon said premises and take down or remove said tree or portion thereof declared to be hazardous, and to do any and all things which in his opinion may be necessary for the protection of life, limb or property.
- d. Assessment of Expense. If, after the notice hereinbefore provided for has been given, the owner, agent or occupant has failed to remove such hazardous tree or portion thereof, and it becomes necessary for the Metropolitan Airports Commission to remove same, said Executive Director or his designee shall mail a statement of the expense of such removal to the owner, agent or occupant of the property from which such tree or portion thereof has been removed, and if within thirty (30) days therefrom the owner, agent or occupant has not remitted to the Commission for the expense incurred by the Commission in said removal, the Executive Director or his designee may forthwith recover the amount of such expense from the owner or owners of said property in any civil court of competent jurisdiction, in the manner provided by law.

SECTION V. LAND USE SAFETY ZONING

A. Safety Zones. In order to carry out the purpose of this FCM Zoning Ordinance, as set forth in Section I., the following Safety Zones are hereby established, subject to the safety zoning limits in Section VI.B.

- 1. Safety Zone A.** Designated land, the extents of which are shown in **Exhibit B**, within that portion of the Precision Instrument Approach Zone of Runway 10R and the Approach Zones of 10L-28R, 18-36, and 28L, beginning at, and coinciding with, the end of the Primary Surfaces for Runway 10R; and that starts at a width of 1,000 feet and extends outward a horizontal distance of 3,333 feet expanding uniformly to a width of 2,000 feet for Runway 28L; and that starts at a width of 1,000 feet extends outward a horizontal distance of 3,333 feet expanding uniformly to a width of 2,000 feet for Runway 10R; and that starts at a width of 500 feet and extends outward a horizontal distance of 2,600 feet expanding uniformly to a width of 1,280 feet for Runways 10L-28R; and that starts at a width of 500 feet and extends outward a horizontal distance of 1,793 feet expanding uniformly to a width of 1,038 feet for Runways 18-36. Safety Zone A overlies the Runway Protection Zones.
- 2. Safety Zone B.** Designated land, the extents of which are shown in **Exhibit C**, within that portion of the Precision Instrument Approach Zone of Runway 10R and Approach Zone of Runway 28L beginning at and coinciding with the Primary Surface of the Runway at a width of 1,000 feet, extending outward a distance of five thousand (5,000) feet and expanding uniformly to an ultimate width of two thousand five hundred (2,500) feet, less the area encompassing Safety Zone A; and designated land in that portion of the Approach Zone of Runway 10L-28R beginning at and coinciding with the Primary Surface of the Runway at a width of 500 feet, extending outward a distance of three thousand nine hundred (3,900) feet and expanding uniformly to an ultimate width of one thousand six hundred seventy (1,670) feet less the area encompassing Safety Zone A; and designated land in that portion of the Approach Zone of Runways 18-36 beginning at and coinciding with the end of the Primary Surface of the Runway at a width of 500 feet, extending outward a distance of two thousand six-hundred ninety one (2,691) feet and expanding uniformly to an ultimate width of one thousand three hundred seven (1,307) feet less the area encompassing Safety Zone A.

3. **Safety Zone C.** All land enclosed within the perimeter of the Horizontal Zone, except that land within Safety Zone A and Safety Zone B.

B. Land Use Restrictions.

1. **General Restrictions.** Subject at all times to the height restrictions set forth in Section IV.B., no use shall be made of any land in any of the Safety Zones that creates or causes interference with the operations of radio or electronic facilities on the Airport or with radio or electronic communications between Airport and aircraft, makes it difficult for pilots to distinguish between Airport lights and other lights, results in glare in the eyes of pilots using the Airport, impairs visibility in the vicinity of the Airport, is deemed a "hazard" to air navigation by FAA or MNDOT as part of an FAA 7460 Obstruction Evaluation, or otherwise endangers the landing, taking off, or maneuvering of aircraft.
2. **Safety Zone A Restrictions.** Subject at all times to the height restrictions set forth in Section IV.B. and to the general restrictions contained in Section V.B.1., areas designated as Safety Zone A for each end of Runways 10R-28L, 10L-28R, 18-36 shall contain no buildings, temporary structures, exposed transmission lines, or other similar land use structural hazards, and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include, but are not limited to, such uses as agriculture (seasonal crops), horticulture, raising of livestock, animal husbandry, wildlife habitat, light outdoor recreation (non-spectator), cemeteries, and auto parking. Where Safety Zone A overlies the Runway Protection Zone, land uses and Structures within the Runway Protection Zone will be governed by Federal laws and regulations or by FAA advisory circulars, orders, or guidance.
3. **Safety Zone B Restrictions.** Subject at all times to the height restrictions in Section IV.B. and to the general restrictions in Section V.B.1., areas designated as Safety Zone B shall be restricted in use as follows: Each use shall be on a site whose area shall not be less than three acres. Each use shall not create, attract, or bring together a site population that would exceed 15 times that of the site acreage. Each site shall have no more than one building plot upon which any number of Structures may be erected.

A building plot shall be single, uniform, and non-contrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

Site Area at Least (Acres)	But Less Than (Acres)	Ratio of Site area to Building Plot Area	Building Plot Area square feet	Maximum Site Population (15 Persons/A)
3		12:1	10,900	45
	4	12:1		
4		10:1	17,400	60
	6	10:1		
6		8:1	32,600	90
	10	8:1		
10		6:1	72,500	150
	20	6:1		
20	and up	4:1	218,000	300

The following uses are specifically prohibited in Safety Zone B: churches, hospitals, Schools, theaters, stadiums, hotels and motels, trailer courts, camp grounds, and other places of public or semipublic assembly, and ponds or other uses that might attract waterfowl or other birds such as putrescible waste disposal operations, wastewater treatment facilities and associated settling ponds, and dredge spoil containment areas; provided, however, the prohibition on ponds or other uses that might attract waterfowl or other birds shall not apply to areas below an elevation of eight hundred sixty five (865) feet above mean sea level along any Bluff of the Minnesota River.

- 4. Safety Zone C Restrictions.** No land use in Safety Zone C shall violate the height restrictions set forth in Section IV.B. or the general restrictions contained in Section V.B.1.

SECTION VI. AIRPORT ZONING LIMITS AND FCM ZONING MAP

- A. Airspace Zoning Limits.** No Airspace Zone shall extend more than two miles from the Airport Boundary under the Precision Instrument Approach Surfaces or more than one and one-half miles from the Airport Boundary outside the Precision Instrument Approach Surfaces. Exhibit D – Airport Boundary and Airspace Zoning Limits and Exhibit E – Airport Boundary and Airspace Contours, attached hereto and made a part hereof, show these limits.

- B. Safety Zoning Limits.** The Safety Zoning Limits shall not extend beyond one (1) mile from the airport boundary. Safety Zone B will define the extent of the zoning limits in areas where Safety Zone B extends beyond one (1) mile from the airport boundary. Exhibit F – Airport Boundary and Safety Zoning Limits, attached hereto and made a part hereof, shows these limits.
- C. FCM Zoning Map.** The locations and boundaries of the Airspace Surfaces, Airspace Zones, Safety Zones, and the Maximum Construction Heights without an Airport Zoning Permit established by this FCM Zoning Ordinance are set forth on the Flying Cloud Airport Zoning Map consisting of one-hundred and two (102) plates – Airspace Zones, Plates A-A1 to A-F6; Safety Zones, Plates SZ-A1 to SZ-F6; and Maximum Construction Heights Without Permit, Plates MCH-A1 to MCH-F6 prepared by the Metropolitan Airports Commission, attached hereto and made a part hereof. These plates, together with such amendments thereto as may from time to time be made, and all notations, references, elevations, heights, data, surface and zone boundaries, and other information thereon, shall be and the same are hereby adopted as part of this FCM Zoning Ordinance.

SECTION VII. NONCONFORMING USES

- A. FCM Zoning Ordinance.** The provisions of this FCM Zoning Ordinance shall not be construed to require the removal, lowering, other change, or alteration of any Structure, or otherwise interfere with the continuance of any Nonconforming Use in existence but not conforming to the provisions of this FCM Zoning Ordinance on the Effective Date. Nothing herein contained shall require any change in the construction, alteration, or intended use of any Structure, the construction or alteration of which was begun prior to the Effective Date, and was diligently prosecuted and completed within two (2) years of the Effective Date.

SECTION VIII. AIRPORT ZONING PERMITS

- A. Permit Required.** The following activities shall not take place on a Lot in any Airspace Zone or Safety Zone unless an Airport Zoning Permit shall have been granted therefore by the Zoning Administrator for the jurisdiction in which the Lot is located.
- 1. Existing Structures.** Except as specifically provided in Section VIII.B., no existing Structure shall be altered, changed, rebuilt, repaired, or replaced.

2. ***New Structures.*** Except as specifically provided in Section VIII.B., no Structure shall be newly constructed or otherwise established.
3. ***Nonconforming Structures.*** No nonconforming Structure shall be altered, changed, rebuilt, repaired, or replaced.
5. ***Nonconforming Use.*** No Nonconforming Use shall be changed or converted to another Nonconforming Use.

B. Exception To Permit Requirement.

1. ***Maximum Construction Height Without A Permit.*** No Airport Zoning Permit shall be required for an existing Structure to be altered, changed, rebuilt, repaired, or replaced on a Lot or for a new Structure to be constructed or otherwise established on a Lot, if the highest point on the Structure or on any equipment used to accomplish any of the foregoing activities, whichever is higher, measured in feet from curb level or from natural grade at a point ten (10) feet away from the front center of the Structure, whichever is lower, does not exceed the maximum construction height above ground without an Airport Zoning Permit shown for the Lot on the applicable Maximum Construction Heights Without Permit Plate in the FCM Zoning Map. The permitting process will require an FAA 7460 Obstruction Evaluation for all structures with proposed heights in excess of the maximum allowable construction height without a permit.
2. ***No Violation Of Height Or Land Use Restriction Permitted.*** Nothing in this Section VIII.B. shall be construed as permitting or intending to permit a violation or a greater violation of any provision of this FCM Zoning Ordinance.

C. Permit Application. An Airport Zoning Permit application for activities on a Lot shall be made in the manner and on the form established by the Zoning Administrator of the jurisdiction in which the Lot is located as designated in Section XI.B.

D. Permit Standard. An Airport Zoning Permit shall be granted unless the Zoning Administrator determines that granting the permit (1) would allow a conforming Structure or use to violate any provision of this FCM Zoning Ordinance or (2) would permit a nonconforming Structure or a Nonconforming Use to become a greater violation of any provision of this FCM Zoning Ordinance. Any Airport Zoning Permit granted may be granted subject to any reasonable conditions that the Zoning Administrator may deem necessary to

effectuate the purpose of this FCM Zoning Ordinance. In making any determination, the Zoning Administrator need not give public notice of, or hold a public hearing on, the Airport Zoning Permit application or the determination.

- E. Abandoned Or Deteriorated Nonconforming Uses.** Whenever a Zoning Administrator determines that a nonconforming Structure has been abandoned or more than eighty percent (80%) torn down, deteriorated, or decayed, no Airport Zoning Permit shall be granted that would allow such Structure to exceed the height restrictions of Section IV.B. or otherwise violate any provision of this FCM Zoning Ordinance. Whether application is made for an Airport Zoning Permit or not, a Zoning Administrator may order the owner of a nonconforming Structure, at the owner's expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this FCM Zoning Ordinance. Prior to issuing such an order, the city Zoning Administrator shall consult with the Metropolitan Airports Commission and obtain its consent to the proposed order. Further, prior to the issuance of any such order, the affected City and the Metropolitan Airports Commission shall enter into an agreement as to which party is responsible for issuance and enforcement of the order. In the event the owner of the nonconforming Structure shall neglect or refuse to comply with such order for ten (10) days after receipt of written notice of such order, the Zoning Administrator may, by appropriate legal action, proceed to have the nonconforming Structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the Structure is, or was, located. Unless such an assessment is paid within ninety (90) days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight percent (8%) per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes, all as authorized by Minnesota Statutes § 360.067.

SECTION IX. VARIANCES

- A. Variance Application.** Any Person desiring to construct or establish a new Structure; to alter, change, rebuild, repair, or replace an existing Structure, to allow a Tree to grow higher; to alter, repair, replace, or replant a Tree, or to use his or her property in violation of any provision of this FCM Zoning Ordinance may apply to the Board of Adjustment for a variance from such provision. A variance application shall be made by sending the application on the

form provided by the Board of Adjustment by certified United States Mail to (1) the members of the Board of Adjustment and (2) the Board of Adjustment at the mailing address specified in Section XII.C. The applicant shall also mail a copy of the application by regular United States Mail to the Zoning Administrator of the jurisdiction in which the Structure or property is located, as designated in Section XI.B. The Board of Adjustment may charge a fee for processing the application.

- B. Failure Of Board To Act.** If the Board of Adjustment fails to grant or deny the variance within four (4) months after the last Board member receives the variance application, the variance shall be deemed to be granted by the Board of Adjustment, but not yet effective. When the variance is granted by reason of the failure of the Board of Adjustment to act on the variance, the Person receiving the variance shall send notice that the variance has been granted by certified United States Mail to (1) the Board of Adjustment at the mailing address specified in Section XII.C. and (2) the Commissioner. The applicant shall include a copy of the original application for the variance with the notice to the Commissioner. The variance shall be effective sixty (60) days after this notice is received by the Commissioner, subject to any action taken by the Commissioner pursuant to Minnesota Statutes § 360.063, subd. 6.a.
- C. Variance Standard.** A variance shall be granted where it is found that a literal application or enforcement of the provisions of this FCM Zoning Ordinance would result in practical difficulty or unnecessary hardship and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this FCM Zoning Ordinance and Minnesota Statutes Chapter 360. Any variance granted may be granted subject to any reasonable conditions that the Board of Adjustment, or the Commissioner acting under Section IX.B., may deem necessary to effectuate the purpose of this FCM Zoning Ordinance.

SECTION X. HAZARD MARKING AND LIGHTING

- A. Nonconforming Uses.** The Metropolitan Airports Commission may require the owner of any nonconforming Structure to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Metropolitan Airports Commission 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 Metropolitan Airports Commission.

- B. Permits And Variances.** Any Airport Zoning Permit or variance granted by a Zoning Administrator or the Board of Adjustment may, if such action is deemed advisable to effectuate the purpose of this FCM Zoning Ordinance and be reasonable in the circumstances, be granted subject to a condition that the owner of the Structure in question, at the owner's expense, install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an Airport Hazard.

SECTION XI. ZONING ADMINISTRATOR

- A. Duties.** It shall be the duty of each Zoning Administrator to administer and enforce the provisions of this FCM Zoning Ordinance. Applications for Airport Zoning Permits shall be made to a Zoning Administrator as provided herein. A Zoning Administrator may charge a fee for processing the application. Airport Zoning Permit applications shall be considered and acted upon by the Zoning Administrator in accordance with the provisions of this FCM Zoning Ordinance and within the timelines established by Minnesota Statutes § 15.99, as it may be amended. The Zoning Administrator shall remind each applicant that it is the responsibility of the applicant to record any conditions of an Airport Zoning Permit, if required by law.
- B. Designated Zoning Administrators.** For the purpose of this FCM Zoning Ordinance, the Zoning Administrator shall be the official entitled as follows: the Eden Prairie Zoning Administrator for lands located in the City of Eden Prairie; the Shakopee Zoning Administrator for lands located in the City of Shakopee; and the Chanhassen Zoning Administrator for lands located in the City of Chanhassen. In the event that one (1) or more of the above described Zoning Administrators does not administer this FCM Zoning Ordinance, the Flying Cloud Airport Joint Airport Zoning Board hereby appoints the Executive Director, Metropolitan Airports Commission, (or his or her designee) to administer this FCM Zoning Ordinance in the municipality or municipalities. If any official position designated above as a Zoning Administrator ceases to exist or to perform or serve its present function, the successor position as designated by the applicable entity shall become the Zoning Administrator for that entity and shall perform or serve such functions.

SECTION XII. BOARD OF ADJUSTMENT

- A. Establishment Of Board And Selection Of Chair.** There is hereby established a Board of Adjustment that shall consist of five (5) members appointed by the Metropolitan Airports Commission, and each shall serve for a term of three (3) years and until a successor is duly appointed and qualified. Of the members first appointed, one (1) shall be appointed for a term of one (1) year, two (2) for a term of two (2) years, and two (2) for a term of three (3) years. Upon their appointment, the members shall select a chair to act at the pleasure of the Board of Adjustment. Members shall be removable by the Metropolitan Airports Commission for cause, upon written charges, after a public hearing.
- B. Board Powers.** The Board of Adjustment shall have the power to hear and decide appeals from any order, requirement, decision, or determination made by any Zoning Administrator or the Metropolitan Airports Commission's Executive Director in the enforcement of this FCM Zoning Ordinance and to hear and grant or deny variances.
- C. Board Procedures.**
- 1. Rules, Meetings, And Records.** The Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this FCM Zoning Ordinance. Meetings of the Board of Adjustment shall be held at the call of the chair and at such other times as the Board of Adjustment may determine. The chair, or in his or her absence the acting chair, may administer oaths and compel the attendance of witnesses. All hearings of the Board of Adjustment shall be public. The Board of Adjustment 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 offices of the Executive Director, Metropolitan Airports Commission, and the Zoning Administrator of the jurisdiction in which the affected Structure or Lot is located.
 - 2. Written Findings And Conclusions.** The Board of Adjustment shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in affirming, modifying, or reversing an order, requirement, decision, or determination of a Zoning Administrator or the Metropolitan Airports Commission's Executive Director and in granting or denying a variance.

3. *Majority Vote Required.* The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to affirm, modify, or reverse an order, requirement, decision, or determination of a Zoning Administrator or the Metropolitan Airports Commission's Executive Director, to decide to grant or deny a variance, or to act on any other matter upon which the Board of Adjustment is required to pass under this FCM Zoning Ordinance.

4. *Mailing Address.* The mailing address for the Board of Adjustment is:

FCM Zoning Ordinance Board of Adjustment
c/o Executive Director
Metropolitan Airports Commission
6040 28th Avenue South
Minneapolis, MN 55450

SECTION XIII. APPEALS

- A. *Who May Appeal.*** Any Person aggrieved, or any taxpayer affected by any order, requirement, decision, or determination of a Zoning Administrator made in administration of this FCM Zoning Ordinance may appeal to the Board of Adjustment. Such appeals may also be made by any governing body of a municipality or county, or any joint airport zoning board, which is of the opinion that an order, requirement, decision, or determination of a Zoning Administrator is an improper application of this FCM Zoning Ordinance as it concerns such governing body or board.
- B. *Commencement Of Appeals.*** All appeals hereunder must be commenced within thirty (30) days of a Zoning Administrator's decision by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment the notice of appeal and all papers constituting the record upon which the order, requirement, decision, or determination appealed from was taken.
- C. *Stay Of Proceedings.*** An appeal shall stay all proceedings in furtherance of the order, requirement, decision, or determination appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in the Zoning Administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be

stayed except by order of the Board of Adjustment on notice to the Zoning Administrator and on due cause shown.

D. Appeal Procedures. The Board of Adjustment shall fix a reasonable time for hearing an appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in Person, by agent, or by attorney.

E. Decision. The Board of Adjustment may, in conformity with the provisions of this FCM Zoning Ordinance, affirm or reverse, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination, as may be appropriate under the circumstances and, to that end, shall have all the powers of a Zoning Administrator.

SECTION XIV. JUDICIAL REVIEW

Any Person aggrieved, or any taxpayer affected by, any decision of the Board of Adjustment or any action of the Commissioner, or any governing body of a municipality or county, or any joint airport zoning board, which is of the opinion that an order, requirement, decision, or determination of the Board of Adjustment or action of the Commissioner is illegal, may seek judicial review as provided in Minnesota Statutes § 360.072. The petitioner must exhaust the remedies provided in this FCM Zoning Ordinance before availing himself or herself of the right to seek judicial review as provided by this Section XIV.

SECTION XV. PENALTIES AND OTHER REMEDIES

Every Person who violates any provision of this FCM Zoning Ordinance, any zoning approval granted hereunder, any condition of any zoning approval granted hereunder, or any order, requirement, decision, or determination of a Zoning Administrator or the Board of Adjustment shall be guilty of a misdemeanor and shall be punished by a fine, imprisonment, or both of not more than the fine and imprisonment established for misdemeanors by state law. Each day a violation continues to exist shall constitute a separate offense for purpose of the penalties and remedies specified in this section. This FCM Zoning Ordinance may also be enforced through such proceedings for injunctive relief and other relief as may be proper under Minnesota Statutes § 360.073, as it may be amended, and other applicable law.

SECTION XVI. RELATION TO OTHER LAWS, REGULATIONS, AND RULES

- A. Compliance Required.** In addition to the requirements of this FCM Zoning Ordinance, all Structures, Trees, and uses shall comply with all other applicable city, local, regional, state, or federal laws, regulations, and rules, including Minnesota Statutes §§ 360.81-360.91 – Regulation Of Structure Heights, Minnesota Rules 8800.1100 – Regulation Of Structure Heights, and 14 Code of Federal Regulations Part 77 – Objects Affecting Navigable Airspace.
- B. Conflicts With Other Regulations.** Where a conflict exists between any provision of this FCM Zoning Ordinance and any city, local, regional, state, or federal law, regulation, or rule applicable to the same area, whether the conflict be with respect to the height of Structures or Trees, the use of land, or any other matter, the more stringent law, regulation, or rule shall govern and prevail.
- C. Current Versions And Citations.** All references to city, local, regional, state, and federal laws, regulations, and rules in this FCM Zoning Ordinance are intended to refer to the most current version and citation. If such references are no longer valid due to repeal or renumbering, the new laws, regulations, or rules intended to replace those cited, regardless of the citation, shall govern.

SECTION XVII. SEVERABILITY

- A. Effect Of Taking.** In any case in which the provisions of this FCM Zoning Ordinance, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular Structure, Lot, or Tree to such an extent, or to be so onerous in their application to such a Structure, Lot, or Tree, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of this FCM Zoning Ordinance as to other Structures, Lots, and Trees, and, to this end, the provisions of this FCM Zoning Ordinance are declared to be severable.
- B. Validity Of Remaining Provisions.** Should any section or provision of this FCM Zoning Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this FCM Zoning Ordinance as a whole or any part thereof other than the parts so declared to be unconstitutional or invalid.

SECTION XVIII. EFFECTIVE DATE

This FCM Zoning Ordinance shall take effect on the 1st day of May, 2019. Copies thereof shall be filed with the Commissioner and the Registers of Deeds for Hennepin County, Minnesota.

Passed and adopted after public hearings by the Flying Cloud Airport Joint Airport Zoning Board this 10th day of April, 2019.

I hereby certify that this is a complete, true, and correct copy of the *Flying Cloud Airport Zoning Ordinance* as adopted by the Flying Cloud Airport Joint Airport Zoning Board on April 10, 2019.



Brad Aho, Chair
Flying Cloud Airport Joint Airport Zoning Board

Date: April 10, 2019



Kristin Berwald, Secretary
Flying Cloud Airport Joint Airport Zoning Board

Date: April 10, 2019

Subscribed and sworn to before me this 10th day of April, 2019 by Brad Aho and Kristin Berwald, Chair and Secretary respectively, of the Flying Cloud Airport Joint Airport Zoning Board.



Notary Public

