

ORDINANCE NO. 383

AMENDING CHAPTER 4,
ARTICLE III

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE III, OF THE CODE OF THE CITY OF CHARLOTTE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE DOUGLAS MUNICIPAL AIRPORT

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina:

Section 1. Chapter 4, Article III, of the Code of the City of Charlotte is hereby amended by rewriting the entire Article to read as follows:

"Section 4-17. TITLE. This ordinance shall be known and may be cited as 'Douglas Municipal Airport Zoning Ordinance.'

"Section 4-18. AUTHORITY. This ordinance is adopted pursuant to the authority conferred by Chapter 63, Article 4, of the General Statutes of North Carolina. It is hereby found that an airport hazard endangers the lives and property of users of Douglas Municipal Airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of Douglas Municipal Airport and the public investment therein. Accordingly, it is declared: (1) that the creation or establishment of an airport hazard is a public nuisance and an injury to the region served by Douglas Municipal Airport; (2) that it is necessary in the interest of the public health, public safety and general welfare that the creation or establishment of airport hazards be prevented, and; (3) that the prevention of these hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or interests in land.

"Section 4-19. DEFINITIONS. As used in this Ordinance, unless the context otherwise requires:

- (a) AIRPORT - Means Douglas Municipal Airport.
- (b) AIRPORT ELEVATION - Means the established elevation of the highest point on the usable landing area.
- (c) AIRPORT HAZARD - Means any structure, tree or use of land which obstructs the airspace required for or is otherwise hazardous to the flight of aircraft in landing or taking-off at the airport.
- (d) AIRPORT REFERENCE POINT - Means the point established as the approximate geographic center of the airport landing area and so designated.
- (e) BOARD OF ADJUSTMENT - Means a board consisting of ten members appointed by the City Council of the City of Charlotte, North Carolina, and the Board of Commissioners of Mecklenburg County, North Carolina, as provided in General Statutes 63-33.
- (f) HEIGHT - For the purpose of determining the height limits in all zones set forth in this ordinance and shown on the zoning map; the datum shall be mean sea level elevation unless otherwise specified.
- (g) RUNWAY - Means that paved area designated for the landing and taking-off of aircraft.
- (h) LANDING AREA - Means the area of the airport used for the landing, taking-off or taxiing of aircraft.
- (i) NON-CONFORMING USE - Means any structure, tree, or use of land which is lawfully in existence at the time of the adoption of the ordinance or of an amendment thereto, and which does not then meet the requirements of said ordinance or amendment.
- (j) PERSON - Means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.
- (k) STRUCTURE - Means an object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.
- (l) TREE - Means any object of natural growth.

-3-

"Section 4-20. ZONES. In order to carry out the provisions of this ordinance, there are hereby created and established certain zones which include all of the land lying within the Approach Zones, Transition Zones, Horizontal Zone and Conical Zone. Such areas and zones are shown on Douglas Municipal Airport Zoning Map consisting of one sheets, prepared by John Talbert & Associates, Inc., and dated August 24, 1965, which is attached to this ordinance and made a part thereof. The various zones are hereby established and defined as follows:

- (a) **APPROACH ZONES** - Approach Zones are established at each end of the runways for landings and take-offs. The land area covered by the approach zones shall be as follows: The approach zones shall have a length of 50,000 feet beginning at a point 200 feet outward from the end of each runway and extending outward, ending at a point 50,200 feet from the end of the runway on the extended center line of the runway. The width of each approach zone shall be 1,000 feet at a distance of 200 feet from the end of the runway, widening thereafter uniformly to a width of 16,000 feet at a distance of 50,200 feet beyond each end of the runway.
- (b) **TRANSITION ZONES** - Transition Zones are hereby established adjacent to and symmetrically located on both sides of runways and on both sides of approach zones as indicated on the map attached hereto. The land area covered by the transition zones shall be as follows:
 - (1) Transition Zones Adjacent to Runways - The length of the transition zone adjacent to each runway shall be equal to the length of the center line of each runway which it adjoins plus 200 feet at each end measured outwardly along the runway center line extended. The width of these transition zones shall be 1,050 feet with one side extending along a line which is parallel to, level with, and 500 feet in horizontal distance from the center line of the runway and the other side extending along a line which is parallel to, level with and 1,550 feet from the center line of the runway.
 - (2) Transition Zones Adjacent to Approach Zones - The length of the transition zones adjacent to each approach zone shall be 50,000 feet measured outward along the runway center line extended from a point 200 feet outward from the end of the runway to a point 50,200 feet outward from the end of the runway. The width of these transition zones varies as shown

on the map attached hereto. One side shall extend along the side line of the adjoining approach zone (as described in /a/ above) and the other side shall extend along a line connecting the points on the ground which are normal to the points at which the surfaces of the transition zones (as described in 4-21 /b/ below) project through the surfaces of the horizontal and conical zones (as described in 4-21 /d/ below), and for the distance beyond which the transition surfaces project through the conical surfaces the side shall extend along a line which is 5,000 feet from the side line of the approach zones.

- (c) HORIZONTAL ZONE - A horizontal zone is hereby established to include that area within a circle whose center is the Airport Reference Point and whose radius is 11,500 feet. Provided, however, the approach zones and the transition zones included within the area of that circle are not included in the horizontal zone.
- (d) CONICAL ZONE - A conical zone is hereby established to include that area within a ring, 7,000 feet wide, around the horizontal zone, measured from the periphery of the horizontal zone; provided, however, the approach zones and the transition zones included within the area of that ring are not included in the conical zone.

"Section 4-21. HEIGHT LIMITATIONS. Except as otherwise provided in this Ordinance, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this Ordinance, to a height which projects above the imaginary surface of any such zone. The imaginary surfaces of the zones created by this Ordinance are established as follows:

- (a) APPROACH ZONES - The Approach Zone surface is an inclined plane located directly above the approach zone area. The slope of the approach surface is one (1) foot in height for each fifty (50) feet in horizontal distance beginning at a point 200 feet from and at the elevation of the end of the runway and extending to a distance of 10,200 feet from the end of the runway; thence one (1) foot in height for each forty (40) feet in horizontal distance to a point 50,200 feet from the end of the runway.
- (b) TRANSITION ZONES - The Transition Zones surface is an inclined plane located directly above the transition zone area. The slope of the transition surface is one (1) foot in height for each seven (7) feet in horizontal distance measured upward and outward in a vertical plane at right angles to the center line of the runway. The surface of that part of the transition zone which is adjacent to a runway, (as described in 4-20 /b/, /1/ above), slopes upward and outward from

-5-

the side line which is 500 feet in horizontal distance from the center line of the runway until it projects through the surface of horizontal zone. The surface of that part of the transition zone which is adjacent to an approach zone (as described in 4-20 /a/ above), slopes upward and outward from the edge of the Approach Zone surface until it projects through the surface of either the horizontal zone or the conical zone. For that part of the transition zone which extends beyond the periphery of the conical zone, the surface shall slope upward and outward from the edge of the approach zone for a horizontal distance of 5,000 feet.

- (c) HORIZONTAL ZONE - The Horizontal Zone surface is a level surface located directly above the horizontal zone at a height of one hundred fifty (150) feet above the airport elevation or a height of 898 feet above mean sea level.
- (d) CONICAL ZONE - The Conical Zone surface is a surface located directly above the Conical Zone Area. The slope of the conical zone surface is one (1) foot in height for each twenty (20) feet of horizontal distance measured upward and outward from the periphery of the horizontal zone surface, and extending to a height of 1,248 feet above the airport elevation.

"Where an area is covered by more than one (1) height limitation, the more restrictive limitations shall prevail.

"Nothing in this Ordinance shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to 40 feet above the surface of the land.

"Section 4-22. USE RESTRICTIONS. Notwithstanding any other provisions of this Ordinance, no use may be made of land within any zone established by this Ordinance in such a manner as to create electrical interference with radio communication between the Airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the Airport, impair visibility in the vicinity of the Airport or otherwise endanger the landing, taking-off, or maneuvering of aircraft.

"Section 4-23. NON-CONFORMING USES. Except as provided in Section 4-24 /b/ below, the height limitations set forth in Section 4-21 of this ordinance shall not be applicable in the following instances.

- (a) Trees may be allowed to grow and structures may be constructed and maintained to a height up to 40 feet above the surface of the land.

(b) Existing trees or structures which do not comply with the height limitations established in Section 4-21 on the effective date of this ordinance or amendment thereto, but which do comply with the Airport Zoning Ordinance in effect prior to the adoption of this ordinance, shall be allowed to remain as non-conforming uses. The provisions of Section 4-21 shall not be construed to require the removal, lowering or other change or alteration of any such tree or structure.

(c) Structures which are under construction or alteration prior to the effective date of this ordinance or amendment and whose construction or alteration is diligently prosecuted.

"The owner of any tree or structure which falls into one of the categories specified above, is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the City of Charlotte 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 City of Charlotte.

"Section 4-24. PERMITS. Except as provided in Section 4-24(f) below, application for a permit must be made to and a permit obtained from the Superintendent of Building Inspection of the City of Charlotte before any material change may be made in the use of land or before any structure or tree may be erected, altered, planted, replaced, repaired or substantially changed. Each application shall indicate the purpose for which the permit is desired, with sufficient particularity to enable the Superintendent of Building Inspection to determine whether the resulting use, structure or tree would conform to the regulations herein prescribed.

(a) Future Uses - A permit shall be issued if it is determined that the proposed future use, structure or tree will conform to the requirements of the regulations herein prescribed. A permit shall not be issued if it is determined that the proposed future use, structure or tree fails to conform to the requirements of the regulations herein prescribed.

(b) Existing Uses - A permit shall be issued if it is determined that the proposed alteration, repair, replacement, rebuilding, replanting or growth of a non-conforming structure or tree will not cause or allow such structure or tree to be made higher or to become a greater hazard to air navigation than it was on the effective date of this ordinance or amendments thereto. A permit shall not be issued if it is determined that the proposed alteration, repair, replacement, rebuilding, replanting or growth of a non-conforming structure or tree will cause or allow such structure or tree to be made or become higher, or become a greater hazard to air

navigation, than it was on the effective date of this ordinance or any amendments thereto.

(c) Abandoned or Destroyed Non-Conforming Uses - Whenever the Superintendent of Building Inspection determines that a non-conforming structure or tree has been abandoned or more than eighty per cent torn down, destroyed, deteriorated, or decayed, he shall not issue a permit that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations prescribed herein. Whether or not an application for a permit is made under this section, the Superintendent may by appropriate action compel the owner of such non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such structure or tree as may be necessary to conform to the regulations or, if the owner of such non-conforming structure or tree shall neglect or refuse to comply with such order for ten days after notice thereof, the Superintendent may proceed to have the object lowered, removed, reconstructed, or equipped.

(d) Variances - Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this ordinance, may apply to the Board of Adjustment for a variance from such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but will do substantial justice and be in accordance with the spirit of this ordinance.

(e) Hazard Marking and Lighting - Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the City of Charlotte at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

(f) No permit shall be required for the erection, alteration, construction, reconstruction, planting, replacing, repairing or changing of any structure or tree having a height of 40 feet or less, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed above in Section 4-21.

"Section 4-25. ENFORCEMENT. It shall be the duty of the Superintendent of Building Inspection of the City of Charlotte, North Carolina, to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Superintendent of Building Inspection upon a form furnished by him. Applications required by this Ordinance to be submitted to the Superintendent of Building Inspection shall be promptly considered and granted or denied by him. Applications for action by the Board of Adjustment shall be forthwith transmitted by the Superintendent of Building Inspection.

"Section 4-26. BOARD OF ADJUSTMENT.

(a) The Zoning Board of Adjustment for the City of Charlotte, and Charlotte Perimeter is hereby designated to have and exercise the following powers:

to hear and decide appeals from any order, requirement, decision, or determination made by the Superintendent of Building Inspection in the enforcement of this ordinance; (2) to hear and decide special exceptions to the terms of this ordinance upon which such Board of Adjustment under such regulations may be required to pass; (3) to hear and decide specific variances.

(b) The Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. The Chairman, or in his absence the acting chairman, 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 office of the Superintendent of Building Inspection and shall be a public record.

(c) 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 reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this ordinance.

(d) The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the Superintendent of Building Inspection or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in this ordinance.

"Section 4-27. APPEALS.

(a) Any person aggrieved, or any taxpayer affected, by any decision of the Superintendent of Building Inspection made in his administration of this ordinance, if of the opinion that a decision of the Superintendent of Building Inspection is an improper application of these regulations, may appeal to the Board of Adjustment.

(b) All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Adjustment, by filing with the Superintendent of Building Inspection a notice of appeal specifying the grounds thereof. The Superintendent of Building Inspection shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Superintendent of Building Inspection 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 his 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 agency from which the appeal is taken and on due cause shown.

(d) The Board of Adjustment shall fix a reasonable time for hearing appeals, 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.

-9-

(e) The Board of Adjustment may, in conformity with the provisions of this ordinance, reverse or affirm, 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.

"Section 4-28. JUDICIAL REVIEW. Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the Superior Court of Mecklenburg County, North Carolina, as provided in Article 4 of Chapter 63 of the General Statutes of North Carolina.

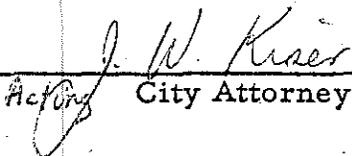
"Section 4-29. PENALTIES. Each violation of this ordinance or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and be punishable by a fine of not more than fifty (\$50) dollars or imprisonment for not more than thirty (30) days or both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense.

"Section 4-30. CONFLICTING REGULATIONS. Where there exists a conflict between any of the regulations or limitations prescribed in this ordinance and any other regulations 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 limitation or requirement shall govern and prevail.

"Section 4-31. SEVERABILITY. If any of the provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable."

Section 2. This Ordinance shall become effective upon its adoption.

Approved as to form:


Acting City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in meeting on the 11th day of October, 1965, the reference having been made in Minute Book 46, beginning at Page 92, and recorded in full in Ordinance Book 14, beginning at Page 213.

Lillian R. Hoffman
City Clerk