

ZONING ORDINANCE TO LIMIT HEIGHT OF OBJECTS AROUND THE MORIARTY MUNICIPAL AIRPORT.

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 MORIARTY MUNICIPAL 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 USED HEREIN; REFERRING TO THE "PART 77 AIRSPACE PLAN" WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF ADJUSTMENT; AND IMPOSING PENALTIES.

This Ordinance is adopted pursuant to the authority conferred by Sections 3-39-16 to 3-39-26 and 64-2-1 and 64-202, NMSA 1978, ADD., Page 1. It is hereby found that an obstruction as defined herein has a potential for endangering the lives and property of users of the Moriarty Municipal Airport, and property or occupants of land in the vicinity of the airport; and that such an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Moriarty Municipal Airport and the public investment therein. Accordingly, it is declared:

- (1) that the creation or establishment of such an obstruction has the potential of being a public nuisance and may injure the region served by the Moriarty 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 obstructions that are hazardous to air navigation be prevented; and
- (3) that the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of police power without compensation.

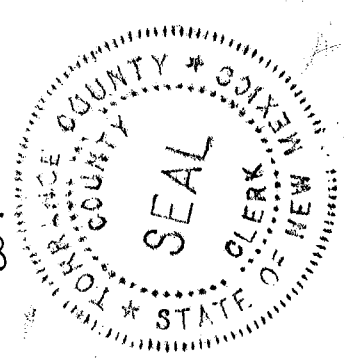
It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF MORIARTY, NEW MEXICO AND THE COUNTY COMMISSION OF TORRANCE COUNTY, NEW MEXICO:

STATE OF NEW MEXICO
County of Torrance

I hereby certify that this instrument was filed for record on the 27 day of April A.D. 19 95 at 8:24 o'clock A M. and duly recorded in book 211 at page 1639-1648

Witness my hand and Seal of office
Carla Clayton
County Clerk Torrance Co., N.M.
[Signature]



Section I: Short Title.

This Ordinance shall be known and may be cited as the "Moriarty Municipal Airport Height Zoning Ordinance."

Section II: Definitions.

As used in this Ordinance, unless the context otherwise requires:

1. *Airport* means the Moriarty Municipal Airport.
2. *Airport elevation* - The established elevation of the highest point on the usable landing area, i. e. 6,201 feet MSL.
3. *Approach surface* - A surface centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section IV of this Ordinance. In plan the perimeters of the approach surfaces coincides with the perimeters of the approach zones.
4. *Approach, transitional, horizontal, and conical zones* - These zones are as described in Section III of this Ordinance.
5. *City Council* - The elected Governing Body of City of Moriarty.
6. *Conical surface* - A surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.
7. *Hazard to air navigation* - An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
8. *Height* - For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the airspace map, the datum shall be the National Geodetic Vertical Datum of 1929 unless otherwise specified.
9. *Horizontal surface* - A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
10. *Larger than utility runway* - A runway that is constructed for and intended to be used by propeller aircraft of greater than 12,500 pounds maximum gross takeoff weight and jet powered aircraft.
11. *Nonconforming use* - Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.
12. *Nonprecision instrument runway* - A runway having an existing or planned straight-in instrument approach procedure, but which has no existing or planned precision instrument approach procedure.

13. *Obstruction* - Any structure, growth, or other object, including mobile objects, which exceeds a limiting height set forth in Section IV of this Ordinance.
14. *Person* - An individual, firm, partnership, corporation, company, association, joint stock association, or government entity; also includes a trustee, receiver, assignee, or any similar representative of any of these.
15. *Precision instrument runway* - A runway having an existing precision instrument approach procedure utilizing an Instrument Landing System (ILS), Precision Approach Radar (PAR), or other precision approach systems approved by the Federal Aviation Administration. 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 approved by the FAA.
16. *Primary surface* - A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the nearest point on the runway centerline. The width of the primary surface is set forth in Section III of this Ordinance.
17. *Runway* - A defined area on an airport prepared for landing and takeoff of aircraft along its length.
18. *Structure* - An object, including mobile objects, constructed or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formations, and overhead power transmission lines.
19. *Transitional surfaces* - These surfaces extend outward at right angles to the runway centerline, and the runway centerline extended, at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the approach surfaces to where they intersect the horizontal surface.
20. *Tree* - Any object of natural growth.
21. *Utility runway* - A runway that is constructed for and intended to be used only by propeller driven aircraft of 12,500 pounds or less maximum gross takeoff weight.
22. *Visual runway* - A runway intended solely for the operation of aircraft using visual approach procedures.

Section III: Airport 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 beneath the approach surfaces, transitional surfaces, horizontal surface, and conical surface as they apply to the Moriarty Municipal Airport. These surfaces are shown on the Moriarty Municipal Airport Part 77 Airspace Plan, consisting of two sheets of drawings prepared by Molzen-Corbin & Associates and dated September 1993, which are attached to this Ordinance and made a part hereof. An area located in more than one of the following zones shall be considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

1. **Runway 12-30 Approach Zones** (Runway larger than utility, visual approach). The inner edges of these zones coincide with the ends of the Runway 12-30 primary surface which is 500 feet wide. The approach zones expand uniformly outward to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. The zones are centered on and symmetrical about the extended runway centerline.
2. **Runway 8-26 Approach Zones** (Runway larger than utility, nonprecision approach, visibility minimums greater than 3/4 mile). The inner edges of these zones coincide with the ends of the Runway 8-26 primary surface which is 500 feet wide. The approach zones expand uniformly outward to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. The zones are centered on and symmetrical about the extended runway centerline.
3. **Transitional Zones.** The transitional zones are the areas beneath the transitional surfaces.
4. **Horizontal Zone.** The horizontal zone is established arcs of 10,000 feet radii from the center of each end of the Runway 8-26 primary surface and connecting the adjacent arcs by drawing tangents to those arcs. The horizontal zone does not include the approach and transitional zones.
5. **Conical Zone.** The conical zone is established as the area that begins at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of 4,000 feet.

Section IV: Airport Zone Height Limitations.

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no trees shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height established herein for such zone. The applicable height limitations are hereby established for each of the zones as follows:

1. **Runway 12-30 Approach Zones** (Runway larger than utility, visual approach). Slopes twenty (20) feet outward for each foot upward beginning at each end of the Runway 12-30 primary surface, at the elevation of the primary surface at that end, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
2. **Runway 8-26 Approach Zones** (Runway larger than utility, nonprecision approach, visibility minimums greater than 3/4 mile). Slopes thirty-four (34) feet outward for each foot upward beginning at each end of the Runway 8-26 primary surface, at the elevation of the primary surface at that end, and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
3. **Transitional Zones.** The transitional zones slope seven (7) feet outward for each foot upward, beginning at the sides of and at the same elevations as the primary surfaces and the approach surfaces, and extend to where they intersect with the horizontal zone at 6,351 feet above mean sea level.
4. **Horizontal Zone.** The horizontal zone is established at 150 feet above the airport elevation, or at 6,351 feet above mean sea level.
5. **Conical Zone.** The conical zone slopes twenty (20) feet outward for each foot upward, beginning at the periphery of the horizontal zone at 150 feet above the airport elevation, and extends upward to a height of 350 feet above the airport elevation, or to 6,551 feet above mean sea level.
6. **Excepted Height Limitations.** Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, up to a height of 50 feet above the natural surface of the land.

Section V: Use Restriction

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird-strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

Section VI: Nonconforming Uses

1. **Regulations not Retroactive.** The regulations prescribed in this Ordinance 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 Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.
2. **Marking and Lighting.** Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Federal Aviation Administration to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Moriarty.

Section VII: Permits

1. **Future Uses.** Except as specifically provided in paragraphs (a) and (b) hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no trees shall be planted in any zone hereby created unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired with sufficient particularity to allow it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section VII, Paragraph 4 hereunder.

- (a) In the area lying within the limits of the horizontal zone and the conical zone, no permit shall be required for any tree or structure less than seventy-five (75) feet in height above the natural ground level, except when because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for these zones.
- (b) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the respective runways, no permit shall be required for any tree or structure less than seventy-five (75) feet above the natural ground level, except when such tree or structure would extend above the height limit prescribed for the respective approach zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in Section IV, Paragraph 6 above.

2. **Existing Uses.** No permit shall be granted that would allow the establishment or creation of an obstruction, or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance, or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
3. **Nonconforming Uses Abandoned or Destroyed.** Whenever the Zoning Enforcement Officer, determines that a nonconforming tree or structure has been abandoned or more than 80% torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit, or otherwise deviate from the zoning regulations.
4. **Variances.** Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the City Council for a variance from such regulations. The application for a variance shall be accompanied by a determination by the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and 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 spirit of this Ordinance. Additionally, no application for variance to the requirements of this Ordinance may be considered by the City Council unless a copy of the application has been furnished to the Federal Aviation Administration for advice as to the aeronautical effects of the variance. If the Federal Aviation Administration does not respond to the application within fifteen (15) days after receipt, the City Council may act on its own to grant or deny said application.

5. ***Obstruction 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 install, operate, and maintain at the owner's expense such markings and lights as may be deemed necessary by the appropriate agency charged with the responsibility for determining the necessity for marking and lighting to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. If deemed proper by the City Council, this condition may be modified to require the owner to allow the City of Moriarty, at its own expense, to install, operate, and maintain the necessary markings and lights.

Section VIII: Enforcement

It shall be the duty of The Zoning Enforcement Officer to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Office of City Clerk on a form published for that purpose. Applications required by this Ordinance to be submitted to City Clerk shall be promptly considered and granted or denied. Application for action by the City Council shall be forthwith transmitted by the City Clerk.

Section IX: Appeals

1. Any person aggrieved, or any taxpayer affected, by any decision of the Zoning Enforcement Official made in the administration of this Ordinance, may appeal to the City Council.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the City Council, by filing with the City Clerk a notice of appeal specifying the grounds thereof. The City Clerk shall forthwith transmit to the City Council all the documents constituting the record upon which the action appealed from was taken.
3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Enforcement Official certifies to the City Council, after notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in the opinion of the Zoning Enforcement Officer, cause imminent peril to life or property. In such case proceedings shall not be stayed except by order of the City Council on notice to the Zoning Enforcement Official and on due cause shown.
4. The City Council 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.
5. The City Council 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 as may be appropriate under the circumstances.

Section X: Judicial Review

Any person aggrieved or any taxpayer affected by any decision of the City Council may appeal to the Court of Appeals as provided in Rule 12-601 of The Rules of Appellate Procedure of the Public Laws of New Mexico..

Section XI: Penalties

Each violation of this Ordinance or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and shall be punishable by a fine of not more than \$500.00 dollars, or imprisonment for not more than 180 days, or both; and each day a violation continues to exist shall constitute a separate offense.

Section XII: 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 or the use of land, the more stringent limitation or requirement shall govern and prevail.

Section XIII: Severability

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are 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 XV: Effective Date

WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public health, public safety, and general welfare, an EMERGENCY is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the _____ and publication and posting as required by law.

Adopted by the County Commission this 26 day of April, 1995.

TORRANCE COUNTY BOARD OF COMMISSIONERS

Bill Rull
Chairman

Rodger Ramon
Member

Roy Spenn
Member

ATTEST:

Carla Clayton
Clerk of the Board

