

A DRAFT ZONING ORDINANCE FOR THE BERLIN REGIONAL AIRPORT LOCATED IN THE TOWN OF MILAN, NEW HAMPSHIRE

The following political subdivisions fall within the Airspace Surfaces of the Berlin Regional Airport.

- Town of Milan, NH
- Town of Dummer, NH
- Town of Cambridge, NH

*Note that the City of Berlin holds administrative authority over Berlin Regional Airport, but the Airport is located wholly within the Town Milan, NH. No Airspace Surfaces exist within the City of Berlin's political boundaries. Refer to the Berlin Regional Airport Zoning Map for more detail.

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 BERLIN REGIONAL 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 BERLIN REGIONAL AIRPORT ZONING MAP WHICH IS INCORPORATED 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 the New Hampshire Revised Statutes Annotated (RSA) §424.5. It is hereby found that an obstruction has the potential for endangering the lives and property of users of Berlin Regional Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of Berlin Regional Airport; and that 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 Berlin Regional Airport and the public investment therein. Accordingly, it is declared:

1. that the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Berlin Regional 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 a hazard 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 the police power without just 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 the 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 Choose an item. as follows:

SECTION I: SHORT TITLE

This Ordinance shall be known and may be cited as the Berlin Regional Airport Zoning Ordinance.

SECTION II: DEFINITIONS

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

1. AIRPORT – Berlin Regional Airport, located 7 miles from Berlin, NH in the Town of Milan, NH
2. AIRPORT ELEVATION – The highest point of an airport’s usable landing area measured in feet from sea level.
3. APPROACH SURFACE – A surface longitudinally 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 perimeter of the approach surface coincides with the perimeter of the approach zone.
4. APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES – These zones are set forth in Section III of this Ordinance.
5. BOARD OF ADJUSTMENT – A Board consisting of five (5) members elected at the annual town meeting as provided in §9.01 of the Town of Milan Zoning Ordinance and having the duties and powers as provided by RSA 673.3
6. CONICAL SURFACE – A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 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 zoning map, the datum shall be mean sea level elevation 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 driven aircraft of greater than 12,500 pounds maximum gross 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 instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.
13. OBSTRUCTION – Any structure, growth, or other object, including a mobile object, 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 governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
15. 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 of that runway; for military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each of that runway. The width of the primary surface is set forth in Section III of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
16. RUNWAY – A defined area on an airport prepared for landing and takeoff of aircraft along its length.
17. STRUCTURE – An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

18. **TRANSITIONAL SURFACES** – These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.
19. **TREE** – Any object of natural growth.
20. **UTILITY RUNWAY** – A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.
21. **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 surfaces, and conical surfaces as they apply to Berlin Regional Airport. Such zones are shown on the Berlin Regional Airport Zoning map consisting 1 sheet prepared by Jacobs Engineering Group, which is attached to this Ordinance and made a part hereof. An area located in more than one (1) of the following zones is 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 Larger Than Utility With A Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone – The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
2. Runway Larger Than Utility Visual Approach Zone – The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
3. Transitional Zones – The transitional zones are the areas beneath the transitional surfaces. (7:1)
4. Horizontal Zone – The horizontal zone is established by swinging arcs of 5,000 feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent 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 commences at the periphery of the horizontal zone and extends outwards 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 tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

1. Runway Other Than Utility With A Visibility Minimum Greater Than 3/4 Mile Nonprecision Instrument Approach Zone – Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

2. Runway Larger Than Utility Visual Approach Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
3. Transitional Zones – Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 1311.3 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.
4. Horizontal Zone – Established at 150 feet above the airport elevation or at a height of 1311.3 feet above mean sea level.
5. Conical Zone – Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

SECTION V: USE RESTRICTIONS

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 by 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 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 City of Berlin Airport Authority 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 [Choose an item.](#)

SECTION VII: PERMITS

1. Future Use – Except as specifically provided in a, b, and c hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree 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 permit 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,

4.

- a) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such 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 runway, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
- c) In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or 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, 5.

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 Town of Milan determines that a nonconforming tree or structure has been abandoned or more than 80 percent 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 Board of Adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from 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 Board of Adjustment unless a copy of the application has been furnished to the City of Berlin Airport Authority for advice as to the aeronautical effects of the variance. If the Airport Authority does not respond to the application within fifteen days after receipt, the Board of Adjustment 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 necessary. If deemed proper by the Board of Adjustment, this condition may be modified to require the owner to permit the **Choose an item.** at its own expense, to install, operate, and maintain the necessary markings and lights.

SECTION VIII: ENFORCEMENT

It shall be the duty of the Town of Milan Building Inspector to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Town of Milan Planning Board upon a form published for that purpose. Applications required by this Ordinance to be submitted to the Planning Board shall be promptly considered or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Planning Board.

SECTION IX: ZONING BOARD OF ADJUSTMENT

1. The Zoning Board of Adjustment shall exercise the following powers: (1) to hear and decide appeals from any order, requirement, decision, or determination made by the Planning Board or equivalent authority 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; and (3) to hear and decide specific variances.
2. The Board of Adjustment shall make written findings of facts 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.
3. 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 Planning Board or decide in favor of applicant on any matter upon which it is required to pass under this Ordinance or to effect variation to this Ordinance.

SECTION X: APPEALS

1. Any person aggrieved or any taxpayer affected by any decision of the Planning Board, or the equivalent authority in absence of a Planning Board, made in the administration of the Ordinance, may appeal to the Board of Adjustment.
2. 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.

3. 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 circumstance.

SECTION XI: JUDICIAL REVIEW

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Adjustment, may appeal to the Superior Court of Coos County as provided in Section 4 of Chapter 677 of the Public Laws of the State of New Hampshire.

SECTION XII: 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 ____ dollars [adopting authority shall determine appropriate and desired penalty amount] or imprisonment for not more than ____ days [adopting authority shall determine appropriate and desired penalty length] or both; and each day a violation continues to exist shall constitute a separate offense.

SECTION XIII: 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 is with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

SECTION XIV: 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 application 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 [Choose an item] BOARD OF SELECTMAN and publication and posting as required by law.

Adopted by the ____ this ____ day of ____, 20___. [Leave blank contingent on approval – Town Clerk will authorize]

