

**BOROUGH OF MOUNT POCONO  
MONROE COUNTY, PENNSYLVANIA  
ORDINANCE NO. 2 of 2012**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES (CHAPTER 52 – AIRPORT ZONING AND CHAPTER 215 – ZONING) OF THE BOROUGH OF MOUNT POCONO, MONROE COUNTY, PENNSYLVANIA, TO UPDATE LIGHTING REQUIREMENTS AS FOLLOWS:**

**ITEM 1 - AMEND CHAPTER 52 BY DELETING IT .....1**

**ITEM 2 - AMEND CHAPTER 215-13 .....1**

**ITEM 3 - AMEND CHAPTER 215 ARTICLE XIV.....1**

**BE IT HEREBY ORDAINED AND ENACTED** by the Borough Council of the Borough of Mount Pocono, Monroe County, Pennsylvania, by the authority of and pursuant to the provisions of Act of July 31, 1968, P.L. 805, No. 247 of the General Assembly of the Commonwealth of Pennsylvania, as reenacted and amended, known and cited as the Pennsylvania Municipalities Planning Code; that the Borough of Mount Pocono Subdivision and land development Ordinance (Code of Ordinances Chapter 187) and the Zoning Ordinance (Code of Ordinances Chapter 215) are hereby amended as follows:

**ITEM 1 – DELETE CHAPTER 52 – AIRPORT ZONING**

**ITEM 2 – AMEND THE FOLLOWING SECTION OF CHAPTER 215 TO READ AS NOTED BELOW:**

**215-13 (A) Designation**

**AHZ Airport Hazard Zoning**

**ITEM 3 – AMEND ARTICLE XIV AIRPORT OVERLAY DISTRICT OF CHAPTER 215 TO READ AS AIRPORT ZONING AND AS NOTED BELOW:**

**§215-128. Title and description**

- A. This chapter shall be known and may be cited as the “Borough of Mount Pocono Airport Zoning Ordinance.”
- B. Description: “An ordinance regulating and restricting the height to which structures may be erected or objects of natural growth, and otherwise regulating the use of property in the vicinity of the Pocono Mountain Municipal Authority by creating the appropriate airport zones and establishing the boundaries thereof; providing for changes in these restrictions and boundaries of such zones; defining certain terms used herein; referring to the Pocono Mountains Municipal Airport height limitation and zoning district map which is incorporated in and made part of this ordinance; providing for enforcement; establishing a Zoning Hearing Board; imposing penalties; and amending the official zoning map by the adoption of an Official Supplementary Airport Overlay Zoning Map.”

**§215-129. Statutory authority; declaration of policy.**

- A. This chapter is adopted pursuant to the authority conferred by 1984 PA. Laws 164, codified at 74 Pa.C.S.A. § 5101 et seq.
- B. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Pocono Mountains Municipal Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future approach minimums of the Pocono Mountains Municipal 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 Pocono Mountains Municipal Airport and the public investment therein.
- C. Whereas the creation or establishment of an airport hazard, as defined, is a public nuisance and may injure the region served by the airport; and
- D. whereas, it is necessary in the interest of public health, public safety and general welfare that the creation or establishment of airport hazards, as defined be prevented; and whereas, the prevention of these of these airport hazards, as defined, should be accomplished, to the extent legally possible, by the exercise of police power without compensation; and
- E. whereas, both the prevention of the creation or establishment of airport hazards, as defined, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards, as defined, are public purposes for which political subdivisions may raise and expend public funds and acquire land or interests in land; and
- F. whereas the Borough Council of the Borough of Mount Pocono did hold public hearing on December 19, 2011.
- G. Accordingly, it is declared: It is hereby ordained and enacted by the Borough of Mount Pocono, Monroe County, Pennsylvania, as follows.

**§215-130. Definitions.**

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

Aircraft – Any contrivance, except an unpowered hang glider or parachute, used for manned ascent into or flight through the air.

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

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

#### **§215-131. Airport surface zones designated.**

There are hereby created and established certain zones within the Airport District Overlay ordinance, defined in §52-3 and depicted on Figure 1 and illustrated on Airport Hazard Area Map, hereby adopted as part of this ordinance, which include:

1. Approach Surface Zone
2. Conical Surface Zone
3. Horizontal Surface Zone
4. Primary Surface Zone
5. Transitional Surface Zone

#### **§ 215-132. Permit Applications.**

As regulated by Act 164 and defined by 14 Code of Federal Regulations Part 77.13(a) (as amended or replaced), any person who plans to erect a new structure 20' or greater above ground level, or adds to an existing structure, thereby increasing the height to 20' or greater above ground level and or to erect and maintain any object (natural or manmade) 20' or greater above ground level in the Airport Hazard Overlay District, shall first notify the Department's Bureau of Aviation (BOA) and the Pocono Mountain Airport Authority by submitting PENNDOT Form AV-57 to obtain an obstruction review of the proposal at least 30 days prior to commencement thereof. The Department's BOA response must be included with this permit application for it to be considered complete. If the Department's BOA returns a determination of no penetration of airspace, the permit request should be considered in compliance with the intent of this Overlay Ordinance. If the Department's BOA returns a determination of a penetration of airspace, the permit shall be denied, and the project sponsor may seek a variance from such regulations as outlined in **§215-133**. Permits and variances shall be in accordance with Chapter 215, Zoning, as amended of the Code of Mount Pocono Borough.

No permit is required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.

- A. Local enforcement. It shall be the duty of the Zoning Officer of the Borough of Mount Pocono to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Zoning Officer of the Borough of Mount Pocono upon a form published for that purpose. Applications required by this chapter to be submitted to the Zoning Officer of the Borough of Mount Pocono shall be promptly considered and granted or denied. Application for action by the Board of Adjustment shall be forthwith transmitted by the Zoning Officer of the Borough of Mount Pocono.
- B. Notice to Department. Notwithstanding any other provision of law, a municipality or board which decides to grant a permit or variance under the chapter shall notify the Department of Transportation of its decision. This notice shall be in writing and shall be sent so as to reach the Department at least 10 days before the date upon which the decision is to be issued.

#### **§215-33. Variance.**

Any request for a variance shall include documentation in compliance with 14 Code of Federal Regulations Part 77 Subpart B (FAA Form 7460-1 as amended or replaced). Determinations of whether to grant a variance will depend on the determinations made by the FAA and the Department's BOA as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable air space. In particular, the request for a variance shall consider which of the following categories the FAA has placed the proposed construction in:

1. No Objection – The subject construction is determined not to exceed obstruction standards and marking/lighting is not required to mitigate potential hazard. Under this determination a variance shall be granted.
2. Conditional Determination – The proposed construction/alteration is determined to create some level of encroachment into an airport hazard area which can be effectively mitigated. Under this determination, a variance shall be granted contingent upon implementation of mitigating measures as described in § 52-9 – Obstruction marking and Lighting.
3. Objectionable – The proposed construction/alteration is determined to be a hazard and is thus objectionable. A variance shall be denied and the reasons for this determination shall be outlined to the applicant.

Such requests for variances shall be granted where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the intent of this ordinance.

#### **§215-134. Use Restrictions**

Notwithstanding any other provisions of this Ordinance, no use shall be made of land or water within the Airport District Overlay in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise endanger or interfere with the landing, takeoff or maneuvering of aircraft utilizing the *Airport*.



**Airport – Pocono Mountains Municipal Airport.** Any area of land or water which is used, or intended to be used, for the landing and takeoff or aircraft up to but not to include stage one jets and appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with all airport buildings and facilities thereon.

**Airport Elevation –** One thousand nine hundred sixteen feet; the highest point of an airport's usable landing area measured in feet above sea level.

**Airport Hazard –** Any structure or object, natural or man-made, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined by "Airport Hazard" in 74 Pa.C.S.A. § 5102.

**Airport Hazard Area –** Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this chapter and the Act 164 of 1984 (Pennsylvania Laws Relating to Aviation).

**Approach Surface (Zone) –** An Imaginary surface longitudinally centered on the extended runway center line, extending outward and upward from the end of the primary surface. An approach surface is applied to each end of the runway based on the planned approach. The inner edge of the approach surface is the same width as the primary surface and expands uniformly depending on the planned approach. The approach surface zone, as shown on Figure 1, is derived from the approach surface.

**Conical Surface (Zone) –** An imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet horizontally to one (1) foot vertically for a horizontal distance of 4,000 feet. The conical surface zone, as shown on Figure 1, is based on the conical surface.

**Department –** Pennsylvania Department of Transportation

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

**Height –** For the purpose of determining the heights limits in all zones set forth in this Chapter and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

**Horizontal Surface (Zone) –** An imaginary plane of 150 feet above the established airport elevation, that is constructed by swinging arcs of various radii from the center of the end of the primary surface and then connecting the adjacent arc by tangent lines. The radius of each arc is based on the planned approach. The horizontal surface zone, as shown in Figure 1, is derived from the horizontal surface.

**Larger Than Utility Runway –** A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

**Nonconforming Use –** Any pre-existing structure, object of natural growth, or use of land which is consistent with the provisions of this Chapter or an amendment thereto.

**Non-Precision Instrument Runway –** A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

**Obstruction –** Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth by this Chapter.

**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.

**Precision Instrument Runway –** A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

**Primary Surface (Zone) –** An imaginary surface longitudinally centered on the runway extending 200 feet beyond the end of the paved runways or ending at each end of turf runways. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway center line. The primary surface zone, as shown on Figure 1, is derived from the primary surface.

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

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

**Transitional Surface (Zone) –** An imaginary surface that extends outward and upward from the edge of the primary surface to the horizontal surface at a slope of seven (7) feet horizontally to one (1) foot vertically (7:1). The transitional surface zone, as shown on Figure 1, is derived from the transitional surface.

**Tree –** Any object of natural growth.

**§215-135. Pre-Existing non-Conforming Uses:**

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 a non-conforming use. No non-conforming use shall be structurally altered or permitted to grow higher, so as to increase the non-conformity, and a non-conforming use, once substantially abated (subject to the underlying zoning ordinance,) may only be reestablished consistent with the provisions herein.

**§215-136. Obstruction Marking and Lighting.**

Any permit or variance granted pursuant to the provisions of this ordinance may be conditioned according to the process described in §215-133 to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or require the person requesting the permit or variance, to install, operate, and maintain such marking or lighting as deemed necessary to assure both ground and air safety.

**§215-137. Violations and Penalties.**

Subject to that in the underlying Zoning Ordinance.

**§215-138. Appeals.**

Subject to the process in the underlying Zoning Ordinance.

**§215-139. Conflicting Regulations.**

Where there exists a conflict between any of the regulations prescribed in this ordinance and any other regulation applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

**§215-140. Severability.**

If any of the provisions of this Ordinance or the application thereof to any person or circumstance 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.

**§215-141. Amendments to chapter.**

The within chapter shall be amended only pursuant to the terms and provisions prescribed by the Pennsylvania Municipalities Planning Code, in the same manner that amendments are made to a zoning ordinance.

**EFFECTIVE DATE**

This Ordinance shall become effective immediately upon adoption.

Ordained and enacted this 3rd day of January, 2012, Borough of Mount Pocono.

  
John Finnerty, President

Attested by:

  
Lori Noonan, Borough Secretary

Approved this 3rd day of January, 2012.

  
Daniel McDavitt, Mayor