

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

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VOLUME I



By the Authority of the Legislature

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posters for political or agricultural fair purposes, shall not be deemed to be outdoor advertising structures, devices, or displays within the meaning of sections 111 to 122, inclusive, but they shall not be painted upon or annexed to any rock or tree and are subject to regulation and supervision by the commission to prevent or remove whatever will injuriously affect any public interest or endanger the safety of persons using any highway. Signs or posters located on railroad property and intended for display to the public using such railroad, and signs erected, maintained, or displayed under the provisions of any statute, and directional signs erected by authority of the commission upon designs determined by it and not exceeding 48 inches in length and 9 inches in width, except in cases where the commission shall decide that a larger directional sign is necessary for control of traffic, designating places of interest within 20 miles of the location of said sign shall not be deemed outdoor advertising structures, devices, or displays within the meaning of sections 111 to 122, inclusive.

Sec. 121. Limitation. 1935, c. 163, § 11. 1937, c. 144. These regulations shall not apply to outdoor advertising in the compact or built up section of any town or city but such advertising is subject to regulation by town or city by-laws or ordinances. The compact or built up section of any town or city shall be the territory thereof contiguous to any way which is built up with buildings devoted to business or where the dwelling-houses are situated less than 150 feet apart for a distance of at least $\frac{1}{4}$ of a mile.

Sec. 122. Penalty. 1935, c. 163, § 12. Any person, firm, or corporation who shall erect, maintain, or display an advertisement, sign, or billboard, or any structure designed for the display of advertising matter contrary to the provisions of sections 111 to 122, inclusive, shall forfeit and pay not less than \$10, nor more than \$100, for each sign so displayed, to be recovered by action at law in the name and for the use of the state to be expended as provided in section 115.

CHAPTER 21.

AVIATION.

Sections 1-7 Aeronautics Commission.
 Sections 8-16 Model Airport Zoning Act.
 Sections 17-23 Municipal and County Airports.

Aeronautics Commission

Sec. 1. Aeronautics commission; appointment, terms. 1939, c. 8, §§ 1, 2, 5. 1941, c. 236, §§ 1, 2. The aeronautics commission, as heretofore established, shall consist of 3 members, all of whom shall be citizens of the state, and who shall serve without compensation. At the expiration of the term of office of any member, the governor, with the advice and consent of the council, shall appoint a citizen of the state to serve for a term of 3 years or until his successor is duly appointed and qualified. In case of the death or resignation of any member, the governor, with the advice and consent of his council, shall appoint a citizen of Maine to serve for the remainder of the unexpired term, or until his successor is duly appointed and qualified.

Sec. 2. Duties of the commission. 1939, c. 8, § 3; c. 303, § 1. 1941, c. 236, § 3. The commission shall administer the laws relating to aeronautics and shall make such rules and regulations concerning air traffic, not inconsistent with federal regulations covering aeronautics, as may be necessary to promote public safety and the best interests of aviation in the state. The commission shall advance the interests of aeronautics within the state by studying aviation needs, assisting and advising authorized representatives of political subdivisions within the state in the development of aeronautics, and by cooperating and coordinating with such other agencies, whether local, state, regional, or federal, as may be working toward the development of aeronautics within the state.

The commission shall supervise and control all state airports and shall make such rules and regulations concerning the use of the said airports and their facilities as they deem necessary for the efficient management thereof and the development of aviation.

See c. 14, § 167, re aeronautical fund.

Sec. 3. Acceptance of federal funds authorized. 1939, c. 303, § 2. The governor and council are authorized to accept federal funds apportioned to the state for the development of aeronautics within the state, and expend the same for the purposes for which they were granted, or authorize their expenditure for the said purposes by the aeronautics commission.

Sec. 4. Registration of planes, pilots, and riggers. R. S. c. 30, §§ 4, 5, 7, 8. 1933, c. 265. 1939, c. 168, § 1. 1941, c. 236, § 4. No civil aircraft shall be flown in the state unless such aircraft and its pilot are properly licensed under federal law, nor unless they have an unrevoked and unsuspended certificate of registration as hereinafter provided.

All aircraft owners resident in the state and operating planes in the state shall register such aircraft with the commission and pay a fee of \$1 for each registration.

All aircraft pilots and all parachute riggers resident in the state and operating in the state shall register with the commission and pay a fee of \$1.

All persons registering under the provisions of sections 1 to 7, inclusive, shall receive a certificate thereof. Any certificate issued under the provisions of said sections may be revoked or suspended by the commission, after hearing, whenever the holder thereof violates any of the provisions of said sections or any of the rules and regulations issued under the authority of the provisions of said sections.

Sec. 5. Terms defined. R. S. c. 30, § 1. 1941, c. 236, § 5. When used in sections 1 to 7, inclusive, or in any of the rules and regulations promulgated by authority of said sections, the term "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of, or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

The term "public aircraft" means any aircraft used exclusively in the governmental service of the United States or of any state or territory thereof.

The term "civil aircraft" means any aircraft other than a public aircraft.

The term "airman" means any individual, including the person in command, and any pilot, mechanic, or member of the crew, who engages in the navigation of aircraft while under way, or any individual who is in charge of the inspection, overhauling, or repairing of aircraft.

The term "person" means an individual, a partnership, or two or more individuals having a joint or common interest, or a corporation.

The term "aeronautics" means the operation of aircraft and all acts incidental or necessary to their operation, such as promotion of corporations, building and equipping landing fields, improving and marking the fields, and establishing directional signs.

The term "rigger" means any persons licensed by the federal government for packing, repairing, and maintaining parachutes.

Sec. 6. Aeronautical director. 1941, c. 236, § 6. The commission may appoint an aeronautical director to serve at its pleasure. The director shall act as executive officer of the commission and under its direction shall administer the aeronautical laws and enforce the rules and regulations of the commission. The salary of the director shall be fixed by the commission subject to the approval of the governor and council.

Sec. 7. Penalty. 1941, c. 236, § 7. Whoever violates any provision of sections 1 to 6, inclusive, or any rule or regulation promulgated thereunder shall be punished by a fine of not more than \$100, or by imprisonment for not more than 3 months.

Model Airport Zoning Act

Sec. 8. Definitions of terms used in §§ 8-16. 1941, c. 142, § 1. As used in sections 8 to 16, inclusive, unless the context otherwise requires:

I. "Airport" means any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

II. "Airport hazard" means any overhead power line which interferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

III. "Political subdivision" means any municipality, city, county, village, plantation, or town.

IV. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

V. "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke-stacks, and overhead transmission lines.

VI. "Tree" means any object of natural growth.

Sec. 9. Airport hazards not in public interest. 1941, c. 142, § 2. An airport hazard endangers the lives and property of users of the 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 the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

Sec. 10. Adoption of airport zoning regulations. 1941, c. 142, § 3.

I. Every political subdivision may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed,

airport zoning regulations, which regulations shall divide the area surrounding any airport within the jurisdiction of said political subdivision into zones and, within such zones, specify the land uses permitted, and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulations, the political subdivision shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing existing obstructions, and the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

II. In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under the provisions of sections 8 to 16, inclusive, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under the provisions of sections 8 to 16, inclusive.

III. Any two or more political subdivisions may agree, by ordinance duly adopted, to create a joint board and delegate to said board the powers herein conferred to promulgate, administer, and enforce airport zoning regulations to protect the aerial approaches of any airport located within the corporate limits of any one or more of said political subdivisions. Such joint boards shall have as members 2 representatives appointed by the chief executive officer of each political subdivision participating in the creation of said board, and a chairman elected by a majority of the members so appointed.

IV. The jurisdiction of each political subdivision is extended to the promulgation, administering, and enforcement of airport zoning regulations to protect the approaches of any airport which is owned by said political subdivision but located outside the corporate limits of said political subdivision. In case of conflict with any airport zoning or other regulations promulgated by any other political subdivision, the regulations adopted pursuant to this section shall prevail.

V. All airport zoning regulations adopted under the provisions of sections 8 to 16, inclusive, shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in subsection I of section 11.

Sec. 11. Permits and variances. 1941, c. 142, § 4.

I. **Permits.** Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to the provisions of sections 8 to 16, inclusive, a system may be established by any political subdivision for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement,

change, or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a non-conforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated, or decayed:

A. No permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and

B. Whether application is made for a permit under this subsection or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense thereof upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 10% per year until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change, or repair of non-conforming uses shall be granted.

II. Variances. Any person desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under the provisions of sections 8 to 16, inclusive, may apply to the board of appeals, as provided in subsection III of section 12, for a variance from the zoning regulations in question. Such variances shall be allowed where 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 do substantial justice and be in accordance with the spirit of the regulations and of sections 8 to 16, inclusive.

III. Obstruction marking and lighting. In granting any permit or variance under the provisions of this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of sections 8 to 16, inclusive, and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon.

Sec. 12. Procedure. 1941, c. 142, § 5.

I. Adoption of zoning regulations. No airport zoning regulations shall be adopted, amended, or changed under the provisions of sections 8 to 16, inclusive, except by action of the legislative body of the political subdivision in question, or the joint board provided for in subsection III of section 10, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport is located.

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II. Administration of zoning regulations; administrative agency. The legislative body of any political subdivision adopting airport zoning regulations under the provisions of sections 8 to 16, inclusive, may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform such duty, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under the provisions of subsection I of section 11, but such agency shall not have or exercise any of the powers delegated to the board of appeals.

III. Administration of airport zoning regulations; board of appeals. Airport zoning regulations adopted under the provisions of sections 8 to 16, inclusive, shall provide for a board of appeals to have and exercise the following powers:

A. To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of said sections or of any ordinance adopted pursuant thereto;

B. To hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance;

C. To hear and decide specific variances under the provisions of subsection II of section 11. Where a zoning board of appeals or adjustment already exists, it shall be appointed as the board of appeals. Otherwise, the board of appeals shall consist of 5 members, each to be appointed for a term of 3 years and to be removable for cause by the appointing authority upon written charges and after public hearing. Provided, however, that in the first instance one member shall be appointed for a term of 3 years, 2 for a term of 2 years, and 2 for a term of 1 year. Thereafter each member appointed shall serve for a term of 3 years or until his successor is duly appointed and qualified.

The board shall adopt rules in accordance with the provisions of any ordinance adopted under sections 8 to 16, inclusive. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board 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 board and shall be a public record.

Appeals to the board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a

restraining order which may be granted by the board or by a court of record on application and on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of the 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 or by agent or by attorney.

The board may, in conformity with the provisions of sections 8 to 16, inclusive, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Sec. 13. Judicial review. 1941, c. 142, § 6. Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision may appeal to the superior court in the manner provided for appeal on estimate of damages for town ways in section 33 of chapter 84.

Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

Sec. 14. Enforcement and remedies. 1941, c. 142, § 7. Each violation of sections 8 to 16, inclusive, or of any regulations, order, or ruling promulgated or made pursuant to sections 8 to 16, inclusive, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$300, or imprisonment for not more than 90 days, or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision within which the property is located may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of sections 8 to 16, inclusive, or of airport zoning regulations adopted under the provisions of sections 8 to 16, inclusive, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of sections 8 to 16, inclusive, and of the regulations adopted, and orders and rulings made pursuant thereto.

Sec. 15. Acquisition of air rights. 1941, c. 142, § 8. In any case in which:

I. It is desired to remove, lower, or otherwise terminate a non-conforming use; or

II. The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under the provisions of sections 8 to 16, inclusive; or

III. It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located,

or the political subdivision owning the airport or served by it, may acquire by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such an air right, easement, or other estate or interest in the property or non-conforming use in question as may be necessary to effectuate the purpose of sections 8 to 16, inclusive.

Sec. 16. Short title. 1941, c. 142, § 10. Sections 8 to 15, inclusive, shall be known and may be cited as the "Model Airport Zoning Act".

Municipal and County Airports

Sec. 17. Municipal airports authorized. 1931, c. 213, § 1. Cities and towns separately and cities or towns jointly with one another or with counties are authorized to accept, establish, construct, own, lease, control, equip, improve, maintain, and operate airports and landing fields for the use of aircraft within their boundaries or without the limits of such cities and towns with the consent of the city or town where said airport or landing field is to be located, and may use for such purpose or purposes any land suitable therefor that is now or may at any time hereafter be owned or controlled by any city, town, or county.

Sec. 18. Municipal airports declared to be agencies of the state. 1941, c. 243. Airports owned and operated by any city or town are declared to be governmental agencies and entitled to the same immunities as an agency of the state.

Sec. 19. Declaration of public uses. 1931, c. 213, § 2. All lands acquired, owned, leased, controlled, or occupied by such cities, towns, or counties for the purpose or purposes enumerated in section 17 hereof shall be and are declared to be acquired, owned, leased, controlled, or occupied for public uses.

Sec. 20. Acquisition of land. 1931, c. 213, § 3. 1939, c. 308, § 3. 1941, c. 173, § 1. Private property needed by a city, town, county, or authorized state agency for an airport or landing field or for the expansion of an airport or landing field may be acquired by gift, purchase, lease, or other means. As a matter of public exigency, a city or town may take land for use as an airport or landing field whether such land is within or without its corporate limits and may alter, extend, or discontinue such use. All proceedings including the assessment of damages and appeal therefrom shall be the same as is provided by law for laying out, altering, and discontinuing town ways. No land outside the corporate limits of a city or town shall be laid out by it for such use unless the consent of the municipal officers of the town or city in which such land is located has first been obtained. As a matter of public exigency a county or authorized state agency may take land for use as an airport or landing field and may alter, extend, or discontinue such use. In the case of a county or authorized state agency, all proceedings including assessment of damages, appeal, and the taking of land in two or more counties shall be the same as provided by law for laying out, altering, and discontinuing highways by the county commissioners. No property, rights, or easements of a public utility shall be taken under the provisions of sections 17 to 23, inclusive, without the approval of the public utilities commission after hearing and upon such notice to the public utility affected thereby as said commission may order.

Sec. 21. Air rights, easements, and zoning. 1931, c. 213, § 4. The provisions of section 20 shall apply to the acquisition of air rights and easements over pri-

vate property adjoining such airports and landing fields in order to provide unobstructed air space and safe approaches for the landing and taking off of aircraft using such airports and landing fields, to place and maintain suitable marks and lights for the safe operation thereof, and to prevent any use of such adjoining land as would hinder the proper development or use of such airports and landing fields. Cities and towns may enact zoning ordinances applicable to such airports, landing fields, and adjoining lands situated within the limits of such cities and towns.

Sec. 22. Maintenance, operation, and regulation. 1931, c. 213, § 5. Cities or towns and counties which have established or may hereafter establish airports or landing fields or which acquire, lease, or set apart land for such purpose or purposes in accordance with the provisions of sections 17 to 23, inclusive, may exercise the powers granted in section 17 hereof or may delegate all or part of such powers to an officer, board, or commission of such city, town, or county. The expenses of construction, improvement, equipment, maintenance, and operation shall be a city, town, or county charge as the case may be. Cities, towns, or counties may lease such airports or landing fields or any part thereof to any individual or corporation desiring to use the same for the purpose of operating an airport, landing field, or for other purposes incident thereto, subject to such conditions and regulations as may be provided for the protection of the public. Cities or towns and counties may adopt regulations and establish charges and fees for the use of such airports and landing fields, which regulations shall conform to and coincide with in so far as possible the uniform field rules for airports adopted pursuant to the United States Air Commerce Act of 1926 as such uniform field rules may be amended from time to time, and may fix penalties for violations of said regulations. Cities and towns are specifically granted the same police powers over airports or landing fields outside the limits of such cities or towns as they may now exercise or may hereafter be authorized to exercise within such limits.

Sec. 23. Appropriations, bond issues, and taxation. 1931, c. 213, § 6. The purchase price or award for land acquired for an airport or landing field may be paid for by appropriation of moneys available therefor or wholly or partly paid for from the proceeds of sale of bonds of the city, town, or county as the proper officers of the city, town, or county shall determine, subject, however, to the adoption of a proposition therefor if required by law as a prerequisite to the issuance of bonds of such cities, towns, or counties for public purposes generally. Cities, towns, and counties are authorized to appropriate or cause to be raised by taxation or otherwise in such cities, towns, or counties sums sufficient to carry out the provisions of sections 17 to 23.