

ARTICLE 5-400. - AIRPORT INFLUENCE AREA^[3]

Footnotes:

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Editor's note—Section 3 of Ord. No. 86-4687, adopted April 28, 1986, repealed former Art. 5-400, §§ 5-401—5-410, relative to the airport influence area and § 1 of said Ord. No. 86-4687 enacted a new Art. 5-400 relative to similar subject matter to read as herein set out in §§ 5-401—5-420. The provisions of former Art. 5-400 derived from Ord. No. 82-4475, § 1(16.30.010—16.30.100), adopted Nov. 22, 1982, and Ord. No. 83-4515, § 1, enacted June 6, 1983.

Cross reference—Buildings and building regulations, Ch. 6; community development, Ch. 9; noise, Ch. 17; planning, Ch. 20; subdivision regulations, Ch. 23; design standards for subdivisions, § 23-601 et seq.; easement, § 23-603; vegetation, Ch. 25; zoning, Ch. 27.

State Law reference—Noise, height and land use regulation, MCA 67-4-101 et seq.; airport hazard regulation, MCA 67-5-101 et seq.

Sec. 5-401. - Finding and purpose.

Obstructions, tall trees, structures, and certain types of developments situated in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity; reduce the area available for landing, taking off, and maneuvering aircraft; and increase the likelihood of legal action against the city for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the intent of this article to apply special height and land development standards in airport approach and noise exposure areas for the purposes of:

- (1) Promoting the health, safety, and general welfare of the general public.
- (2) Increasing safety in the use of airports.
- (3) Protecting persons and property within the district and elsewhere.
- (4) Encouraging land uses that will complement and be compatible with the airport and the physical and visual aspects of the environment.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-402. - Applicability.

- (a) The airport influence area and noise zone is superimposed over existing zoning districts (as established by the city or county zoning ordinances) in airport approach areas according to Federal Aviation Regulations (FAR) Part 77, "Objects Affecting Navigable Airspace," by the Federal Aviation Administration, and as applied to Billings Logan International Airport. The regulations and restrictions set forth herein shall be applied to those properties determined to be within the overlay district, in addition to the underlying zoning regulations and restrictions of said properties. If there is a conflict between the provisions of the overlay zone created by this article and the provisions of the underlying zone created by the pertinent zoning ordinance, the more restrictive provision shall apply.
- (b) The airport influence area and noise zone includes two (2) overlays that are not necessarily coterminous: One for height regulations and one for land use regulations. For purposes of this article, references to the airport influence area and noise zone mean the outer boundary of the two (2) overlays when combined. For some parcels, only special height regulations shall apply; for some parcels, only

special land use regulations shall apply; and for some parcels, both height and land use regulations shall apply.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-403. - District established for Billings Logan International Airport.

An airport influence area and noise zone for Billings Logan International Airport is hereby established and shown on Exhibits C-1 and C-2 included and made part of this article.

(Ord. No. 86-4687, § 1, 4-28-86)

Editor's note— Exhibit C-1 relative to the airport influence area height and hazard limitation zone and Exhibit C-2 pertaining to aircraft noise overlay zones are not set out herein but are on file and available for inspection in the offices of the city.

Sec. 5-404. - Definitions.

In the airport influence area and noise zones, unless the context requires otherwise, the following words and phrases shall have the following meanings.

Acoustical treatment: The appropriate design and construction of new structures, or the alteration of existing structures, to result in a noise reduction (exterior-to-interior) sufficient to ensure that the interior day-night sound level (Ldn) in all habitable rooms does not exceed Ldn 45 during aircraft operations.

Aircraft hazard: Any structure or object of natural growth located on or in the vicinity of Billings Logan International Airport, or any use of land near the airport, which obstructs the airspace required for the flight of aircraft in landing or takeoff at the airport or otherwise causes a danger or potential danger to such landing or takeoff of aircraft.

Aircraft noise overlay zone: An overlay on the basic zoning districts, applied within the airport influence area, depicting the latest potential aircraft noise contours for Billings Logan International Airport. Within the zone, specific land use compatibility regulations apply, depending on the level of potential aircraft noise exposure.

Airport: Billings Logan International Airport.

Airport influence area: A rectangular area extending ten thousand (10,000) feet out in each direction from the thresholds of the primary instrument approach runway (Runway 9L-27R at Billings Logan International Airport) and one mile on each side of the extended centerline of that runway, as established by MCA Title 67, Chapter 4. For Billings Logan International Airport, the rectangle measures thirty thousand five hundred twenty-eight (30,528) feet long by ten thousand five hundred sixty (10,560) feet wide.

Board of airport hazard adjustment: As established by Section 5-413 Billings, Montana City Code.

Day-night sound level (Ldn): A method for describing the estimated cumulative aircraft noise exposure that affects communities in airport environs. The Ldn value represents decibels of noise as measured by an A-weighted sound-level meter. In the Ldn procedures, noise exposures are accumulated for a typical twenty-four-hour period. Daytime and nighttime noise exposures are considered separately. A weighting factor equivalent to a penalty of ten (10) decibels is applied to aircraft operations or other noise sources between 10:00 p.m. and 7:00 a.m. to account for the increased sensitivity of people to nighttime noise. The Ldn values can be expressed graphically on maps using either contours or grid cells.

Decibel (dB): A unit for measuring the volume of a sound, equal to the logarithm of the ratio of the intensity of the sound to the intensity of an arbitrarily chosen standard sound.

Director of aviation: The person designated by the City of Billings to exercise functions with respect to determining conformance with airport height zone limitations and making recommendations regarding airport noise zone land use restrictions.

Hazard to air navigation: An obstruction determined to have a substantial adverse affect on the safe and efficient utilization of the navigable airspace.

Height: In the context of this article, maximum height means the maximum permitted height in feet of any structure or tree above the established elevation in feet, mean sea level, of the nearest end of an existing or proposed runway or, if otherwise stated, the airport elevation.

Height and hazard limitation zones: Regulations within the airport influence area that specify the maximum height of structures or objects of natural growth in conformance with Federal Aviation Administration regulations, as well as prohibitions against developing land uses that could result in a hazard to air navigation. The regulations in the height and hazard limitations zones are superimposed over existing zoning districts and only apply if they are more restrictive than the underlying zoning regulations.

Noise: Any sound that is undesirable because it interferes with speech and hearing, or is intense enough to damage hearing, or is otherwise annoying.

Noise contours: Lines drawn on a map that connect points of equal Ldn values.

Noise grid: Squares or "cells" of equal size superimposed over a base map of an airport or other noise source and its environs. Numbers printed in each grid cell represent the Ldn value of noise at the center of the square for a particular year being studied. Several numbers representing several years can also be displayed. Grid cells may be of any size, depending on the study area. For Billings Logan International Airport, the cell is one thousand (1,000) feet per side (about twenty-three (23) acres) and is used for purposes of noise analysis and land use planning.

Nonconforming use: Any pre-existing structure, tree, natural growth, or use of land which is inconsistent with the provisions of this article or an amendment thereto.

Person: Means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

Runway: Paved surface of an airport landing strip used for aircraft takeoffs and landings.

Structure: Any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, earth formations, and overhead transmission lines.

Structure, height of: The vertical distance measured from the adjoining curb level to the highest point of the structure, including chimneys and ventilators; provided that, where structures are set back from the street line or are located within an open area and not adjacent to streets, the height shall be measured from the average elevation of the finished grade at the front of the structure.

Tree: Any object of natural growth.

Tree, height of: The vertical distance measured from the adjoining curb level to the highest point of the tree; provided that, where trees are set back from the street line or are located within an open area and not adjacent to streets, the height shall be measured from the average elevation of the grade at the base of the tree.

Uniform Building Code (UBC): The building code as used by the City of Billings and Yellowstone County.

Zoning commission: As established by Section 27-1001, Billings, Montana City Code.

Zoning coordinator: The person designated by the city-county planning board to exercise functions with respect to this article and as designated in Section 27-1102, Billings, Montana City Code.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-405. - Airport influence area and noise zones.

Maps of the airport influence area and noise zones shall be filed with the Billings City Clerk, the Yellowstone County Clerk and Recorder, and the Yellowstone County Planning Department. Copies of those maps are attached hereto marked Exhibit C-1, Airport Influence Area/Height and Hazard Limitation Zones; and Exhibit C-2, Aircraft Noise Overlay Zones. Said maps designate and establish the airport influence area and noise zones provided by MCA Title 67, Chapter 4, Part 2, and are hereby superimposed on the area shown.

(Ord. No. 86-4687, § 1, 4-28-86)

Editor's note— Exhibits C-1 and C-2 referred to above are not set out in this article but are on file and available for inspection in the offices of the city.

Sec. 5-406. - Uses permitted generally.

Permitted uses are any uses permitted by the existing zones over which airport influence area and noise zones are superimposed, except as prohibited in this article.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-407. - Aircraft hazard land use restrictions.

Notwithstanding any other provisions of the city or county zoning ordinances, no use, structure, or equipment may be located and no activity may be performed within the airport influence area and noise zones which would:

- (1) Communications. Create unreasonable interference with either existing or planned future (1) radio communication for aircraft using the airport and (2) electronic navigational aids or devices such as instrument landing systems. Generators, motors, and artificial lighting devices which create excessive static are examples of equipment that can cause interference.
- (2) Visibility. Create a hazard to flying by materially reducing visibility within the airport influence area, such as incinerators, rock crushers, smelters, chemical manufacturing, and similar uses.
- (3) Illumination. Make it difficult for fliers to distinguish between airport or other navigational lights or markers and other lights, or cause glare to fliers using the airport, such as any arrangement and use of lights which resemble a layout or color of a landing area, or search lights or flash-type advertising signs.
- (4) Dangerous activities. Results in any business, structure, tree, occupation, or use which is dangerous or hazardous to the safety of aircraft or persons using the airport, or to property or persons in the airport influence area. Towers, poles, smokestacks, advertising balloons, above-ground bulk storage of petroleum products, and fireworks manufacturing are examples of potentially dangerous uses, structures, and activities.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-408. - Height limitations generally.

No structure shall be erected or altered, and no tree shall be allowed to grow, or be maintained, which shall exceed the height limits set forth for the airport influence area over and above the elevations stated in feet above mean sea level (MSL), as indicated in Exhibit C-1. Height limits set by zones over which airport approach zones are superimposed, if lesser, shall prevail. If a proposed structure or tree shall lie on or

across the boundary of two (2) or more zones, the more restrictive height limit shall apply. No variances to the height limitations set forth in this section shall be granted.

(Ord. No. 86-4687, § 1, 4-28-86)

Editor's note— Exhibit C-1 referred to above is not set out in this article but is on file and available for inspection in the offices of the city.

Sec. 5-409. - Aircraft noise compatibility regulations.

/It is generally recognized that residential and some other uses may be incompatible in areas that are exposed to aircraft noise levels of Ldn 65 or higher unless the structures are insulated with acoustical material for sound attenuation to lower the interior noise levels. The objective is to achieve an interior noise level of Ldn 45 in habitable spaces. Therefore, except as otherwise provided in the city or county zoning ordinances, proposed new land uses in an aircraft noise overlay zone shall conform with the regulations set forth in this section.

- (1) Aircraft noise overlay zone. The areas exposed to aircraft noise from aircraft operations at Billings Logan International airport are depicted in Exhibit C-2 and attached hereto. Exhibit C-2 shall be modified from time to time as conditions change.
- (2) Land use compatibility standards. Table A, "Land Use Compatibility Standards in Aircraft Noise Exposure Areas", contained herein, provides a list of land uses and the compatibility of land uses within specific noise exposure areas. Table A shall be used only to determine whether a specific land use shall ordinarily be compatible or incompatible with the noise levels expected to be experienced within the zone where the existing or proposed use is or shall be located. Permission or prohibition of specific uses is based exclusively on the noise compatibility criterion. The underlying zone may otherwise expressly prohibit specific uses in order to comply with the general purpose and intent of the city or county zoning ordinances. Therefore, the permitted and conditionally permitted uses of the underlying zones and their greater degree of specificity shall govern, except where a permitted land use (1) shall result in an aircraft hazard as specifically prohibited in section 5-407, or (2) is expressly prohibited in the aircraft noise overlay zone. All other regulations of the city or county zoning ordinances shall apply.

The compatibility standards set forth in Table A have been derived from guidelines contained in the document Federal Aviation Regulations (FAR) Part 150, "Airport Noise Compatibility Planning", Code of Federal Regulations, Title 14, Chapter I, Subchapter I, Part 150, Table 1, December 18, 1984, by the Federal Aviation Administration.

- (3) Uses by right or by special airport influence area permit. The general uses listed in Table A shall be permitted either by right or by an airport influence area permit, as applicable. Existing nonconforming uses may remain on the site without any required alterations or treatment until such time as the use or structure becomes subject to the limitations set forth in section 5-410.
- (4) Aircraft noise exposure update. Aircraft noise levels may vary over time because of changes in aircraft operations, on-airport land use, aircraft engine design or retrofit, and other reasons; therefore, the extent of noise exposure may also change. To ensure that the noise zones applied in the aircraft noise overlay zone accurately reflect the current or predicted aircraft noise exposure pattern, the director of aviation shall, from time to time, as necessary, review the noise level boundaries and submit a map indicating any suggested changes in the noise level boundaries to the city council for approval. If approved, the revised map shall be filed with the Billings City Clerk, Yellowstone County Clerk and Recorder and Yellowstone County Planning Department.

TABLE A
Land Use Compatibility Standards in Aircraft Noise Exposure Areas

Land use	Below Ldn 60	Ldn 60 to 65	Ldn 65 to 70	Ldn 70 to 75	Ldn 75 to 80	Ldn 80 to 85	Over Ldn 85
Residential:							
Residential, other than mobile homes and transient lodgings	Compatible	Compatible ^a	NLR required;sup\sup;	NLR required;sup\sup;	Incompatible	Incompatible	Incompatible
Mobile homes	Compatible	Compatible ^a	Incompatible	Incompatible	Incompatible	Incompatible	Incompatible
Transient lodgings	Compatible	Compatible ^a	NLR required;sup\sup;	NLR required;sup\sup;Incompatible	Incompatible	Incompatible	
Public use:							
Schools, hospitals, and nursing homes	Compatible	Compatible ^a	NLR required;sup\sup;	Incompatible	Incompatible	Incompatible	Incompatible
Churches, auditoriums, and concert halls	Compatible	Compatible	NLR required;sup\sup;	NLR required	Incompatible	Incompatible	Incompatible
Governmental services	Compatible	Compatible	Compatible	NLR required	NLR required	Incompatible	Incompatible

Transportation	Compatible	Compatible	Compatible	Compatible ^c	Compatible ^c	Compatible ^c	Compatible ^c
Parking	Compatible	Compatible	Compatible	Compatible ^c	Compatible ^c	Compatible ^c	Incompatible
Commercial use:							
Offices, business, and professional	Compatible	Compatible	NLR required	NLR required	NLR required	Incompatible	Incompatible
Wholesale and retail—building materials, hardware, and farm equipment	Compatible	Compatible	Compatible	Compatible ^c	Compatible ^c	Compatible ^c	Incompatible
Retail trade—general	Compatible	Compatible	NLR required	NLR required	NLR required	Incompatible	Incompatible
Utilities	Compatible	Compatible	Compatible	Compatible ^c	Compatible ^c	Compatible ^c	Incompatible
Communication	Compatible	Compatible	NLR required	NLR required	NLR required	Incompatible	Incompatible
Manufacturing and production:							
Manufacturing, general	Compatible	Compatible	Compatible	Compatible ^c	Compatible ^c	Compatible ^c	Incompatible

Photographic and optical	Compatible	Compatible	Compatible	NLR required	NLR required	Incompatible	Incompatible
Agriculture (except livestock) and forestry	Compatible	Compatible	Compatible	Compatible	Compatible	Compatible	Compatible
Livestock farming and breeding	Compatible	Compatible	Compatible	Compatible	Incompatible	Incompatible	Incompatible
Mining and fishing resources production and extraction	Compatible	Compatible	Compatible	Compatible	Compatible	Compatible	Compatible
Recreational:							
Outdoor sports arenas and spectator sports	Compatible	Compatible	Compatible	Compatible	Incompatible	Incompatible	Incompatible
Outdoor music shells, amphitheaters	Compatible	Compatible	Incompatible	Incompatible	Incompatible	Incompatible	Incompatible
Nature exhibits and zoos	Compatible	Compatible	Compatible	Incompatible	Incompatible	Incompatible	Incompatible

Amusements, parks, resorts, and camps	Compatible	Compatible	Compatible	Compatible	Incompatible	Incompatible	Incompatible
Golf courses, riding stables, and water recreation	Compatible	Compatible	Compatible	Compatible	Incompatible	Incompatible	Incompatible

Ldn = Yearly day-night sound level in decibels.

Compatible = Generally, no special notes attenuating materials are required to achieve an interior noise level of Ldn 45 in habitable spaces, or the activity (whether indoors or outdoors) would not be subject to a significant adverse effect by the outdoor noise level.

NLR = Noise Level Reduction. NLR is used to denote the total amount of noise transmission loss in decibels required to reduce an exterior noise level in habitable interior spaces to Ldn 45. In most places, typical building construction automatically provides an NLR of 20 decibels. Therefore, if a structure is located in an area exposed to aircraft noise of Ldn 65, the interior level of noise would be about Ldn 45. If the structure is located in an area exposed to aircraft noise of Ldn 70, the interior level of noise would be about Ldn 50, so an additional NLR of 5 decibels would be required if not afforded by the normal construction. This NLR can be achieved through the use of noise attenuating materials in the construction of the structure.

Incompatible = Generally, the land use, whether in a structure or an outdoor activity, is considered to be incompatible with the outdoor noise exposure, even if special attenuating materials were to be used in the construction of the building.

a. In climates where existing structures have thin, single-wall construction with minimal insulation, the Ldn 60 to 65 area may not be compatible without additional noise level reduction incorporated into the design and construction. However, it should be noted that in many urban areas, the ambient noise level may be above Ldn 65, so structures in the Ldn 60 to 65 area must be evaluated on a case-by-case basis.

b. The land use is generally incompatible and should only be permitted in areas of infill in existing neighborhoods or where the community determines that the use must be allowed.

c. NLR required in offices or other areas with noise-sensitive activities.

Source: Peat, Marwick, Mitchell & Co., as derived from the U.S. Department of Transportation, Federal Aviation Administration, Federal Aviation Regulations (FAR) Part 150, "Airport Noise Compatibility Planning," Code of Federal Regulations, Title 14, Chapter 1, Subchapter 1, Part 150, Table 1, January 18, 1985.

(Ord. No. 86-4687, § 1, 4-28-86)

Editor's note— Exhibit C-2 referred to in § 5-409(1) above is not set out herein but is on file and available for inspection in the offices of the city.

Sec. 5-410. - Nonconformity.

Notwithstanding other provisions in the city or county zoning ordinances with respect to the nonconforming use of land and buildings, this section shall apply in the airport influence area and noise zones, but shall not replace other provisions when such other provisions are more restrictive.

- (1) Application of provisions. The height, noise, and land use development regulations prescribed herein shall not be retroactive and shall not (1) be construed to require the removal, lowering, acoustical insulation, or other change or alteration of any structure, tree, or use of land not conforming to the height limit regulations or the land use development regulations as of the effective date of this section; or (2) be applied to any land that has been platted for residential subdivisions prior to the effective date of this section; or (3) otherwise interfere with the continuance of any use on the land or within a structure of nonconforming height or use; or (4) 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 section and is diligently prosecuted and completed within two (2) years; except subject to the following limitations. Any structure or use not conforming to the height limit regulations, or any use on the land or within a structure not conforming to the land use development regulations of this section shall not be:
 - a. Reestablished after discontinuance for one (1) year.
 - b. Extended, enlarged, altered, renovated, or otherwise improved if the improvement exceeds fifty (50) percent of the fair market value of the structure immediately prior to the request for permits for such improvements.
 - c. Changed to any other use except in conformity with this article.
 - d. Rebuilt or repaired after damage exceeding fifty (50) percent of the fair market value immediately prior to damage.
- (2) Limitation on uses identified as hazards: No permit or approval shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to be made or allowed to exceed height limitations, or become a greater hazard to air navigation, than it was on the effective date of this article or any amendments thereto, or than it is prior to or when the application for permit is made.
- (3) Repairs. No approval shall be required to make repairs or to replace parts of existing structures, provided that the repairs or parts replacement does not result in an enlargement or increase in the height of the existing structure, and involve less than fifty (50) percent of the fair market value of the structure.
- (4) Right to install hazard markers. Notwithstanding the preceding provisions of this article, the owner of any nonconforming structure or tree to whom an airport influence area permit or variance has been granted is hereby required to permit the City of Billings, at its own expense, to install, operate, and maintain thereon navigation markers and lights as shall be deemed necessary under the circumstances by the Federal Aviation Administration or the director of aviation to warn pilots of the presence of an airport hazard.
- (5) Changes in use. Any change in a nonconforming use shall be subject to the provisions of this section and other applicable provisions of the city zoning ordinance.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-411. - Acoustical treatment.

- (a) Acoustical treatment shall be required for new noise-sensitive land uses and existing nonconforming uses that become subject to the limitations of section 5-410 and the provisions of Table A, to insure a reduction in exterior noise levels in habitable interior spaces to a level not to exceed Ldn 45.
- (b) Acoustical treatment shall be required for new noise-sensitive land uses and existing nonconforming uses that become subject to the limitations of section 5-410 and the provisions of Table A so that a noise level reduction (exterior-to-interior) sufficient to ensure that the interior day-night sound level (Ldn) during aircraft operations in all habitable rooms does not exceed Ldn 45.
- (c) Evidence of compliance with the required acoustical performance of the buildings shall consist of an acoustical analysis report, prepared under the supervision of a person experienced in the field of acoustical engineering, submitted with the application for building permit.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-412. - Airport influence area permit application.

Within the aircraft noise overlay zone, height and hazard limitation zones, and the airport influence area, no new structures shall be erected, no uses of land or structures shall be changed, substantially altered, repaired or replaced without first requiring an airport influence area permit therefor. No building permit shall be issued by the city until an airport influence area permit under this article is first obtained. Airport influence area permits shall be applied for in the following manner:

- (1) An application with appropriate fee shall be filed by the property owner, contract purchaser, or authorized agent. The application shall be filed with the zoning coordinator and shall be submitted with the following minimum information:
 - a. A legal and general description of the tract or tracts upon which the airport influence area permit is sought;
 - b. A map showing the dimensions, acreage and sites of the tract or tracts and adjacent land uses;
 - c. The name and addresses of the owner(s) of the tract or tracts and their agents, if any;
 - d. A site plan showing major details of the proposed development including but not limited to the sites of proposed and existing buildings and structures, heights of all proposed structures, off-street parking and loading, service and refuse areas, means of ingress and egress, landscaping, screening, signs, open space areas, and proposed types of construction materials and acoustical treatment;
 - e. A time schedule for development;
 - f. The applicant shall submit an executed perpetual air rights easement in the form prescribed by the city administrator. Said perpetual air rights easement will grant to the City of Billings for the benefit of the public a perpetual air rights right-of-way for the free and unobstructed navigation and passage of all types of aircraft in and through the air space above the real property involved.
 - g. Any other information the applicant believes will support the request including any structural enforcements that may make the use more compatible.
- (2) The zoning coordinator, upon receiving an application shall do the following:
 - a. Prior to airport influence area permit issuance, offer the airport department a minimum of ten (10) working days in which to prepare a formal written review and consult with other departments of the city and/or county to fully evaluate the impact of the use(s) contemplated under the application upon public facilities and services;

- b. Study each application with references to its appropriateness and effect on this article, existing and proposed airport and immediate surrounding land uses, and its relationship to the Billings Comprehensive Plan and the FAR Part 150 Noise Compatibility Program;
- c. If the zoning coordinator finds upon review as outlined hereinabove that the use proposed is compatible with the noise overlay zones set forth in Exhibit C-2, the zoning coordinator shall issue an airport influence area permit. Further, within an airport influence area a person who obtains an airport influence area permit for building a structure which is a nonconforming use under rules adopted pursuant to this article or a person who takes or buys property subject to such an airport influence area permit is on notice that the airport existed before the airport influence area permit was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under an airport influence area permit may not collect damages from the City of Billings for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.
- d. If the zoning coordinator finds that the proposed use may receive a variance, the zoning coordinator shall advise the applicant and outline the procedure for obtaining a variance provided, however, that no variance may be applied for or granted on height limitations.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-413. - Board of airport hazard adjustment.

There is hereby created for the city, a board of airport hazard adjustment as provided by Section 67-4-312 Montana Codes Annotated, consisting of the five (5) members appointed under Section 27-1005, Billings, Montana City Code, to the board of airport hazard adjustment are concurrent with their terms as members of the board of adjustment.

- (1) Proceedings. The meetings of the board of airport hazard adjustment shall be held at the same time and in the same manner as set forth for the board of adjustment in Section 27-1005(b), Billings, Montana City Code.
- (2) Powers and duties. The board of airport hazard adjustment shall have the power to hear and decide variance requests from any person desiring to erect a structure or increase the height of an existing structure, permit the growth of a tree, or use his property in violation of this article. Variances shall be granted as follows:
 - a. No variance shall be granted which would allow the height of a structure or tree to exceed the limits set forth in this article.
 - b. Except as provided in subsection 5-413(1) above, a variance shall be granted where a literal application or enforcement of the article would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.
 - c. A variance shall be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.
 - d. Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under this article or a person who takes or buys property subject to such a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from the City of Billings for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

(3) Appeals. All of the provisions of sections 76-2-321 through 76-2-328, Montana Codes Annotated, relating to appeals and judicial review are applicable to grievances relating to rules, variances or airport influence area permits.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-414. - Variance application procedure.

An application for a variance shall be filed with the zoning coordinator under the following conditions:

- (1) File application for variance with the underlying documentation required for airport influence area permit application and all other documentation the applicant feels is necessary with the zoning coordinator.
- (2) The applicant shall pay the required fee.
- (3) The zoning coordinator shall, in writing, notify the applicant, or his agent, of the time, date and place of the board of airport hazard adjustment meeting at which the variance will be considered five (5) days in advance of that date.
- (4) Each application shall be presented to the board of airport hazard adjustment, by the zoning coordinator, together with the staff's conclusions, findings, and comments on the matter. The board of airport hazard adjustment shall take into account and address the following factors when variances in noise zones 2, 3, and 4 are requested:
 - a. Soundproofing materials, construction techniques, frequency of flights, and elevation and orientation of property to achieve an interior noise level not greater than Ldn 45;
 - b. Infill developments in established neighborhoods shall be acoustically treated to achieve an interior noise level not great than Ldn 45. If normal construction doesn't achieve an interior noise level of Ldn 45, additional insulation shall be added;
 - c. Noise sensitive commercial/industrial activities may require sound attenuation to achieve an interior noise level not greater than Ldn 45;
 - d. Street and road capacity;
 - e. Ingress and egress to adjoining streets;
 - f. Off-street parking;
 - g. Fencing, screening and landscaping;
 - h. Building bulk and location;
 - i. Usable open space;
 - j. Signs and lighting;
 - k. Noise, vibration, air pollution and similar environmental influences;
 - l. Consistency with the objectives and purposes stated herein and the Billings Comprehensive Plan and the FAR Part 150 Noise Compatibility Program;
 - m. Compatibility with surrounding land use or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
- (5) The application must be submitted at least twenty (20) days prior to the date of the public hearing.
- (6) An application for a variance may not be withdrawn or amended by the applicant after the legal advertising as required by this article shall have first appeared. However, the board of airport hazard adjustment may, by a two-thirds vote of all members, allow the application to be withdrawn without prejudice to time limitations for filing a variance application.

- (7) If an application for a variance is denied by the board of airport hazard adjustment, another application shall not be filed within a period of one (1) year from the date of denial, except upon the initiation of the board of airport hazard adjustment after a showing of a change of circumstances which would warrant a rehearing.
- (8) The zoning coordinator, upon receiving an application for a variance, shall do the following:
 - a. Offer the airport department a minimum of ten (10) working days in which to prepare a formal written review and consult with other departments of the city to fully evaluate the impact of the uses contemplated under the variance application upon public facilities and services;
 - b. Study each application with reference to its appropriateness and effect on existing and proposed land uses; and its relationship to the comprehensive plan;
 - c. Place notice of the time, date and place of the public hearing in the legal newspapers and in a newspaper of general circulation fifteen (15) days in advance of the date set for the public hearing;
 - d. Notify the owner of the property, or his or her agent, of the time, date and place of the public hearing five (5) days in advance of that date;
 - e. Notify the property owners, by mail, within three hundred (300) feet of the exterior boundaries of the property subject to the variance of the time, date and place and proposed use. In the R-150 zone, the zoning coordinator may, at his or her discretion, notify property owners within a radius greater than three hundred (300) feet if he or she deems that the contemplated use would have a substantial environmental impact;
 - f. Place a notice of the time, date and place of the public hearing on the property ten (10) days prior to the hearing date;
 - g. Report his or her findings, in writing, to the board of airport hazard adjustment, which report shall be a matter of public record.
- (9) Board of airport hazard adjustment action. The board of airport hazard adjustment, before it grants a variance shall determine:
 - a. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;
 - b. That a literal interpretation of the provisions of this article would deprive the applicant of the rights commonly enjoyed by other tracts in the same district;
 - c. That granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other land in the same district;
 - d. That the granting of the variance will be in harmony with the general purpose and intent of this chapter and with the comprehensive plan;
 - e. In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this article.
 - f. The board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance;
 - g. Under no circumstances shall the board grant a variance to allow a use not permissible under the terms of this article in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-415. - Nonsignificant projects.

The following projects within the airport influence area and noise zones shall be considered nonsignificant and exempt from the provisions of section 5-409 except that the height limitations of section 5-408 and any other applicable provisions of the city or county zoning ordinances shall apply.

- (1) Signs.
- (2) Interior repairs and interior alterations which do not exceed fifty (50) percent of the building volume or are less than fifty (50) percent of the fair market value of the structure and do not increase the building volume and/or change the use of the space from its original use shall be exempt from the requirements of this article. All other interior alterations shall be subject to the provisions of this section.
- (3) Temporary structures and uses incidental to building construction and land development.
- (4) Repair of sewer, water, electric, gas, telephone, and drainage systems.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-416. - Fees.

All fee amounts required herein shall be set by the city administrator and shall be based upon the direct costs of processing the applications. All fee amounts set may be superseded by resolution of the city council.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-417. - Enforcement.

The provisions of this article shall be enforced by the building official or his or her assistant, subject to such variations or interpretation as may be made by the board of airport hazard adjustment. The building official shall:

- (1) Issue building permits for all construction, alteration or movement of buildings or structures only after first determining that all applicable provisions of this article are complied with;
- (2) Conduct inspections as are necessary to ensure compliance with the provisions of this article;
- (3) Institute appropriate action or proceedings to prevent or correct unlawful construction, alteration or movement of buildings or structures or unlawful occupancy of buildings, structures or land.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-418. - Abatement of violation.

- (a) If on any inspection the condition of a building or premises, or its use or occupancy does not conform to the provisions of this article, the building official shall issue written notice to the owner or tenant, specifying the manner in which the building or premises, or its use or occupancy fails to conform, and the owner or tenant shall take steps to make it conform as directed by the building official.
- (b) Appeal from the actions of the building official shall be made with the board of airport hazard adjustment in conformance with section 5-413(3).

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-419. - Penalties.

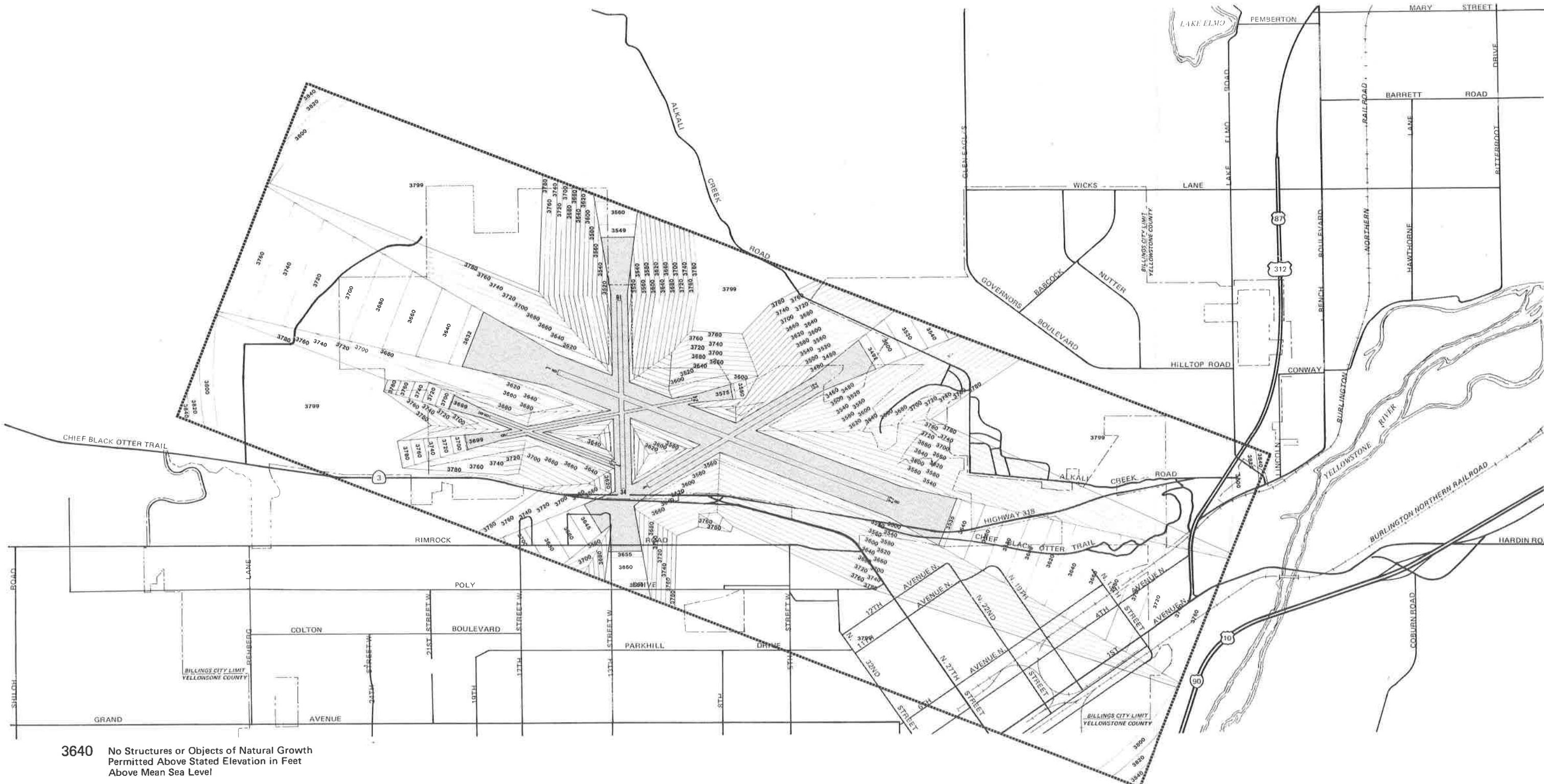
The same penalties as provided in Section 27-1104, Billings, Montana City Code, shall be applicable to violations of any of the sections hereof.

(Ord. No. 86-4687, § 1, 4-28-86)

Sec. 5-420. - Conflicting regulations.

Where there exists a conflict between any of the regulations or limitations prescribed in this article and any other regulations, statutes, or ordinances applicable to the same area, whether the conflict be with respect to the height of structures or trees, noise regulations, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

(Ord. No. 86-4687, § 1, 4-28-86)



3640 No Structures or Objects of Natural Growth
Permitted Above Stated Elevation in Feet
Above Mean Sea Level

No Development

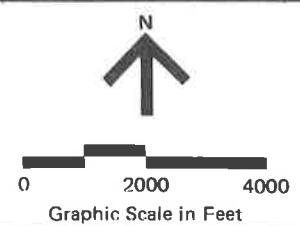
----- Airport Areas of Influence



Master Plan and Noise Compatibility Program—Billings Logan International Airport
City of Billings, Montana

April 1985

Airport Areas of Influence/Height and Hazard Limitation Zone



Exhibit

C-1



Zone 4: Ldn 75+

Zone 3: Ldn 70 to 75

Zone 2: 1 dn 65 to 70

Zone 1: Less than 1 dn 65

Ldn = Day-Night Sound Level

Master Plan and Noise Compatibility Program-Billings Logan International Airport
City of Billings, Montana

Aircraft Noise Overlay Zones



0 2000 4000
Graphic Scale in Feet

PFAT
MARWICK
April 1985