

# **ORDINANCE NO. 6-2009**

**To Repeal and Replace Article P Amery Code of Ordinances the City of Amery,  
Article P Airport Overlay Zoning and Height Limitations Ordinance**

## **AMERY MUNICIPAL AIRPORT**

### **ARTICLE P AIRPORT OVERLAY ZONING and HEIGHT LIMITATIONS ORDINANCE**

The City Council of the City of Amery, Wisconsin, does ordain as follows:

- Section 13-1-200: Purpose, Authorization, Justification
- Section 13-1-201 Definitions
- Section 13-1-202: General Provisions
- Section 13-1-203: Airport Zones and District Regulations
- Section 13-1-204: Non-Conforming Uses
- Section 13-1-205: Administration
- Section 13-1-206: Permits
- Section 13-1-207: Review Process
- Section 13-1-208: Appeals and Variances
- Section 13-1-209: Violations and Penalties
- Section 13-1-210: Severability
- Section 13-1-211: Effect
- Section 13-1-212 through 13-1-220: Reserved for Future Use

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### **Sec. 13-1-200\_ Purpose, Authorization, and Justification.**

- (a) **Purpose.** It is the purpose of this article is to regulate the use of property, and to regulate and restrict the height of structures and objects of natural growth in the vicinity of the Amery Municipal Airport; in order to promote the public health, safety, convenience and general welfare; to increase safety in the use of the airport; and to protect persons and property within the airport affected area. The associated map will outline the area within which basic overlay zoning districts will be applied as a means of maintaining the best interests of the operation of Amery Municipal Airport, as well as encouraging the development of compatible lands uses on private property within the area.
- (b) **Authorization.** This article, designed to protect the approaches, airspace, and physical areas of the Amery Municipal Airport; and to ensure the compatibility of surrounding land uses and development to the greatest extent possible; is adopted pursuant to Sections 62.23 and 114.136, Wisconsin Statutes.
- (c) **Jurisdiction.** The jurisdiction of this article shall extend over all lands and waters within three statute miles of the boundaries of the Amery Municipal Airport.

### **Sec. 13-1-201 Definitions.**

For the purposes of this article, certain words and terms are defined as follows. Words used in the present tense include the future; the singular number includes the plural number, and the plural number includes the singular number; the word “shall” is mandatory and not permissive. Any words not herein defined shall be construed as defined in the state and city codes. All distances, unless otherwise specified, shall be measured horizontally.

- (a) **Airport.** The Amery Municipal Airport, owned by and located in the City of Amery, Polk County, Wisconsin.
- (b) **Airport Hazard.** Any structure; object, whether man-made or natural; or use of land which obstructs the airspace required by FAA for the safe flight of aircraft in landing or taking off at the Airport; or is otherwise hazardous to such landing and taking off; or to persons using such lands or structures.
- (c) **Airport Zoning Map.** The Amery Municipal Airport Overlay Zoning and Height Limitation Map dated August 19, 2009, which is attached hereto and adopted as part of this article.
- (d) **Alteration.** Any construction which would result in a change in height or lateral dimensions of an existing structure or object.
- (e) **Commission.** The City of Amery Airport Commission.
- (f) **Community Center.** A facility used for and providing religious, fraternal, social, or recreational programs generally open to the public and designed to accommodate and serve significant segments of the community.
- (g) **Construction.** The erection or alteration of any structure or object, either of a permanent or temporary character.
- (h) **Department.** The City of Amery Zoning Department, or its agent.
- (i) **Detention Pond.** A pond or pool used for the temporary storage of water runoff and which provides for the controlled release of such waters.
- (j) **Development.** Any man-made change to improved or unimproved real estate, including but not limited to: construction of, or additions or substantial improvements to, buildings, other structures, or accessory uses; the placement of mobile homes; mining, dredging, filling, grading, paving, excavating or drilling operations; or depositing of materials.

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- (k) **Elevation.** The overall elevation above mean sea level of the top of a structure, including any appurtenance installed thereon, or the top of any object of natural growth.
- (l) **FAA.** Federal Aviation Administration.
- (m) **Growth.** Any object of natural growth, including trees, shrubs, or foliage, except farm crops which are cut at least once a year.
- (n) **Height.** The distance measured from the surface of the ground to the highest point of any structure or growth.
- (o) **Hunting Preserve.** Also termed a Game Preserve. Properties used for the raising, residence, and hunting of wildlife animals within a confined area for commercial or fraternal hunting clubs.
- (p) **Manager.** The manager of the Airport.
- (q) **Multi-Family Residential Development.** A building, or portion thereof, designed exclusively for occupancy by three or more families living independently of each other in individual dwelling units.
- (r) **Non-Conforming Use.** Any structure, tree, or land use which does not conform with a regulation prescribed in this article or an amendment thereto, as of the effective date of such regulation.
- (s) **Person.** Any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any spouse, partner, trustee, receiver, assignee, or other similar representative thereof.
- (t) **Preexisting Permitted Use.** Any use of the land lawfully in existence at the time this article or an amendment thereto becomes effective. Non-conforming structures, if destroyed, shall conform to this article if reconstructed.
- (u) **Place of Public Assembly.** All buildings or parts of buildings, where people gather for theater, recreation, entertainment, worship or educational purposes, as a principle use.
- (v) **Retention Pond.** A pond designed to hold a specific amount of water indefinitely. Usually the pond is designed to have drainage leading to another location when the water level gets above the pond capacity, but still maintains a certain capacity.
- (w) **Runway.** That portion of the airport having surfaces specially developed and maintained for the landing and takeoff of aircraft.
- (x) **Spectator Athletic Fields.** An indoor or outdoor recreational facility with permanent seating for individuals or stadium style lighting.
- (y) **Structure.** Any object or construction installed by a person, the use of which requires a permanent location on the ground, or attached to something having a permanent location on the ground.
- (z) **Tree.** Any object of natural growth, except for farm crops which are cut at least once a year, and except shrubs, bushes, or plants which do not grow to a height of more than five feet above the ground.
- (aa) **Underlying Zoning Ordinance.** The base, or existing zoning ordinance in effect in an area subject to this article.
- (bb) **Variance.** A departure from the terms of this article as applied to a specific building, structure or parcel of land, granted by the Board of Appeals upon the applicant proving unnecessary hardship, which permits the construction, alteration, remodeling or use of land that deviates from the requirements of this article.

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(cc) **Wildlife Sanctuary.** Also termed Wildlife Refuge, refers to the use of public or private property for the permanent or temporary residence or rehabilitation of wildlife animals or birds. Properties typically include the use of high fencing or netting to prevent wildlife from leaving the property. The raising and keeping of farm animals, veterinary clinics, or dog kennels, are not considered wildlife sanctuaries.

(dd) **Zoning Administrator.** The Zoning Administrator (or other authorized agent) for the City of Amery.

(ee) **Zoning Board of Appeals.** The City of Amery Zoning Board of Appeals..

## **Sec. 131\_202\_ General Provisions.**

(a) **Use Restrictions.** Except as otherwise provided in this article, no land, building, or structure shall hereafter be used or occupied; and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered, except in conformity with all the regulations herein. Notwithstanding any other provision of this article, the following standards shall be in full force and effect:

(1.) Glare. No glare-producing materials shall be used on the exterior of any structure, including any metal building, which are hazardous to aviation, or result in glare in the eyes of pilots using the Airport. (Zones 1, 2, 3, and 4)

a. Intent -- An example of a development that has the potential to cause hazardous glare is a multi-story office complex encased in reflective (mirrored) glass. An example of a development that would not likely have the same potential is the addition of a sunroom on the side of a house.

(2.) Lighting. There shall be no display of signs which produce a flashing or blinking effect, nor any lighting which projects upward in a manner that would interfere with aircraft, or a pilot's ability to identify Airport lights. (Zones 1, 2, 3, and 4)

a. Intent -- An example of lighting which would be of concern are lighting patterns that could simulate runway edge lighting, end or taxiway lighting, guidance lights; or upward shining search lights used for commercial advertising.

(3.) Electrical Interference. No structures or uses on land or water shall create electrical or electronic interference with navigational signals, or radio or radar communications between the aircraft and a ground station. (All Zones)

(4.) Visibility. No structure or use shall impair the visibility in the vicinity of the Airport, or otherwise endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the Airport, including the emission or discharge of smoke which would interfere with the health and safety of pilots and the public in the use of the Airport, or which would otherwise be detrimental or injurious to the health, safety, and general welfare of the public in the use of the Airport. (Zones 1, 2, 3, and 4)

a. Intent -- An example of a development that would likely not have the potential to cause visibility conflicts is the smoke produced by a wood furnace for a single-family residence. An example of development that has the potential to cause visibility conflicts is an industrial complex with cooling towers, evaporation ponds, and smoke stacks.

(b) **Hazard Marking and Lighting.** Any permit or variance granted under this article, may, if such action is deemed advisable by the Department to effectuate the purpose of this article and if such is reasonable in the circumstances, be so conditioned as to require the owner of the structure or trees in question to permit the Airport, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to the flyers the presence of an airport hazard.

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- (c) **Airport Zones.** All Airport Zones established by this article are shown on a map entitled Amery Municipal Airport Overlay Zoning and Height Limitation Map dated August 19 2009, on file with the city, and adopted as part of this article.
- (d) **Height Zones.** All Height Zones previously established by the Amery Municipal Airport Height Limitation Zoning Ordinance, and shown on a map dated January 13, 1996, are now included in this article and shown on the Airport Zoning Map, dated August 19, 2009.
- (e) **Height Limitations.** Except as otherwise provided in this article, no structure, tree or growth shall be erected, altered, allowed to grow, or be maintained within any of the zones established by this article to an elevation in excess of the applicable elevation limitations as shown on the Airport Zoning Map. The permitted elevation shall not exceed the elevation limitation numbers shown within the various zones encompassed by this article. Any structure constructed, altered or located in violation of this article shall be removed at the owner's expense. The Commission shall have the right to trim, prune, or remove, at the Commission's expense, any tree allowed to grow to a height in excess of the height limitation set forth herein.
- (1.) Exceptions. The restrictions contained in this article shall not apply to legal fences or to farm crops that are cut at least once each year.
- (f) **District Boundaries.** District boundary lines are centerlines of highways, roads or pavements; section, division of section, tract, or lot lines, or extensions of such lines, as applicable; or as otherwise indicated
- (1.) When a district line divides a lot/parcel of record, existing prior to the effective date of this ordinance, in such a manner that a use is not permitted in the most restrictive district of such lot, but is permitted on that portion of such lot in the lesser restrictive district, then a permitted use may be developed only on that portion of the lot/parcel where it is permitted, provided:
- a. The use is permitted by the underlying zoning ordinance;
  - b. The use complies with all applicable setback requirements;
  - c. A site plan, drawn to scale showing the location of the use and the district line on that lot/parcel, is submitted to the Department and is reviewed and approved pursuant to the procedure contained herein;
  - d. The permitted use, if developed, in no way creates or increases any hazard within the airspace required for takeoff, landing, or flight of aircraft
- (2.) Zone 1 shall be the most restrictive, and Zone 5 shall be the least restrictive.
- (g) **Notice/Fair Disclosure Statement.** No land shall be sold within Zones 1, 2, 3, 4, and 5 without the seller notifying any potential purchaser of said real estate of the proximity of the airport and that the land may be subject to noise, dust, lights, and the arrival and departure of aircraft, which may cause damage to dwellings or other structures, or may adversely impact the health of animals. The notification shall include a disclosure that the property may be subjected to those land use regulations adopted by this article.

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## Sec. 131\_203\_ Airport Zones and District Regulations.

In order to carry out the provisions of this article, there are hereby created and established five (5) zones as shown on the Airport Zoning Map, consisting of one sheet, and attached to and made a part of this article. For the purpose of this article, the lands and waters within three statute miles from the boundaries of Airport are divided into five (5) districts defined as follows:

(a) **Zone 1 – Airport District.** The Airport District is defined as all those lands owned by the Airport and intended to be used for airport purposes. The District is created to encompass areas that, due to the operation of aircraft, could be exposed to excessive noise, are within the aircraft approach and departure areas, or are in areas which are exposed to a greater risk of aircraft crashes (crash hazard area). The District is established to protect the approaches to the airport from incompatible land uses, and to preserve the airport’s ability to serve its present and future air transportation needs. Any expansion, alteration, or enlargement of any building, structure, or property within this zone must be approved by the Department. The boundaries of Zone 1 – Airport District are shown on the Airport Zoning Map.

(1.) Permitted Uses and Structures. Only uses and structures that are directly related to and necessary for the function and operation of the Airport.

- a. Air terminals
- b. Aircraft hangars
- c. Runways, taxiways, aprons, and related lighting and air support apparatus
- d. Airport administration and maintenance buildings and facilities
- e. Airport security, rescue, and firefighting buildings and facilities
- f. Aircraft repair and maintenance buildings and facilities
- g. Fuel storage facilities and pumps
- h. Commercial uses directly related to Airport operations
- i. Public gatherings in conjunction with an Airport related activity sponsored or approved by the Airport
- j. Air cargo facilities
- k. Intermodal facilities
- l. Other related airport uses and structures
- m. Municipal emergency responses facilities
- n. Agricultural uses provided they do not inadvertently result in a concentration of birds or other wildlife, which poses a threat to aviation operations

(2.) Prohibited Uses. Any construction, expansion, alteration or enlargement to any building or structure within this district is prohibited except for those uses and buildings necessary for the function, enhancement, or operation of the Airport. Wildlife sanctuaries, hunting preserves, or game preserves (including aviaries).

(3.) Dimensional Requirements. The size, height, location, and placement of structures or objects shall comply with the Amery Municipal Airport Layout Plan.

(b) **Zone 2 – High Impact Runway Approach and Departure District.** The purpose of this District is to establish land use requirements in areas that are typically over flown by aircraft during initial take-off and final landing maneuvers, and hence could be subjected to excessive noise and greater risk of aircraft crashes. The boundaries of the Zone 2 are shown on the Airport Zoning Map.

(1.) Permitted Uses.

- a. Single-family or duplex residential developments not to exceed a gross density of one unit per 30,000 square feet, provided new residential buildings are not directly located within the approach and departure ends of each runway
- b. Those uses permitted by the underlying zoning ordinance except for those uses specifically prohibited, or listed as a conditional use, by this article.

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(2.) Prohibited Uses.

- a. Multi-family residential developments
- b. Retirement, assisted living, and nursing homes
- c. Licensed group day care facilities
- d. Hospitals, except for clinics or medical offices provided the use does not include overnight sleeping quarters for patients
- e. Churches, schools, libraries, museums, and community centers
- f. Theaters, amphitheaters, and amusement parks
- g. Sports stadiums and spectator athletic fields
- h. Campgrounds
- i. Commercial or fraternal outdoor shooting ranges
- j. Wildlife sanctuaries, hunting preserves, or game preserves (including aviaries)
- k. Landfills, garbage dumps, offal dump sites, and other similarly licensed or titled facilities used to process, bury, store, or otherwise dispose of waste, trash, refuse, or dredge material that would attract birds or rodents.

(3.) Conditional Uses.

- a. The creation, expansion, or restoration of retention or detention ponds, wetlands, or any other body of water, either natural or artificial, provided mitigation measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- b. Mineral extraction operations provided the owner/operator of the mineral extraction operation sign an operational agreement with the Commission, agreeing to provide written notice to the Airport Manager one week prior to the start of any blasting activities, as resulting dust and debris may pose a threat to aviation operators. Any site reclamation that includes the creation of water bodies shall provide mitigation measures to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- c. Enclosed trash transfer stations provided the facility meets the FAA's definition of a fully enclosed trash transfer station (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- d. Commercial or public composting operations that accept only yard waste (e.g. leaves, lawn clippings, or branches), provided the compost never includes food or other municipal solid waste.
- e. Golf Courses and driving ranges, except those designed with lighting for night time play, provided mitigations measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).

(4.) Construction Requirements. All newly constructed enclosed residential, office, sales, and work areas that will be subject to a minimum of four (4) hours of continuous human occupancy per day, shall utilize construction techniques that provide a minimum of 10 decibels outdoor to indoor noise level reduction over industry standards for similar structures. Installation of air conditioning shall meet the 10-decibel requirement of the article.

(5.) Dimensional Requirements:

- a. Height. No structure or growth shall exceed the height permitted by the Airport Zoning Map.
- b. Setbacks. The setback requirements shall meet the municipal setback requirements of the applicable municipal zoning code.
- c. Lot Area. The minimum lot area provisions of the underlying zoning ordinance shall apply to all areas within Zone 2.

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(c) **Zone 3 – Moderate Impact Runway Approach and Departure District.** The purpose of this District is to establish land use requirements in areas that may be over flown by aircraft entering, operating within, and departing from a typical airport flight pattern, and hence could be subject to occasional excessive noise and risk of aircraft crashes. The boundaries of the Zone 3 are shown on the Airport Zoning Map.

(1.) Permitted Uses. Those uses permitted by the underlying zoning ordinance except for those uses specifically prohibited, or listed as a conditional use, by this article.

(2.) Prohibited Uses.

- a. Retirement, assisted living, and nursing homes
- b. Licensed group day care facilities
- c. Hospitals, except for clinics or medical offices provided the use does not include overnight sleeping quarters for patients
- d. Churches, schools, libraries, museums, and community centers
- e. Theaters, amphitheaters, and amusement parks
- f. Sports stadiums and spectator athletic fields
- g. Campgrounds
- h. Commercial or fraternal outdoor shooting ranges
- i. Wildlife sanctuaries, hunting preserves, or game preserves (including aviaries)
- j. Landfills, garbage dumps, offal dump sites, and other similarly licensed or titled facilities used to process, bury, store, or otherwise dispose of waste, trash, refuse, or dredge material that would attract birds or rodents.

(3.) Conditional Uses.

- a. The creation, expansion, or restoration of retention or detention ponds, wetlands, or any other body of water, either natural or artificial, provided mitigation measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- b. Mineral extraction operations provided the owner/operator of the mineral extraction operation sign an operational agreement with the Commission, agreeing to provide written notice to the Airport Manager one week prior to the start of any blasting activities, as resulting dust and debris may pose a threat to aviation operators. Any site reclamation that includes the creation of water bodies shall provide mitigation measures to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- c. Enclosed trash transfer stations provided the facility meets the FAA's definition of a fully enclosed trash transfer station (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- d. Commercial or public composting operations that accept only yard waste (e.g. leaves, lawn clippings, or branches), provided the compost never includes food or other municipal solid waste.
- e. Golf Courses and driving ranges, except those designed with lighting for night time play, provided mitigations measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).

(4.) Construction Requirements. All newly constructed enclosed residential, office, sales, and work areas that will be subject to a minimum of four (4) hours of continuous human occupancy per day, shall utilize construction techniques that provide a minimum of 10 decibels outdoor to indoor noise level reduction over industry standards for similar structures. Installation of air conditioning shall meet the 10-decibel requirement of the article.

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(5.) Dimensional Requirements.

- a. Height. No structure or growth shall exceed the height permitted by the Airport Zoning Map.
- b. Setbacks. The setback requirements shall meet the municipal setback requirements of the applicable municipal zoning code.
- c. Lot Area. The minimum lot area provisions of the underlying zoning ordinance shall apply to all areas within Zone 3.

(d) **Zone 4 – Noise Control/Overflight District.** The purpose of this District is to establish land use requirements in areas that are typically within the flight pattern of aircraft approaching and departing the Airport's runways, and hence could be subject to occasional excessive noise and risk of aircraft crashes. The boundaries of the Zone 4 are shown on the Airport Zoning Map and include property approximately within one mile of the ultimate runway (per the approved Airport Layout Plan), not already within Zone 1, 2, or 3 of this article.

(1.) Permitted Uses. Those uses permitted by the underlying zoning ordinance except for those uses specifically prohibited, or listed as a conditional use, by this article:

(2.) Prohibited Uses.

- a. Commercial or fraternal outdoor shooting ranges
- b. Any other construction or land use that would encourage the concentration of bird (avian) populations except that customary and reasonable agricultural practices that inadvertently result in a concentration of birds are not prohibited.
- c. Landfills, garbage dumps, offal dump sites, and other similarly licensed or titled facilities used to process, bury, store, or otherwise dispose of waste, trash, refuse, or dredge material that would attract birds or rodents.

(3.) Conditional Uses.

- a. The creation, expansion, or restoration of retention or detention ponds, wetlands, or any other body of water, either natural or artificial, provided mitigation measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- b. Mineral extraction operations provided the owner/operator of the mineral extraction operation sign an operational agreement with the Commission, agreeing to provide written notice to the Airport Manager one week prior to the start of any blasting activities, as resulting dust and debris may pose a threat to aviation operators. Any site reclamation that includes the creation of water bodies shall provide mitigation measures to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- c. Enclosed trash transfer stations provided the facility meets the FAA's definition of a fully enclosed trash transfer station (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).
- d. Commercial or public composting operations that accept only yard waste (e.g. leaves, lawn clippings, or branches), provided the compost never includes food or other municipal solid waste.
- e. Golf Courses and driving ranges, except those designed with lighting for night time play, provided mitigations measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).

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(4.) Construction Requirements. All newly constructed enclosed residential, office, sales, and work areas that will be subject to a minimum of four (4) hours of continuous human occupancy per day, shall utilize construction techniques that provide a minimum of 10 decibels outdoor to indoor noise level reduction over industry standards for similar structures. Installation of air conditioning shall meet the 10-decibel requirement of the article.

(5.) Dimensional Requirements.

- a. Height. No structure or growth shall exceed the height permitted by the Airport Zoning Map.
- b. Setbacks. The setback requirements shall meet the municipal setback requirements of the applicable municipal zoning code.
- c. Lot Area. The minimum lot area provisions of the underlying zoning ordinance shall apply to all areas within Zone 4.

(e) **Zone 5 – Height Limitation District.** The purpose of this District is to protect the approaches to the airport from the construction or erection of structures that would constitute a hazard to air navigation, and from incompatible land uses. The boundaries of the Zone 5 include all parcels falling within three (3) statute miles, as shown on the Airport Zoning Map.

(1.) Permitted Uses. Those uses permitted by the underlying zoning ordinance except for those uses specifically prohibited by this article.

(2.) Prohibited Uses.

- a. Landfills, garbage dumps, offal dump sites, and other similarly licensed or titled facilities used to process, bury, store, or otherwise dispose of waste, trash, refuse, or dredge material that would attract birds or rodents.

(3.) Conditional Uses.

- a. The creation, expansion, or restoration of retention or detention ponds, wetlands, or any other body of water, either natural or artificial, provided mitigation measures are taken to lessen the concern for wildlife hazards. (Refer to FAA Advisory Circular 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports).

(4.) Dimensional Requirements.

- a. Height. No structure or growth shall exceed the height permitted by the Airport Zoning Map. The restrictions shall not apply to structures that are less than forty five (45) feet above ground level. Construction plans for structures greater than forty five (45) feet above ground level shall be submitted to the City for review and permitting.
- b. Setbacks. The setback requirements shall meet the municipal setback requirements of the applicable municipal zoning code.
- c. Lot Area. The minimum lot area provisions of the underlying zoning ordinance shall apply to all areas within Zone 5.

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### **Sec. 13-1-204 Non-Conforming Use.**

- (a) **Non-Retroactive.** Nothing contained herein shall require any change in the construction or alteration of any structure, if the construction or alteration of such was begun prior to the effective date of this article, and if such is diligently prosecuted.
- (b) **Reconstruction.** When a nonconforming use, building, structure or tree is destroyed by fire, explosion, act of God, or the public enemy, it may be restored to its original condition so long as it complies with the underlying zoning ordinance requirements and the height limitations imposed by this article as verified by a signed statement from the Zoning Administrator prior to any such rebuilding, reconstructing or rehabilitation.
- (c) **Alteration.** Any principal non-conforming uses, as described in this article, may be expanded, altered, or otherwise enlarged as long as all of the following requirements are met:
  - (1.) The expansion, alteration, or enlargement meets the requirements of height limitation zoning, and a statement showing such compliance is signed by the City prior to the expansion, alteration, or enlargement.
  - (2.) The expansion, alteration, or enlargement in no way increases or creates any hazard within the airspace required for the flight of aircraft in landing or taking off, or creates or increases any potential hazard to any persons on the ground.
- (d) **Removal.** Nothing in this article shall interfere with or prevent the removal of non-conforming uses by purchase or the use of eminent domain in the manner provided by Wisconsin Statutes.

### **Sec. 13-1-205 Administration.**

- (a) **Administrative responsibility.** Regardless of the governmental jurisdiction in which this article is in effect, administration of the article shall be the responsibility of the City of Amery, unless otherwise specified.
- (b) **Conflicting regulations.** The provisions of this article shall prevail over the zoning districts and regulations of Polk County, the Towns of Alden, Black Brook, Garfield, and Lincoln. However, the provisions of this article shall be considered minimum requirements. Where a conflict exists between any of these zoning regulations and any other regulations or ordinances applicable to the same site, whether the conflict is with respect to the height of structures, or growths, the use of land, or any other matter, the more stringent regulations or ordinances shall govern and prevail. Regulations contained herein pertaining to zone 1 shall supercede and control over any local regulation to the contrary.
- (c) Whenever a use is neither specifically permitted nor denied, the use shall be considered prohibited. In such a case, the Department, on its own initiative or upon the request of a specific property owner, may conduct a study to determine if the use is appropriate, and which, if any, performance standards are appropriate to govern said use.
- (d) The Department shall have the right to remove, at the owner's expense, any use or structure which was developed, constructed, or placed after the adoption of this article and found to be in violation of this article.

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## Sec. 13-1-206 Permits.

Applications for permits and variances shall be made to the Zoning Administrator (or other authorized agent) upon a form furnished by the City.

- (a) **Future Uses.** No structure shall hereafter be constructed, erected or installed in any zone created by this article until the owner or his or her agent shall have applied, in writing, for a permit therefore and obtained such permit from the Department, except structures less than 35 feet in height above the ground and within ½ mile of the airport boundary and structures less than 50 feet in height above the ground within the area beginning ½ mile from the airport boundary and extending to three miles from the airport boundary, provided that the development activity is not a prohibited use:
  - (1.) Application for such permit shall indicate the use for which the permit is desired and shall describe and locate the use with sufficient particularity to permit the Department to determine whether such use would conform to the regulations herein prescribed.
  - (2.) Said permit shall be posted in a prominent place on the premises prior to and during the period of construction, erection, installation or establishment.
- (b) **Non-conforming Uses.** Before any nonconforming structure may be replaced, altered or rebuilt, a permit shall be applied for and secured in the manner prescribed by Subsection 13-1-207 authorizing such change, replacement or repair. No such permit shall be denied if the structure will not become a greater hazard to air navigation than it was on the effective date of this article or than it was when the application for a permit was made.
- (c) **Conditional Uses.** Conditional uses shall be reviewed by the Airport Commission, and Plan Commission, pursuant to Article E, Amery Zoning Code.
- (d) **Expiration.** Any permit issued under this article shall expire within six (6) months unless substantial work has commenced, or within eighteen (18) months after the issuance of the permit if the structure for which a permit is issued is not substantially completed, in which case of expiration, the applicant shall reapply for a permit before commencing work on the structure.
- (e) **Fees.** Fees for the administration of this article and zoning permits shall be established by the City. It is intended that the fees should cover the reasonable costs of administering this ordinance.

## Sec. 13-1-207 Review Process.

- (a) **Optional pre-application meeting.** The property owner (or owner's agent) of a proposed development within the jurisdiction of this ordinance is encouraged to submit preliminary information regarding the proposed project to the City's Zoning Administrator (or other authorized agent) prior to submitting a formal application.
- (b) **Application submittal.** A complete application shall be submitted to the City's Zoning Administrator (or other authorized agent). The application shall indicate the use of which the permit is desired, and shall describe and locate the use with sufficient detail to permit the Zoning Administrator (or other authorized agent) to determine whether such use would conform to the applicable provisions of this ordinance.
- (c) **Staff review.** Upon receipt by the Zoning Administrator (or other authorized agent), a copy of the application shall be transmitted to the Chairperson of the Airport Commission, Plan Commission, and the Airport Manager for comment. The Zoning Administrator (or other authorized agent) may submit copies of the application to other departments or government agencies, as deemed necessary, to provide adequate review of the application. Applications shall be granted or denied within 30 days of the date of filing of the applications, unless Federal Aviation Administration (FAA) approval is requested by the applicant or the Airport Commission, in which case the Zoning Administrator's (or other authorized agent) action may await determination by the FAA.

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- (d) **Approval.** Prior to making a final decision, the Zoning Administrator (or other authorized agent) may hold a meeting with the applicant to discuss and attempt to resolve any issues that become evident during the review of the application. Upon completion of the review of the application, the Zoning Administrator (or other authorized agent) shall make a determination and notify the applicant of one of the following final actions:
- (1.) Approved application.
  - (2.) Approved application, with modifications that the Zoning Administrator (or other authorized agent) deems necessary to meet any criteria for approval. An approval with modifications or conditions shall be agreed upon by the property owner, unless the applicant appeals the final action.
  - (3.) Denied application. Such denial must include specific reasons for denial.
- (e) **Issuance of a building permit.** If the Zoning Administrator (or other authorized agent) approves the proposed development, the municipality within which the development is located may issue a building permit. If the proposed development is not approved, no building permit shall be issued.
- (f) **Appeals.** Applications for action by the Board of Appeals shall be forthwith transmitted by the Zoning Administrator (or other authorized agent) to the Board for hearing and decision.

### **Sec. 13-1-208 Appeals and Variances.**

- (a) **Aggrieved Person.** Any person aggrieved or affected by a decision or action of the Department made in the administration of this article, may appeal such decision or action to the Board of Zoning Appeals provided:
- (1.) Such appeals are filed with the Department within thirty (30) calendar days following the administrative decision. Applications for action by the Board of Appeals shall be forthwith transmitted by the Department to the Board for hearing and decision.
  - (2.) The appeal specifies the exact location of the parcel of land affected by the decision and the reason(s) for the appeal.
- (b) **Variances.** Upon appeal in special cases, the Board of Zoning Appeals may, after investigation and public hearing, grant such variance from the terms of this article as will not be contrary to the public interest; where owing to special conditions, a literal enforcement of this article would result in unnecessary hardship; and such relief will do substantial justice and be in accord with the spirit of this article; and does not, or will not, create a hazard to the safe, normal operation of aircraft.

### **Sec. 13-1-209 Violations and Penalties.**

In case of any violation of any provision of this article, the Department may institute appropriate legal action or proceeding to enjoin a violation of this article.

- (a) Each violation of these regulations, or of any regulation, order, or ruling promulgated hereunder, shall constitute an airport hazard, and such hazard shall be removed by proper legal proceedings. In addition, The City of Amery may institute in the Circuit Court of Polk County, or any county in which the airport hazard is wholly or partially located, an action to prevent and restrain, correct or abate any violation of these zoning regulations, or any regulation, order, or ruling made in connection with their injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purposes of these zoning regulations as adopted, and orders and rulings made pursuant thereto.
- (b) Any person, firm, or corporation found guilty of violating any provision(s) of this ordinance shall, upon conviction thereof, forfeit not less than twenty five dollars (\$25.00), nor more than five hundred dollars (\$500.00) for such offense, together with the costs of prosecution. Each day that a violation continues to exist shall constitute a separate offense.

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**Sec. 13-1-210 Severability.**

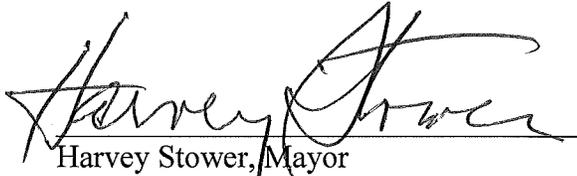
If any of the provisions of this article, or the application thereof to any persons or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

**Sec. 13-1-211 Effect.**

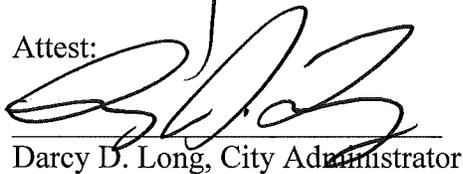
This article shall take effect and be in force upon passage by the City Council and publication.

**Sec. 13-1-212 through 13-1-220 Reserved for Future Use.**

Passed this day Wednesday, September 2, 2009

  
Harvey Stower, Mayor

Attest:

  
Darcy D. Long, City Administrator