

## Chapter 27.59

### AIRPORT ZONING REGULATIONS

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#### **27.59.010 Definitions.**

As used in this chapter unless the context otherwise requires:

**Airport** shall mean the Lincoln airport, located in Sections 4, 5, 6, 7, 8, 9, 17 and 18, Township 10 North and Sections 31 and 32, Township 11 North, Range 6 East of the Sixth Principal Meridian, Lancaster County, Nebraska.

**Airport hazard** shall mean any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone.

**Airport hazard area** shall mean any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones.

**Building Official** shall mean the Director of the Department of Building and Safety of the City of Lincoln, Nebraska, or his or her authorized representative.

**City** shall mean the City of Lincoln, Nebraska.

**Existing runway** means a runway that has been constructed or is under construction.

**Instrument runway** shall mean an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan.

**Lessee** shall mean any person, other than the owner, in possession of land.

**Nonconforming use** shall mean any structure or use of land which does not conform to a requirement of this chapter or an amendment thereto, as of the effective date of this chapter.

**Person** shall mean any individual, firm, association, corporation, or body politic and includes any receiver, assignee, or similar representative thereof.

**Proposed runway** means a runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration.

**Runway** shall mean a defined area at the Airport that is prepared for the landing and takeoff of aircraft along its length. For purposes of Chapter 27.59, only instrument runways as defined herein shall be included within the term “runway”.

**Structure** shall mean any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines.

**Tree** shall mean any object of natural growth.

(Ord. 20304 §1; March 14, 2016; prior Ord. 12571 §280; May 8, 1979).

### **27.59.015 Scope of Regulations.**

The regulations set forth in this chapter or set forth elsewhere in this title when referred to in this chapter are known as the Airport Zoning Regulations. The regulations are adopted pursuant to *Neb. Rev. Stat.* §3-303 (1943 as amended) for the purpose of preventing the creation and establishment of airport hazards. The regulations are applicable in all zoning districts, including the P Public District, and are applicable to both public and private entities, and qualify or supplement as the case may be the underlying district regulations appearing elsewhere in this title. In the event of any conflict between the Airport Zoning Regulations and any other regulation applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such regulations were adopted by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. (Ord. 19714 §2; May 21, 2012).

### **27.59.020 Airport Hazard Area; Boundaries.**

All of the area encompassed within the approach zones, operation zones, turning zones, and transition zones as defined in Section 27.59.030, to the extent that such area is located within the corporate limits of the City of Lincoln or within the extraterritorial zoning jurisdiction of the City of Lincoln, is hereby declared an airport hazard area. The boundaries of the airport hazard area, approach zones, operation zones, turning zones, and transition zones are delineated and shown on the Lincoln Airport Zoning Map. (Ord. 20304 §2; March 14, 2016; prior Ord. 17967 §2; February 25, 2002; Ord. 12571 §281; May 8, 1979).

### **27.59.030 Zone Descriptions.**

(a) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerline. The dimensions of an approach zone for existing or proposed runways are as follows:

- i. An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty feet wide at the farthest end of the zone; and
- ii. The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end. At three miles from

such operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally and continues to the ten-mile limit.

(b) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. The dimensions of an operation zone for existing and proposed runways are as follows:

- i. The operation zone extends two hundred feet beyond the ends of each runway;
- ii. The operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline; and
- iii. The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher.

(c) Transition zone means a zone that extends outward at a right angle to the runway centerline and the extended runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway.

(d) The turning zones comprise all portions of the zoned area not contained in the approach zones, operation zones, and transition zones. The turning zone's outer limit is the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway. (Ord. 20304 § 3; March 14, 2016; prior Ord. 17967 §3; February 25, 2002: Ord. 12571 §282; May 8, 1979).

#### **27.59.040 Height Restrictions.**

Except as otherwise permitted by Chapter 27.59, no structure or appurtenance thereto of any kind or character shall hereafter be erected, constructed, repaired, or established and no tree shall be suffered or allowed within the Airport Hazard Area that exceeds the following height restrictions:

- (a) In the approach zones, the height of the planes forming the approach zones;
- (b) In the turning zones, to a height in excess of 150 feet above the elevation at the closest runway end, as shown on the Lincoln Airport Zoning Map.
- (c) In the transition zones, the height of the planes forming the transition slopes;
- (d) Within the operation zone and in the existing or proposed runways, the height of the existing or proposed finished grade of said runways. All grades of said runways are hereby established by and referenced to the plans of said airport on file in the office of the City Clerk, which plans are made a part of this chapter by reference.

(e) Notwithstanding the above, a maximum height of 275 feet shall be permitted in the 275 Foot Maximum Height Zone as shown on the Lincoln Airport Zoning Map. (Ord. 20304 §4; March 14, 2016; prior Ord. 19714 §3; May 21, 2012: Ord. 17967 §3; February 25, 2002: Ord. 12571 §283; May 8, 1979).

#### **27.59.060 Permit Required; Procedure.**

(a) Except as provided in subparagraph (b), it shall be unlawful to erect, construct, reconstruct, repair, or establish any structure or appurtenance thereto of any kind or character within the boundary of the Airport Hazard Area of the Airport without first obtaining a height permit from the Building Official. A height permit shall not be issued for any structure or appurtenance thereto that exceeds the height restrictions set forth in Section 27.59.040.

(b) No height permit shall be required within the turning zones, or that part of the approach zones located more than seven thousand seven hundred feet from the end of the runway, for construction of any proposed structure that will be no higher than seventy-five feet above the elevation of the natural ground at the location of the proposed construction, except for construction in those specifically "shaded" areas (elevation 1,248 ft. A.M.S.L. or higher) indicated on the Lincoln Airport Zoning Map that are within four miles from the end of a runway. Structures or buildings proposed to be constructed within such "shaded" areas on said map shall require certification as to elevation. No certification as to elevation or a height permit shall be required for proposed accessory structures or accessory buildings to dwelling units when said proposed accessory structures or accessory buildings or any attachment thereto do not exceed the elevation of said dwelling unit.

(c) Application for a height permit as required under the provisions of this chapter shall be made upon a form which is available in the office of the Building Official. The application shall indicate the location, ground elevation with reference to the elevation at the closest point on a runway, and the height of the proposed structure. Said elevation shall be certified to by a land surveyor, registered by the State of Nebraska, which certificate must accompany said application.

(d) Upon completion of any structure or dwelling requiring a height permit, the Building Official shall require a registered professional surveyor to verify the actual height and location of such structure or building. The certification shall be submitted to the Building Official at the point of final construction of the structure or building and prior to operation or occupying the structure or building. Such information shall be recorded and maintained by the Building Official. (Ord. 20304 §5; March 14, 2016: prior Ord. 17967 §6; February 25, 2002: Ord. 12571 §285; May 8, 1979).

#### **27.59.070 Airport Hazards.**

(a) The Building Official shall examine or cause to be examined any structures or trees reported to him as an airport hazard within the airport hazard area, and if such is found to be an airport hazard as defined in Section 27.59.010, and is not otherwise approved or authorized by this Chapter, it shall be the duty of the Building Official to give the owner of the property where such airport hazard exists written notice thereof, and to take such measures as are necessary and authorized by law to eliminate or alleviate said airport hazard. For the purpose of aiding the Building Official to determine whether the existence of any such reported structures or trees constitute an airport hazard, the Building Official may in each case request a written report from the State Department of Aeronautics under the provisions of *Neb. Rev. Stat.* §§ 3-108 and 3-113 (Reissue 2012) to advise whether or not an airport hazard, as defined in this chapter, exists.

(b) Notwithstanding any other provisions of this title, no use may be made of land within any zone established by this ordinance in such a manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, result in glare in the eyes of fliers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, take-off, or maneuvering of aircraft. (Ord. 20304 §6; March 14, 2016: prior Ord. 12571 §286; May 8, 1979).

#### **27.59.080 Nonconforming Height.**

(a) Within the airport hazard area as hereinbefore defined, the lawful height of a building, structure, tree, or premises existing at the time of the effective date of this chapter may be continued although such height does not conform to the provisions hereof and it shall be

considered a nonconforming use. Within the airport hazard area no nonconforming building, structure, tree, premises, or appurtenance thereof of any kind or character shall hereafter be replaced, replanted, substantially reconstructed, repaired, or altered without first receiving a permit from the Building Official authorizing such work. A permit shall be granted under this Section if the applicant shows that the replacement, repair, replanting, or alteration of the nonconforming building, structure, tree, premises, or appurtenance thereof would not result in an increase in height for the nonconforming building, structure, tree, or premises as it existed before the effective date of this Section, as amended, or a greater hazard to air navigation than existed before the effective date of this Section. For any nonconforming use, no permit shall be required under this subsection for repairs made necessary by fire, explosion, act of God, or the common enemy, or for repairs for which the costs do not exceed sixty percent of the fair market value of the structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

(b) Notwithstanding (a) above, an electric supplier owning or operating an electric facility made nonconforming by adoption of this Chapter may, without a permit or approval of the City, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its height as it existed as of the date this Chapter, as amended, was adopted. Any electric facility made nonconforming by adoption of this Chapter which, in the course of being repaired, reconstructed, or replaced will exceed its preexisting height shall require a permit from the City which shall be granted upon a showing that the excess height of the electric facility will not establish or create a greater hazard to air navigation than the electric facility that previously existed at said location. For purposes of this section, an “electric facility” means an overhead electric line, including poles or other supporting structures, owned or operated by an electric supplier as defined in Neb. Rev. Stat. §70-1001.01, for the transmission or distribution of electrical power to the electric supplier’s customers. (Ord. 20304 §7, March 14, 2016; prior Ord. 17967 §7; February 25, 2002: Ord. 12571 §287; May 8, 1979).

#### **27.59.090 Administration.**

It is the duty of the Building Official to administer and enforce this chapter, and said officer is hereby appointed the “administrative agency” provided for in *Neb. Rev. Stat.* §3-319 (2014 Cum. Supp.), and shall have all the powers and perform all the duties of the administrative agency as provided by the airport zoning act, until or unless otherwise ordered by the Mayor. Applications for permits and variances shall be made to the Building Official upon a form furnished by said official. Applications which are by this chapter to be decided by the Building Official shall be promptly considered and granted or denied. Applications for action by the Board of Zoning Appeals shall be forthwith transmitted by the Building Official to the Board for hearing and decision. (Ord. 20304 §8; March 14, 2016: prior Ord. 12571 §288; May 8, 1979).

#### **27.59.100 Board of Zoning Appeals.**

(a) The Board of Zoning Appeals is the "Board of Adjustment" with respect to this chapter, to have and exercise the powers conferred by Section 27.59.120 and such other powers and duties as are conferred and imposed by law. Any person aggrieved or affected by any decision or action of the Building Official made in the administration of this chapter may appeal such decision or action to the Board of Zoning Appeals.

(b) Any appeal taken pursuant to this section shall be by the procedure established by Section 27.75.030. (Ord. 12571 §289; May 8, 1979).

**27.59.110 Powers of the Board of Zoning Appeals.**

The Board of Zoning Appeals has the following powers:

(a) To hear and decide appeals from any order, requirement, or decision made by the Building Official in the enforcement of this chapter;

(b) To hear and decide any special exceptions to the terms of this chapter which such board may be required to pass upon under this chapter; and

(c) To hear and decide specific variances to the extent necessary, where there are peculiar exceptions and unusual circumstances in connection with a specific situation where the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of this chapter. Provided, that any variance may be allowed subject to any reasonable conditions that the Board of Zoning Appeals may deem necessary to effectuate the purpose of this chapter.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Building Official or to decide in favor of the applicant on any matter upon which the Board is required to pass under the airport zoning regulations or to effect any variation in such regulations. (Ord. 20304 §9; March 14, 2016: prior Ord. 12571 §290; May 8, 1979).

**27.59.120 Airport Zoning Commission.**

The Lincoln City-Lancaster County Planning Commission is hereby appointed the “Airport Zoning Commission,” referred to in *Neb. Rev. Stat. § 3-308, (2014 Cum. Supp.)*, to have and exercise the powers conferred by *Neb. Rev. Stat. § 3-308, (2014 Cum. Supp.)*, and such other powers and duties as are conferred and imposed by law. (Ord. 20304 §10; March 14, 2016: prior Ord. 12571 §291; May 8, 1979).

**27.59.130 Use of Land.**

No use of land which is prohibited by Title 27 of this code is permitted within the airport hazard area. (Ord. 12571 §292; May 8, 1979).

**27.59.140 Appeal from Board of Zoning Appeals.**

Any person aggrieved or taxpayer affected by any decision of the Board of Zoning Appeals or governing body of a political subdivision which is of the opinion that a decision of the Board of Zoning Appeals is illegal, may appeal to the District Court of Lancaster County in the manner provided in *Neb. Rev. Stat. §§ 3-324 et seq. (2014 Cum. Supp.)*. (Ord. 20304 §11; March 14, 2016: prior Ord. 12571 §293; May 8, 1979).

**27.59.150 Penalty for Violations.**

(a) Each violation of any provision of this chapter shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$500.00. Each day a violation continues to exist shall constitute a separate offense.

(b) In any case where use of land is made in violation of this chapter or where any building or structure is erected, constructed, reconstructed, altered, repaired, or converted in violation of this chapter, the city attorney, in addition to other remedies, is hereby authorized to institute on behalf of the city, injunction, mandamus, or any other appropriate action or proceeding to prevent such unlawful use, erection, construction, reconstruction, alteration, or conversion, or to correct or abate such violation. (Ord. 20304 §12; March 14, 2016: prior Ord. 12571 §294; May 8, 1979).