

Section 5.21: AAA Airport Hazard Area Overlay District

5.21.01 INTENT:

The intent of this district is to be appended and to overlay any of the primary zoning districts as described in this Resolution to protect the safe use of public airports and their Airport Hazard Area, within the city of Fairbury, NE and its extraterritorial jurisdiction, by limiting the location and height of structures within the operation, approach, transition and turning zones around airports which are registered with the Nebraska Department of Aeronautics, as designated on the Official Zoning Map of Fairbury, Nebraska.

Designated Public Airport

The designated public airport for which these regulations have been prepared is the Fairbury, Nebraska Municipal Airport located more or less in Section 35 Township 2 N Range 2 E.

Airport Hazard Area Description

In accordance with Neb. Rev. Stat. §3-303, every political subdivision that has adopted a comprehensive plan and zoning regulations, and has an airport hazard area within the area of its zoning jurisdiction, must adopt, administer, and enforce the regulations in this section for such airport hazard area.

5.21.02 DEFINITIONS

Airport shall mean an area of land or water designed and set aside that is used or intended to be used for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes; includes any related buildings and facilities. Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans.

Airport hazard shall mean any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft; 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 the act, but such area shall not extend in any direction a distance in excess of three miles from the adjacent boundary of an airport; the limits provided for approach, operation, transition, and turning zones.

Airport layout plan shall mean a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines.

Approach zone shall mean a zone that extends from the end of each operation zone and is centered along the extended runway centerlines.

Electric facility shall mean an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers.

Existing runway shall mean an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction.

Instrument runway shall mean an existing runway with precision or non-precision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or non-precision instrument approaches reflected on the airport layout plan. After the effective date of this act, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation.

Operation zone shall mean a zone that is longitudinally centered on each existing or proposed runway.

Person shall mean any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

Political subdivision shall mean any municipality, city, village, or county.

Proposed runway shall mean an instrument runway or a visual 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 an airport that is prepared for the landing and takeoff of aircraft along its length;

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

Transition zone shall mean a zone that extends outward at a right angle to the 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.

Tree shall mean any object of natural growth.

Turning zone's outer limit shall mean 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.

Visual runway shall mean a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

5.21.03 AIRPORT ZONES

The following are intended for use with this specific overlay zoning district.

Airport Hazard Area consists of Operation Zones, Approach Zones, Turning Zones, and Transition Zones.

Approach Zones extend from the end of each operation zone and are centered along the extended runway centerlines. The zones' dimensions are:

1. Instrument Runways:

- A. Length and Width: The approach zones extend from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zones are 1,000 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline 10 miles from the operation zone where it is 16,840 feet wide.
- B. Height Limit: The height limit of the approach zones begins at the elevation of the operation zone and rises one foot vertically for every 50 feet horizontally (50:1) up to a maximum of 150 feet above the nearest existing or proposed runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every 50 feet horizontally and continues to the 10-mile limit.

2. Visual Runways:

- A. Length and Width: The approach zones extend from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zones are 500 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is 3,700 feet wide.
- B. Height: The height limit of the approach zones begins at the elevation of the operation zone and rises one foot vertically for every 40 feet horizontally (40:1) up to a maximum of 150 feet above the nearest existing or proposed runway end.

Operation Zones are longitudinally centered on each existing or proposed runway:

1. Length:

- a. For existing and proposed paved runways, the operation zones begin and end 200 feet beyond the end of each runway.
- b. For existing and proposed turf runways, the operation zones begin and end at the runway ends.
- c. For existing and proposed instrument runways, the operation zone is 1,000 feet wide, with 500 hundred feet on either side of the runway centerline.
- d. For all other existing and proposed runways, the operation zone is 500 feet wide, with 250 feet on either side of the runway centerline;

2. Height: The height limit of the operation zones is the same as the nearest point on an existing or proposed runway or the surface of the ground, whichever is higher.

Transition Zones extend outward at right angles to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally (7:1). The height limit of these zones begins at the height limit of the adjacent operation zones or approach zones. The transition zones end at a height of 150 feet above the nearest existing or proposed runway end.

Turning Zones extend 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 zones is 150 feet above the nearest existing or proposed runway end.

5.21.04 HEIGHT RESTRICTIONS:

No building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character shall hereafter be erected, constructed, repaired, or established, nor shall any tree or other object of natural growth be allowed to grow, above the heights described in Section 5.21.03 above.

5.21.05 AIRPORT ZONING MAP AND LOCATION

The boundaries, operation zones, approach zones, transition zones, and turning zones of the airport are indicated on the Airport Zoning Map, which is attached hereto and made a part hereof by reference. A copy of the Airport Zoning Regulations and Airport Zoning Map shall at all times be on file in the office of the Zoning Administrator and City Clerk.

5.21.06 PERMIT REQUIREMENTS, EXCEPTIONS, APPLICATION FORMS, AND FEES

1. Anyone wishing to erect, construct, reconstruct, repair, or establish any building, transmission line, communication line, pole, tower, smokestack, chimney, wires, or other structure or appurtenance thereto of any kind or character; or to plant or replant any tree or other object of natural growth which, when mature, would not violate the requirements of Section 5.21.03 above, within the Airport Hazard Area must first obtain a permit from Zoning Administrator.
2. Exception:
Within the Turning Zones, no permit shall be required for any construction, reconstruction, repair, or planting of anything which, when completed, or, in the case of natural growth, when mature, does not exceed seventy-five 75 feet above the nearest existing or proposed runway end.
3. Application Form:
Application for a permit as required under these regulations shall be made on a form to be available in the office of the Zoning Administrator and shall indicate the approximate location, ground elevation with reference to the end of the nearest runway or landing strip and height of the proposed structure or planting. (Mean Sea Level Elevation)
4. Permit Fee:
The fee for each permit issued shall be established by the County Board as a separate Resolution to the Zoning Resolution, and all fees so paid shall be deposited into the airport's revenue fund.

5.21.07 NON-CONFORMING STRUCTURES

1. Within the Airport Hazard Area, no non-conforming building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character or object of natural growth; and no such structures or objects of natural growth have been torn down, destroyed, have deteriorated or decayed to an extent of 50% or more of their original condition, or abandoned for a period of 12 months or more; shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted, or allowed to grow, as the case may be, to a height above the heights permitted by these regulations. Transmission lines and other communication lines shall be interpreted as all poles, wires, guys and all other equipment necessary for the operation and maintenance of same within the regulated zone.
2. Except as provided in subsection (3) of this section for certain electric facilities, all such airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when

the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

3. An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

5.21.08 MARKING OF NON-CONFORMING STRUCTURES

Whenever the Zoning Administrator determines that a specific structure or object in the Airport Hazard Area exceeds the height restrictions and existed prior to the promulgation of these regulations, the owner(s) and/or the lessor(s) of the premises on which the structure or object is located shall be notified in writing by the Zoning Administrator. The owner(s) and lessor(s) shall, within a reasonable time, permit the marking and lighting of the structure or object. The Zoning Administrator shall specify the required marking and lighting, consistent with these regulations entitled "Marking and Lighting of Structures". The cost of marking or lighting shall not be assessed against the owner or lessor of said premises.

5.21.09 ADMINISTRATIVE AGENCY; ENFORCEMENT

The Zoning Administrator shall administer and enforce these regulations and shall be the administrative agency provided for in Neb. Rev. Stat. § 3-319 (Reissue 2007), and shall have all the powers and perform all the duties of the administrative agency as provided in the Airport Zoning Act.

5.21.10 VARIANCE FROM REGULATIONS

1. Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under this regulation may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection section 19-907 through 19-912.01, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this regulation.
2. In granting any permit under or variance from any airport zoning regulation adopted under this regulation, the administrative agency or board of adjustment

may, if it deems such action is advisable to effectuate the purposes of the regulation and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

5.21.11 ZONING BOARD OF ADJUSTMENT

The Fairbury Board of Adjustment shall be the board of adjustment with respect to these regulations. Said board shall have and exercise the powers conferred by Neb. Rev. Stat. §3-320 et. seq. (Reissue 2007) and such other powers and duties as are conferred and imposed by law.

5.21.12 PERMITTED PRINCIPAL USES AND STRUCTURES:

Any use or structure that is permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 5.21.03 above.

5.21.13 CONDITIONAL USES:

Any conditional use that is permitted in the primary zoning district where this district is overlain where such conditional use has been duly authorized by the City Council in accordance with the requirements and procedures specified in this Resolution, provided all buildings, structures and other obstacles comply with the height restrictions set forth in Section 5.21.03 above.

5.21.14 ACCESSORY STRUCTURES:

Any accessory use or structure that is permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 5.21.03 above.

5.21.15 CONFLICTING REGULATIONS:

In the event of any conflict between any airport zoning regulations adopted under this regulation and any other regulations 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 other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

