

# CHAPTER 329

## AIRPORT ZONING

Referred to in §307.25, 331.304, 331.321, 476A.5

[P]

Nuisances in general, chapter 657

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### 329.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meaning herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. “*Airport*” means any area of land or water designed and set aside for the landing and take-off of aircraft and utilized, or to be utilized, in the interest of the public for such purposes.
2. “*Airport hazard*” means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. § 77.21, 77.23 and 77.25 as revised March 4, 1972, and which obstruct the air space required for the flight of aircraft and landing or take-off at an airport or is otherwise hazardous to such landing or taking off of aircraft.
3. “*Airport hazard area*” means any area of land or water upon which an airport hazard might be established if not prevented as provided by this chapter.
4. “*Department*” means the state department of transportation.
5. “*Municipality*” means any county or city of this state.
6. “*Obstruction*” means any tangible, inanimate physical object, natural or artificial, protruding above the surface of the ground.
7. “*Person*” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.
8. “*Structure*” means any object constructed or installed by humans, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines, including the poles or other structures supporting the same.
9. “*Tree*” means any object of natural growth.
10. The singular shall include the plural, and the plural the singular.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.1]  
2008 Acts, ch 1032, §106

### 329.2 Airport hazards contrary to public interest.

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land and other persons in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

1. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.
2. That it is necessary in the interest of the public health, safety, and general welfare that the creation or establishment of airport hazards be prevented.

3. That this should be accomplished, to the extent legally possible, by proper exercise of the police power.

4. That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which municipalities may raise and expend public funds, as an incident to the operation of airports, to acquire land or property interests therein.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.2]

[P] See §657.2(8)

### **329.3 Zoning regulations — powers granted.**

Every municipality having an airport hazard area within its territorial limits may adopt, administer, and enforce in the manner and upon the conditions prescribed by this chapter, zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted, and regulate and restrict, for the purpose of preventing airport hazards, the height to which structures and trees may be erected or permitted to grow. Regulations adopted under this chapter shall be made with consideration of the smart planning principles under section 18B.1.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.3]

2010 Acts, ch 1184, §20

Referred to in §329.4, 329.6

### **329.4 Extraterritorial airport hazard areas.**

When any airport hazard area appertaining to an airport owned or controlled by a municipality is located outside the territorial limits of said municipality:

1. *Ordinances.* The municipality owning or controlling the airport, and the municipality within which the airport hazard area is located, may by duly adopted ordinance adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area.

2. *Petition to district court.* If the municipality within which is located such airport hazard area has failed or refused, within sixty days after demand has been made upon it by any municipality owning or controlling the airport, to adopt reasonably adequate airport zoning regulations under section 329.3, or to join in adopting joint airport zoning regulations as authorized in subsection 1 of this section, the municipality owning or controlling the airport may, upon a resolution of necessity therefor duly adopted by its governing body, petition the district court of the county in which such airport hazard area or any part thereof is located, in the name of the municipality owning or controlling the affected airport, praying that zoning regulations be established for the airport hazard area in question.

3. *Petition — contents.* Such petition shall allege all essential facts showing the necessity for bringing such action, the relief sought including proposed zoning regulations, and the necessity therefor.

4. *Parties.* The parties defendant in such action shall be the municipality in which such airport hazard area is located, and all persons having an apparent or contingent interest in the property located within such area, who may be joined in said action generally as a class.

5. *Procedure.* The action shall be triable in equity and in accordance with general rules of civil procedure, except that such action shall have precedence over any other business of the court except criminal cases, and the court shall set said petition for hearing not less than sixty days nor more than one hundred twenty days from the date it is filed with the clerk of said court.

6. *Notice.* The original notice in such action shall be served upon the municipality in which such airport hazard area is located, and in the same manner as original notice of any other action but not less than thirty days prior to the date set for trial; and upon all other defendants by the publication of said notice in some newspaper or newspapers of general circulation within the area described in the petition, or as near thereto as possible, which publication shall be in the same manner as provided for the publication of other original notices, provided, however, that the last publication thereof shall be not less than thirty days prior to the date set for trial.

7. *Decree and modification.* Upon trial the court may enter decree establishing such

zoning regulations as it shall find reasonable and necessary. The court having once taken jurisdiction of such matter shall retain continuing jurisdiction thereof for such subsequent modification as it may deem advisable, upon proper application of interested parties, and due showing made thereunder after such notice to possible adverse parties as the court shall prescribe.

8. *Appeal.* Any person or municipality adversely affected or aggrieved by any findings of the court may appeal therefrom as in other civil actions.

9. *Enforcement.* Following the entry of any final decree by the district court, and unless appeal has been taken therefrom, the zoning regulations established by such decree may be enforced, and violations thereof punished, as provided by section 329.14.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.4; 81 Acts, ch 117, §1050]

Referred to in §329.6

[P] Service of notice, R.C.P. 1.302 – 1.315

### **329.5 Prevention of airport hazards.**

Any municipality owning or controlling an airport may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to said airport, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter for any area whether within or without the territorial limits of said municipality.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.5]

[P] See §657.2(6)

### **329.6 Zoning powers.**

If any municipality owning or controlling an airport adjacent to which there is an airport hazard area shall fail or refuse, within sixty days after demand made upon it by the department, to adopt reasonably adequate airport zoning regulations under section 329.3, or to proceed as provided in section 329.4, the department may petition the district court of the county in which such airport hazard area, or any part thereof, is located, in the name of the state, praying that zoning regulations be established for the airport hazard area in question, and the provisions of section 329.4, subsections 3 to 9, shall apply to such actions provided, however, that such municipality shall be joined as a party defendant in any such action.

The department may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to any airport within the state, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.6]

### **329.7 Relation to comprehensive zoning regulations.**

Any municipality which adopts zoning ordinances under chapter 414 or chapter 335 may incorporate therein airport hazard area zoning regulations and administer and enforce them as provided in this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.7; 81 Acts, ch 117, §1051]

### **329.8 Conflicting regulations.**

In the event of any conflict between any airport zoning regulations adopted or established under this chapter 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, the more stringent limitation or requirement shall govern and prevail.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.8]

### **329.9 Procedure for adopting zoning regulations — zoning commission.**

In adopting, amending, and repealing airport zoning regulations under this chapter the governing body of a city shall follow the procedure in sections 414.4 and 414.6 and the board of supervisors of a county shall follow the procedure in sections 335.6 and 335.8. The commission so appointed shall be known as the airport zoning commission. The airport zoning commission shall consist of two members from each municipality selected by the

governing body and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality. The terms of the members of the airport zoning commission shall be for six years excepting that when the board is first created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. Members may be removed for cause by the appointing authority upon written charges after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which the member was selected.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.9; 81 Acts, ch 117, §1052]  
Referred to in §331.321

### **329.10 Airport zoning requirements.**

1. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not necessary to effectuate the purposes of this chapter.

2. a. Airport zoning regulations adopted under this chapter may require, at the municipality's expense, the removal, lowering, or other change or alteration of any structure or tree, or a change in use, not conforming to the regulations when adopted or amended.

b. Airport zoning regulations adopted under this chapter may require a property owner to permit the municipality at its own expense to install, operate, and maintain on the property markers and lights as necessary to indicate to operators of aircraft the presence of the airport hazard.

3. All such regulations may provide that a preexisting nonconforming structure, tree, or use, shall not be replaced, rebuilt, altered, allowed to grow higher, or replanted, so as to constitute a greater airport hazard than it was when the airport zoning regulations or amendments to the regulations were adopted.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.10]  
90 Acts, ch 1022, §1

### **329.11 Variances.**

Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use the person's property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, however, that any such variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter, including the reservation of the right of the municipality, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.11]

### **329.12 Board of adjustment — creation — powers — duties.**

1. The governing body of any municipality seeking to exercise powers under this chapter shall by ordinance provide for the appointment of a board of adjustment, as provided in section 414.7 for a city, or as provided in section 335.10 for a county. The board of adjustment has the same powers and duties, and its procedure and appeals are subject to the same provisions as established in sections 414.9 to 414.19 for a city, or sections 335.12 to 335.21 for a county.

2. a. The board of adjustment shall consist of two members from each municipality, selected by the governing body thereof, and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality.

b. The terms of the members of the board of adjustment shall be for five years, excepting

that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years.

c. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which that member was selected.

d. Members shall be removable for cause by the appointing authority upon written charges and after public hearing.

3. The concurring vote of a majority of the board shall be necessary to do any of the following:

a. Reverse any order, requirement, decision, or determination of any administrative official.

b. Decide in favor of the applicant on any matter upon which the board is required to pass under any regulations adopted pursuant to this chapter.

c. Effect any variance from any regulations adopted pursuant to this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.12; 81 Acts, ch 117, §1053]  
2010 Acts, ch 1069, §116

### **329.13 Administration of airport zoning regulations.**

All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency, which may be an agency created by such regulations, or by any official, board, or other existing agency of the municipality adopting the regulations, or of one or both of the municipalities which participated therein, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall not include any of the powers herein delegated to the board of adjustment.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.13]  
2005 Acts, ch 3, §64

### **329.14 Enforcement and remedies.**

Each violation of this chapter or of any regulations, order, or rules promulgated pursuant to this chapter, shall constitute a simple misdemeanor and each day a violation continues to exist shall constitute a separate offense.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.14]  
Referred to in §329.4

### **329.15 Short title.**

This chapter shall be known and may be cited as the “*Airport Zoning Act*”.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.15]