

AIRPORT LAND USE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill amends provisions related to land use requirements near an airport influence area.

Highlighted Provisions:

This bill:

- ▶ defines terms related to airport influence areas and airport overlay zones;
- ▶ encourages a political subdivision adopt land use regulations that protect airports, including:
 - granting of avigation easements;
 - adopting airport overlay zones; and
 - notifying of airport impacts;
- ▶ amends provisions related to governing law in the event of a conflict between land use regulations;
- ▶ amends provisions related to the acquisition of an avigation easement or similar rights; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

10-9a-501, as last amended by Laws of Utah 2021, Chapter 60

17-27a-501, as last amended by Laws of Utah 2021, Chapter 60

72-10-401, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-402, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-403, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-404, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-413, as renumbered and amended by Laws of Utah 1998, Chapter 270

REPEALS:

72-10-405, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-406, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-407, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-408, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-409, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-410, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-411, as renumbered and amended by Laws of Utah 1998, Chapter 270

72-10-412, as last amended by Laws of Utah 2018, Chapter 148

72-10-414, as renumbered and amended by Laws of Utah 1998, Chapter 270

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-9a-501** is amended to read:

10-9a-501. Enactment of land use regulation, land use decision, or development agreement.

(1) Only a legislative body, as the body authorized to weigh policy considerations, may enact a land use regulation.

(2) (a) Except as provided in Subsection (2)(b), a legislative body may enact a land use regulation only by ordinance.

(b) A legislative body may, by ordinance or resolution, enact a land use regulation that imposes a fee.

(3) A legislative body shall ensure that a land use regulation is consistent with the

purposes set forth in this chapter.

(4) (a) A legislative body shall adopt a land use regulation to:

(i) create or amend a zoning district under Subsection 10-9a-503(1)(a); and

(ii) designate general uses allowed in each zoning district.

(b) A land use authority may establish or modify other restrictions or requirements other than those described in Subsection (4)(a), including the configuration or modification of uses or density, through a land use decision that applies criteria or policy elements that a land use regulation establishes or describes.

(5) A municipality may not adopt a land use regulation, development agreement, or land use decision that restricts the type of crop that may be grown in an area that is:

(a) zoned agricultural; or

(b) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act.

(6) A municipal land use regulation pertaining to an airport or an airport influence area, as that term is defined in Section 72-10-401, is subject to Title 72, Chapter 10, Part 4, Airport Zoning Act.

Section 2. Section 17-27a-501 is amended to read:

17-27a-501. Enactment of land use regulation.

(1) Only a legislative body, as the body authorized to weigh policy considerations, may enact a land use regulation.

(2) (a) Except as provided in Subsection (2)(b), a legislative body may enact a land use regulation only by ordinance.

(b) A legislative body may, by ordinance or resolution, enact a land use regulation that imposes a fee.

(3) A land use regulation shall be consistent with the purposes set forth in this chapter.

(4) (a) A legislative body shall adopt a land use regulation to:

(i) create or amend a zoning district under Subsection 17-27a-503(1)(a); and

(ii) designate general uses allowed in each zoning district.

(b) A land use authority may establish or modify other restrictions or requirements other than those described in Subsection (4)(a), including the configuration or modification of uses or density, through a land use decision that applies criteria or policy elements that a land use regulation establishes or describes.

(5) A county may not adopt a land use regulation, development agreement, or land use decision that restricts the type of crop that may be grown in an area that is:

(a) zoned agricultural; or

(b) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act.

(6) A county land use regulation pertaining to an airport or an airport influence area, as that term is defined in Section 72-10-401, is subject to Title 72, Chapter 10, Part 4, Airport Zoning Act.

Section 3. Section 72-10-401 is amended to read:

72-10-401. Definitions.

As used in this part~~[, unless the context otherwise requires]~~:

(1) "Airport" means any area of land or water ~~[designed and set aside]~~ that is used or intended for use for the landing and ~~[taking-off]~~ take-off of aircraft and utilized or to be utilized in the interest of the public for these purposes and receives funding from the Federal Aviation Administration.

~~[(2) "Airport hazard" means 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 the landing or taking-off of aircraft.]~~

(2) "Airport hazard" means any structure, tree, object of natural growth, or use of land that potentially obstructs or impacts the safe and efficient utilization of the navigable airspace required for the flight of aircraft in landing or take-off at an airport.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this part.

(4) "Airport influence area" means land located within 5,000 feet of an airport runway.

(5) "Airport overlay zone" means a secondary zoning district designed to protect the public health, safety, and welfare near an airport, that:

(a) applies land use regulations in addition to the primary zoning district land use regulations of property used as an airport and property within an airport influence area;

(b) may extend beyond the airport influence area;

(c) ensures airport utility as a public asset;

(d) protects property owner land values near an airport through compatible land use regulations as recommended by the Federal Aviation Administration; and

(e) protects aircraft occupant safety through protection of navigable airspace.

(6) "Avigation easement" means an easement permitting unimpeded aircraft flights over property subject to the easement, and includes the right:

(a) to create or increase noise or other effects that may result from the lawful operation of aircraft; and

(b) to remove any obstruction to such overflight.

(7) "Land use regulation" means the same as that term is defined in Sections [10-9a-103](#) and [17-27a-103](#).

~~[(4)]~~ (8) "Political subdivision" means any municipality, city, town, or county.

~~[(5)] "Structure" means any object constructed or installed by man, including buildings, towers, smokestacks, and overhead transmission lines.]~~

~~[(6)] "Tree" means any object of natural growth.]~~

Section 4. Section **72-10-402** is amended to read:

72-10-402. Declaration with respect to airport hazards.

The Legislature finds that:

(1) an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity;

(2) an obstruction of the type that reduces the size of the area available for the landing, taking-off, and maneuvering of aircraft tends to destroy or impair the utility of the airport and the public investment in the airport;

(3) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

(4) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented;

(5) this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation; ~~[and]~~

(6) both 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 political subdivisions may raise and expend public funds and acquire land or property interests in land~~[-]; and~~

(7) the establishment of an airport overlay zone best prevents the creation or

152 establishment of an airport hazard, and promotes the public health, safety, and general welfare.

153 Section 5. Section **72-10-403** is amended to read:

154 **72-10-403. Airport land use regulations.**

155 (1) ~~[(a)]~~ In order to prevent the creation or establishment of airport hazards, every
156 political subdivision having an airport hazard area within ~~[its]~~ the political subdivision's
157 territorial limits, and each political subdivision located within an airport influence area may
158 adopt, administer, and enforce, under the police power and in the manner and upon the
159 conditions prescribed in this part, Title 10, Chapter 9a, Municipal Land Use, Development, and
160 Management Act, and Title 17, Chapter 27a, County Land Use, Development, and
161 Management Act, airport [zoning] land use regulations for the airport [hazard] influence area,
162 including an airport overlay zone.

163 ~~[(b) The regulations may divide the area into zones, and, within the zones, specify the~~
164 ~~land uses permitted and regulate and restrict the height to which structures and trees may be~~
165 ~~erected or allowed to grow.]~~

166 ~~[(2) (a) If an airport is owned or controlled by a political subdivision and any airport~~
167 ~~hazard area appertaining to the airport is located outside the territorial limits of the political~~
168 ~~subdivision, the political subdivision owning or controlling the airport and the political~~
169 ~~subdivision within which the airport hazard area is located may, by ordinance or resolution~~
170 ~~duly adopted, create a joint airport zoning board.]~~

171 ~~[(b) The board shall have the same power to adopt, administer, and enforce airport~~
172 ~~zoning regulations applicable to the airport hazard area in question as that vested by Subsection~~
173 ~~(1) in the political subdivision within which the area is located.]~~

174 ~~[(c) Each joint board shall have as members two representatives appointed by each~~
175 ~~political subdivision participating in its creation and in addition a chair elected by a majority of~~
176 ~~the appointed members.]~~

177 (2) (a) Each political subdivision located within an airport influence area is encouraged
178 to notify a person building on or developing land within an airport influence area of aircraft
179 overflights and associated noise.

180 (b) To promote the safe and efficient operation of the airport, a political subdivision
181 located within an airport influence area is encouraged to:

182 (i) as a condition to granting a building permit or a requested zoning change within an

airport influence area, require a person building or developing land to grant or sale to the airport owner, at fair market value, an avigation easement;

(ii) adopt an airport overlay zone conforming to the requirements of this chapter and 14 C.F.R. Part 77; and

(iii) require any proposed development within an airport influence area to conform with 14 C.F.R. Part 77.

Section 6. Section **72-10-404** is amended to read:

72-10-404. Governing law in event of conflict.

~~[(1) In the event that a political subdivision has adopted or adopts a comprehensive zoning ordinance regulating the height of buildings, any airport zoning regulations applicable to the same area or a portion of the area may be incorporated in and made a part of comprehensive zoning regulations, and be administered and enforced in connection with the comprehensive zoning regulations.]~~

~~[(2)]~~ In the event of conflict between any airport ~~[zoning]~~ land use regulations adopted under this part 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 the 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]~~ the airport overlay zone requirements shall govern and prevail.

Section 7. Section **72-10-413** is amended to read:

72-10-413. Purchase or condemnation of air rights or avigation easements.

A political ~~[subdivision within which the property or nonconforming use is located or the political]~~ subdivision owning the airport ~~[or]~~, whether the airport is located within or without the territorial limits of the political subdivision, or a political subdivision that is served by [it] the airport may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, an air right, ~~[navigation]~~ an avigation easement, or other estate or interest in the property or nonconforming structure or use in question if:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be

provided by airport ~~[zoning]~~ land use regulations under this part; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

Section 8. **Repealer.**

This bill repeals:

Section **72-10-405**, Airport zoning regulations -- Adoption and amendment --
Airport zoning commission -- Powers and duties.

Section **72-10-406**, Airport zoning regulations -- Validity, limitations, and
restrictions.

Section **72-10-407**, Permit for new or changed structures or uses -- Nonconforming
structures -- Airport hazards -- Application to board of adjustment for variance --
Allowance of variance -- Conditioning permit or variance.

Section **72-10-408**, Appeals to board of adjustment -- Procedure -- Stay of
proceedings -- Hearing and judgment.

Section **72-10-409**, Airport zoning regulations -- Administration and enforcement.

Section **72-10-410**, Board of adjustment -- Powers -- Appointment and
membership of board -- Hearings and decisions by board -- Meetings -- Adoption of
rules.

Section **72-10-411**, Appeals to district courts -- Procedure -- Findings, judgment,
and costs -- Regulations invalid as to one structure or parcel of land.

Section **72-10-412**, Violations of chapter or rulings -- Misdemeanor -- Remedies of
political subdivisions.

Section **72-10-414**, Exchange of private property near federal airports.