

AIRPORT LAND USE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

30 AMENDS:

31 10-9a-501, as last amended by Laws of Utah 2021, Chapter 60

32 17-27a-501, as last amended by Laws of Utah 2021, Chapter 60

33 72-10-401, as renumbered and amended by Laws of Utah 1998, Chapter 270

34 72-10-402, as renumbered and amended by Laws of Utah 1998, Chapter 270

35 72-10-403, as renumbered and amended by Laws of Utah 1998, Chapter 270

36 72-10-404, as renumbered and amended by Laws of Utah 1998, Chapter 270

37 72-10-413, as renumbered and amended by Laws of Utah 1998, Chapter 270

38 REPEALS:

39 72-10-405, as renumbered and amended by Laws of Utah 1998, Chapter 270

40 72-10-406, as renumbered and amended by Laws of Utah 1998, Chapter 270

41 72-10-407, as renumbered and amended by Laws of Utah 1998, Chapter 270

42 72-10-408, as renumbered and amended by Laws of Utah 1998, Chapter 270

43 72-10-409, as renumbered and amended by Laws of Utah 1998, Chapter 270

44 72-10-410, as renumbered and amended by Laws of Utah 1998, Chapter 270

45 72-10-411, as renumbered and amended by Laws of Utah 1998, Chapter 270

46 72-10-412, as last amended by Laws of Utah 2018, Chapter 148

47 72-10-414, as renumbered and amended by Laws of Utah 1998, Chapter 270

48

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

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

51 **10-9a-501. Enactment of land use regulation, land use decision, or development**
52 **agreement.**

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

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

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

58 imposes a fee.

59 (3) A legislative body shall ensure that a land use regulation is consistent with the
60 purposes set forth in this chapter.

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

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

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

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

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

70 (a) zoned agricultural; or

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

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

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

76 **17-27a-501. Enactment of land use regulation.**

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

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

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

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

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

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

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

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

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

93 (a) zoned agricultural; or

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

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

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

99 **72-10-401. Definitions.**

100 As used in this part, unless the context otherwise requires:

101 (1) "Airport" means any publicly used area of land or water [~~designed and set aside~~]
102 that is used, or intended to be used, for the landing and [~~taking-off~~] take-off of aircraft and
103 utilized or to be utilized in the interest of the public for these purposes.

104 [~~(2) "Airport hazard" means any structure or tree or use of land which obstructs the~~
105 ~~airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise~~
106 ~~hazardous to the landing or taking-off of aircraft.]~~

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

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

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

113 (4) "Airport overlay zone" means a secondary zoning district designed to protect the

114 public health, safety, and welfare near an airport that:

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

117 (b) may extend beyond the airport influence area;

118 (c) ensures airport utility as a public asset;

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

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

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

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

126 (b) to prohibit or remove any obstruction to such overflight.

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

129 ~~[(4)]~~ (7) "Political subdivision" means any municipality, city, town, or county.

130 ~~[(5)]~~ (8) "Structure" means any object constructed or installed by man, including
131 buildings, towers, smokestacks, and overhead transmission lines.

132 ~~[(6)]~~ (9) "Tree" means any object of natural growth.

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

134 **72-10-402. Declaration with respect to airport hazards.**

135 The Legislature finds that:

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

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

141 (3) the creation or establishment of an airport hazard is a public nuisance and an injury

142 to the community served by the airport in question;

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

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

147 (6) both the prevention of the creation or establishment of airport hazards and the
148 elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards
149 are public purposes for which political subdivisions may raise and expend public funds and
150 acquire land or property interests in land[-]; and

151 (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 zoning 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 territorial limits may adopt,~~
157 ~~administer, and enforce, under the police power and in the manner and upon the conditions~~
158 ~~prescribed in this part, airport zoning regulations for the airport hazard area.]~~

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

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

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

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

173 (1) In order to prevent the creation or establishment of airport hazards, each political
174 subdivision located within an airport influence area, shall adopt, administer, and enforce land
175 use regulations for the airport influence area, including an airport overlay zone, under the
176 police power and in the manner and upon the conditions prescribed:

177 (a) in this part;

178 (b) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act;

179 and

180 (c) Title 17, Chapter 27a, County Land Use Development, and Management Act.

181 (2) (a) Each political subdivision located within an airport influence area shall notify a
182 person building on or developing land in an airport influence area, in writing, of aircraft
183 overflights and associated noise.

184 (b) To promote the safe and efficient operation of the airport, a political subdivision
185 located within an airport influence area:

186 (i) shall:

187 (A) adopt an airport overlay zone conforming to the requirements of this chapter and
188 14 C.F.R. Part 77; and

189 (B) require any proposed development within an airport influence area to conform with
190 14 C.F.R. Part 77; and

191 (ii) may, as a condition to granting a building permit, subdivision plat, or a requested
192 zoning change within an airport influence area, require a person building or developing land to
193 grant or sell to the airport owner, at appraised fair market value, an avigation easement.

194 (3) If a political subdivision located within an airport influence area fails to adopt an
195 airport overlay zone by December 31, 2024, then the following requirements shall apply in an
196 airport influence area:

197 (a) each political subdivision located within an airport influence area shall notify a

198 person building on or developing land within an airport influence area, in writing, of aircraft
199 overflights and associated noise;

200 (b) as a condition to granting a building permit, subdivision plat, or a requested zoning
201 change within an airport influence area, require the person building or developing land to grant
202 or sell to the airport owner, at appraised fair market value, an avigation easement; and

203 (c) require a person building or developing land within an airport influence area
204 conform to the requirements of this chapter and 14 C.F.R. Part 77.

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

206 **72-10-404. Zoning ordinances -- Governing law in event of conflict.**

207 [~~(1) In the event that a political subdivision has adopted or adopts a comprehensive~~
208 ~~zoning ordinance regulating the height of buildings, any airport zoning regulations applicable~~
209 ~~to the same area or a portion of the area may be incorporated in and made a part of~~
210 ~~comprehensive zoning regulations, and be administered and enforced in connection with the~~
211 ~~comprehensive zoning regulations.~~(2)] In the event of conflict between any airport [zoning]
212 land use regulations adopted under this part and any other regulations applicable to the same
213 area, whether the conflict be with respect to the height of structures or trees, the use of land, or
214 any other matter, [~~and whether the other regulations were adopted by the political subdivision~~
215 ~~which adopted the airport zoning regulations or by some other political subdivision, the more~~
216 ~~stringent limitation or requirement] the airport overlay zone requirement shall govern and
217 prevail.~~

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

219 **72-10-413. Purchase or condemnation of air rights or navigation easements.**

220 A political subdivision [~~within which the property or nonconforming use is located or~~
221 ~~the political subdivision]~~ owning the airport [~~or~~], whether or not the airport is located within
222 the territorial limits of the political subdivision, or a political subdivision that is served by [it]
223 the airport may acquire, by purchase, grant, or condemnation in the manner provided by the law
224 under which political subdivisions are authorized to acquire real property for public purposes,
225 an air right, [~~navigation~~] an avigation easement, or other estate or interest in the property or

226 nonconforming structure or use in question if:

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

229 (2) the approach protection necessary cannot, because of constitutional limitations, be
230 provided by airport ~~[zoning]~~ land use regulations under this part; or

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

233 Section 8. **Repealer.**

234 This bill repeals:

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

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

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

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

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

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

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

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

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