

City of Seward, NE

Tuesday, April 7, 2015

Regular Session

Item G3

PUBLIC HEARING - 7:00 P.M. - CONSIDERATION OF AMENDMENT TO ARTICLE 30, PERTAINING TO THE AVIATION OVERLAY DISTRICT OF THE SEWARD UNIFIED LAND DEVELOPMENT ORDINANCE - John Hughes

Consideration of an Ordinance Amending Article 30 of the Unified Land Development Ordinance

Administrative Report: This amendment is in reference to the State of Nebraska requirements of LB 140 (signed into law May 29, 2013) and the impact that it has to Municipal airports.

Staff Contact:

Notice of Public Hearing
Seward Planning Commission & City Council

NOTICE IS HEREBY GIVEN, that the Seward Planning Commission will hold public hearings during a scheduled meeting on Monday, **March 23, 2015 beginning at 7:30 p.m.**, and City Council on Tuesday, **April 7, 2015 at 7 p.m.** at Seward Municipal Building for the purpose of hearing testimony of support, opposition, criticism, suggestions or observations for amendments to Article 30 of the zoning ordinance and a complete update to the Official Zoning Map pertaining to the Aviation Overlay District and requirements of LB140. An agenda for said meeting is kept continuously current and available by request from the City Clerk. The public is encouraged to attend.

Questions or comments concerning the public meeting and hearings may be directed to the City Clerk. All interested parties may offer oral comments at the public hearing and/or may file written comments with the Planning Commission and City Council concerning the petition and such comments shall be considered by the Planning Commission, and City Council provided such written comments are received by the City Clerk prior to the public hearing date.

Dated March 23, 2015

Ed Gonzalez
Planning & Zoning

Publish 1 time March 11, 2015
Provide Proof
Deliver to paper 03/4/2015

LEGISLATIVE BILL 140

Approved by the Governor May 29, 2013

Introduced by Krist, 10.

FOR AN ACT relating to the Airport Zoning Act; to amend sections 3-301, 3-302, 3-303, 3-304, 3-306, 3-307, 3-308, 3-309, 3-310, 3-311, 3-312, 3-313, 3-314, 3-319, 3-320, 3-324, 3-329, 3-330, 3-331, and 3-333, Reissue Revised Statutes of Nebraska; to provide airport hazard area dimensions; to change provisions relating to airport hazard area zoning regulations, the board of adjustment, and judicial review; to define and redefine terms; to change a penalty; to eliminate provisions relating to appeal of zoning regulations, the board of adjustment, and judicial review; to harmonize provisions; to repeal the original sections; and to outright repeal sections 3-315, 3-316, 3-317, 3-318, 3-321, 3-322, 3-325, 3-326, and 3-327, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 3-301, Reissue Revised Statutes of Nebraska, is amended to read:

3-301 For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1) (a) Airport means any an area of land or water designed and set aside that is used or intended to be used for the landing and taking off takeoff of aircraft and utilized or to be utilized in the interest of the public for such purposes, includes any related buildings and facilities.

(b) Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans;

(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 such landing or taking off of aircraft, that penetrates any approach, operation, transition, or turning zone;

(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 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;

(4) Airport layout plan means 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;

(5) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines. Approach zone dimensions are as follows:

(a) For an existing or proposed instrument runway:

(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; and

(b) For an existing or proposed visual runway:

(i) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is three thousand seven hundred feet wide; 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 forty 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;

(6) Electric facility means 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;

(7) Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction;

(8) Instrument runway means 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. 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;

(9) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. Operation zone dimensions are as follows:

(a) For existing and proposed paved runways, the operation zone extends two hundred feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

(b) For existing and proposed instrument runways, the operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred feet wide, with two hundred fifty feet on either side of the runway centerline; and

(c) 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;

~~(4) Political subdivision means any municipality, city, village, or county;~~

~~(5)~~ (10) Person means 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;

(11) Political subdivision means any municipality, city, village, or county;

(12) Proposed runway means 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;

(13) Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

~~(6)~~ (14) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines; and

(15) Transition zone means 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;

~~(7)~~ (16) Tree means any object of natural growth;

(17) Turning zone's outer limit means 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; and

(18) Visual runway means 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.

Sec. 2. Section 3-302, Reissue Revised Statutes of Nebraska, is amended to read:

3-302 (1) It is hereby found that an airport hazard endangers the

lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, ~~taking off~~ takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared ~~that~~ that (a) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question, (b) ~~that~~ it is ~~therefor~~ necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented, and (c) the prevention of airport hazards ~~and~~ (3) ~~that this~~ should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(3) It is further declared that 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 therein.

Sec. 3. Section 3-303, Reissue Revised Statutes of Nebraska, is amended to read:

3-303 In order to prevent the creation or establishment of airport hazards, 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, shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The ~~which~~ regulations shall meet the minimum regulations as prescribed by the Department of Aeronautics ~~for the airport classifications for each airport~~ and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which the structures and trees may be erected ~~or~~ and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be considered a conflict for the purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

Sec. 4. Section 3-304, Reissue Revised Statutes of Nebraska, is amended to read:

3-304 ~~Where~~ If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the area regulated by zoning regulations adopted pursuant to section 3-303, of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within which whose zoning jurisdiction the airport hazard area is or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce by resolution approved by a majority of the board, airport zoning regulations applicable to the an airport hazard area in question as that vested by section 3-303 in the any political subdivision within whose area of zoning jurisdiction such area is located. Each such joint board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years, except as otherwise provided in this section. Board members who have served more than two years as of March 1, 1984, shall continue to serve for two more years. Board members who have served less than two years as of March 1, 1984, shall continue to serve for four more years. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in section 3-319.

Sec. 5. If a joint airport zoning board is created pursuant to section 3-304, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years.

Sec. 6. Section 3-306, Reissue Revised Statutes of Nebraska, is amended to read:

3-306 In the event of any conflict between any airport zoning regulations adopted under ~~sections 3-301 to 3-333~~ the Airport Zoning Act 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.

Sec. 7. Section 3-307, Reissue Revised Statutes of Nebraska, is amended to read:

3-307 No airport zoning regulations shall be adopted, amended, or changed under ~~sections 3-301 to 3-333~~ the Airport Zoning Act except by the action of the legislative body of the political subdivision in question, or the joint airport zoning board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ~~fifteen~~ ten days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which ~~is located~~ the airport hazard area ~~to be zoned~~ is located.

Sec. 8. Section 3-308, Reissue Revised Statutes of Nebraska, is amended to read:

3-308 Prior to the initial zoning of any airport hazard area under ~~sections 3-301 to 3-333~~ the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. ~~Where~~ If a city or county planning commission or comprehensive zoning a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission.

Sec. 9. Section 3-309, Reissue Revised Statutes of Nebraska, is amended to read:

3-309 All airport zoning regulations adopted under ~~sections 3-301 to 3-333~~ the Airport Zoning Act shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of ~~sections 3-301 to 3-333~~ the act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. If an airport layout plan has been submitted for approval to the Federal Aviation Administration with a proposed instrument runway depicted thereon and such airport layout plan is conditionally or unconditionally approved without such proposed instrument runway, the political subdivision shall adopt or revise, as necessary, airport zoning regulations to protect any approach zone for a visual runway only.

Sec. 10. Section 3-310, Reissue Revised Statutes of Nebraska, is amended to read:

3-310 (1) No airport zoning regulations adopted under ~~sections 3-301 to 3-333~~ the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section ~~3-313~~ 3-311.

(2) Any structure that has not yet been constructed but that has received, prior to August 1, 2013, zoning approval from the political subdivision exercising zoning jurisdiction over such structure may be constructed and shall thereafter be considered an existing structure for purposes of this section.

Sec. 11. Section 3-311, Reissue Revised Statutes of Nebraska, is amended to read:

3-311 (1) Airport zoning regulations, adopted under ~~sections 3-301 to 3-333~~ the Airport Zoning Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired. ~~In any event, however,~~

(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. ~~authorizing such replacement, change or repair. No A permit shall be granted that would allow the establishment or creation of an airport hazard or permit a under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use to be made, become higher or become would not result in an increase in height or a greater hazard to air navigation than it was 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. or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.~~

(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.

Sec. 12. Section 3-312, Reissue Revised Statutes of Nebraska, is amended to read:

3-312 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 violation of a manner inconsistent with the airport zoning regulations adopted under sections 3-301 to 3-333 the Airport Zoning Act may apply to the board of adjustment for a variance from the zoning regulations in question. 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 sections 3-301 to 3-333; Provided, that any only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection (2) of section 19-910, 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 sections 3-301 to 3-333. the act.

Sec. 13. Section 3-313, Reissue Revised Statutes of Nebraska, is amended to read:

3-313 In granting any permit under or variance under sections 3-311 to 3-313, from any airport zoning regulation adopted under the Airport Zoning Act, the administrative agency or board of adjustment may, if it deems such action it advisable to effectuate the purposes of sections 3-301 to 3-333 the act 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.

Sec. 14. Section 3-319, Reissue Revised Statutes of Nebraska, is amended to read:

3-319 All airport zoning regulations adopted under sections 3-301 to 3-333 the Airport Zoning Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an

agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations. In the case of airport zoning regulations adopted by a joint airport zoning board, each of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. shall create or designate an official or an administrative agency to administer and enforce the airport zoning regulations within its respective zoning jurisdiction. The duties of any official or administrative agency designated pursuant to sections 3-301 to 3-333 the act shall include that of hearing and deciding all reviewing and acting upon all applications for permits under section 3-311, the airport zoning regulations, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. In no event shall such official or administrative agency be or include any member of the board of adjustment.

Sec. 15. Section 3-314, Reissue Revised Statutes of Nebraska, is amended to read:

3-314 (1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under sections 3-301 to 3-333, the Airport Zoning Act, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body, or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) Any appeal taken under this section shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay any proceeding in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases the proceedings shall not be stayed except by an order of the board after notice to the agency from which the appeal is taken and upon due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give due notice to the parties in interest, and decide the appeal within sixty days after the date of filing such appeal. Any party may appear in person or by an agent or attorney at the hearing.

Sec. 16. Section 3-320, Reissue Revised Statutes of Nebraska, is amended to read:

3-320 (1) All airport zoning regulations adopted under sections 3-301 to 3-333 the Airport Zoning Act shall provide for a board of adjustment to have and exercise the following powers:

(a) (1) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in sections 3-314 to 3-318; (2) to

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

(c) To (3) to hear and decide specific petitions for variances under section 3-312. from the strict application of airport zoning regulations.

(2) A board of adjustment shall consist of five regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. Any member thereof may be removed by the appointing authority for cause, upon written charges and after a public hearing. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agency 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.

(3) The board of adjustment may, consistent with the Airport Zoning Act, reverse or affirm wholly or partly or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as it deems right and proper

under the circumstances.

(4) A board of adjustment, board of zoning appeals, or similar zoning appeals board that exists on the effective date of this act may be designated as and shall exercise the power of the board of adjustment for airport zoning regulations as required by this section.

Sec. 17. Section 3-324, Reissue Revised Statutes of Nebraska, is amended to read:

3-324 Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision, or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is arbitrary or capricious, illegal, or unsupported by evidence, may present a verified petition to the district court setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. Such a petition shall be presented to the court within thirty days after the decision is filed in the office of the board. obtain judicial review of such decision by filing a petition in error in the district court of the county in which the structure or tree that is the subject of the decision is located. The filing of and proceeding on the petition in error shall be in accordance with sections 25-1901 to 25-1937.

Sec. 18. Section 3-329, Reissue Revised Statutes of Nebraska, is amended to read:

3-329 In any case in which airport zoning regulations adopted under sections 3-301 to 3-333, the Airport Zoning Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state Nebraska or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Sec. 19. Section 3-330, Reissue Revised Statutes of Nebraska, is amended to read:

3-330 Each violation of sections 3-301 to 3-333 the Airport Zoning Act or of any regulations, orders, or rulings promulgated or made pursuant to sections 3-301 to 3-333, the act shall constitute a Class ~~III~~ IV misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under sections 3-301 to 3-333 the act may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of (1) sections 3-301 to 3-333, the act, (2) airport zoning regulations adopted under sections 3-301 to 3-333 the act, or (3) any order or ruling made in connection with their the administration or enforcement of the act or such regulations. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of sections 3-301 to 3-333 the act and of the regulations adopted and orders and rulings made pursuant thereto.

Sec. 20. Section 3-331, Reissue Revised Statutes of Nebraska, is amended to read:

3-331 In any case in which (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 regulations under sections 3-301 to 3-333, the Airport Zoning Act, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning or operating the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of sections 3-301 to 3-333, the act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 21. Section 3-333, Reissue Revised Statutes of Nebraska, is amended to read:

3-333 Sections 3-301 to 3-333 and sections 5 and 15 of this act shall be known and may be cited as the Airport Zoning Act.

Sec. 22. Original sections 3-301, 3-302, 3-303, 3-304, 3-306, 3-307, 3-308, 3-309, 3-310, 3-311, 3-312, 3-313, 3-314, 3-319, 3-320, 3-324, 3-329, 3-330, 3-331, and 3-333, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 23. The following sections are outright repealed: Sections 3-315, 3-316, 3-317, 3-318, 3-321, 3-322, 3-325, 3-326, and 3-327, Reissue

Revised Statutes of Nebraska.



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Ed Gonzalez
Building/Zoning &
Code Enforcement Director

Planning Commission Report for March 23, 2015:

1. 7:30pm Public Hearing;

Amendment to Article 30, Aviation Overlay District of the Seward Unified Land Development Ordinance.

This amendment is in reference to the State of Nebraska requirements of LB 140 and the impact that it has to Municipal airports.

ARTICLE 30

AV AVIATION OVERLAY DISTRICT

(Ordinance No. _____, __ - __ -2015)

11.3001 Intent

This district is established as an overlay district for application over any primary zoning district in order to protect the safe use, public investment, and utility of public airports and their Airport Hazard Area, within the city of Seward, NE and its extraterritorial zoning jurisdiction, by limiting the location and height of structures within the operation, approach, transition and turning zones around airports which are licensed by the Nebraska Department of Aeronautics, as designated on the Airport Zoning Map prepared by the Nebraska Department of Aeronautics for the Seward Municipal Airport (Dwg. No. ZN-SWT-09 revised March 12, 2014)

11.3002 Designated Public Airport

The designated public airport for which these regulations have been prepared is the Seward Municipal Airport located in Section 5, Township 10 North, Range 3 East of the 6th P.M., in Seward County which is within the planning and zoning jurisdictional area of Seward, Nebraska. Information on the Seward Municipal Airport can be obtained from the Nebraska Department of Aeronautics at www.aero.nebraska.gov or at www.airnav.com/airports/.

11.3003 Definitions

For purposes of the Aviation Overlay, the following terms are defined:

Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and 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 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 such landing or taking off of aircraft; or penetrates any approach, operation, transition, or turning zone.

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

Airport Layout Plan means 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 means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines.

Electric Facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in Section 70-1001.01, R.R.S. 1943, for the transmission or distribution of electrical power to the electric supplier's customers.

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

Height of Structure means the height of any building, structure or object measured from its highest point to the nearest existing or proposed runway end elevation.

Instrument Runway means 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 zoning regulation, 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 means a zone that is longitudinally centered on each existing or proposed runway.

Person means 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 means any city, village, or county.

Proposed Runway means 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 means 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 means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one (1) foot vertically for every seven feet horizontally (7:1). 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 150 feet above the highest elevation on the existing or proposed runway.

Tree means any object of natural growth.

Turning Zone shall comprise all portions of the hazard area not contained in the Operation Zones, Approach Zones and in the Transitional Zones.

Turning Zone's Outer Limit means the area located at a distance of three (3) 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 150 feet above the highest elevation on the existing or proposed runway.

Visual Runway means 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.

11.3004 Hazard Area Description

In accordance with Neb. Rev. Stat. §3-303, every political subdivision that has adopted 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.

The airport hazard area consists of Operation Zones, Approach Zones, Turning Zones and Transitional Zones. The outer boundary of the hazard area is composed of a series of connected tangents and simple curves which also constitute the outer boundaries of the Approach and Turning Zones. The inner boundary of the hazard area is a boundary line consisting of a series of intersecting tangents five hundred (500) feet from and parallel to the centerline of the instrument runway or landing strip and two hundred fifty (250) feet from and parallel to the respective centerlines of all other runways or landing strips and connecting the inner boundaries of adjacent Approach Zones at the ends of the runways, landing strips or proposed runways or landing strips.

11.3005 Zone Descriptions and Regulations

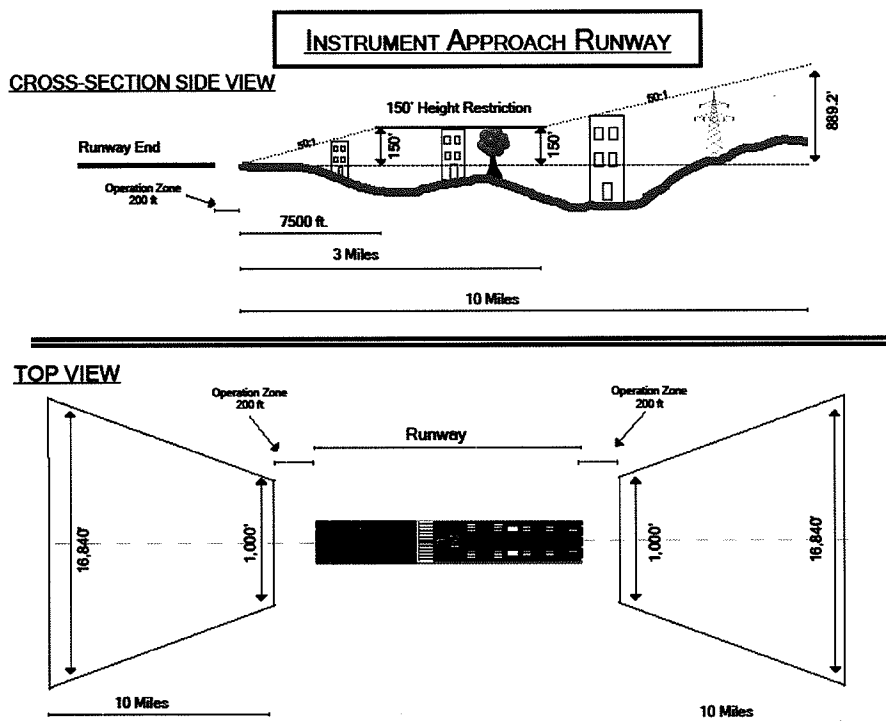
The following are intended for use with this overlay district.

- a. **Operation Zones** are longitudinally centered on each existing or proposed runway:
 1. Length. For existing and proposed paved runways, the operation zone extends two hundred (200) feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;
 2. Width. For existing and proposed instrument runways, the operation zone is 1,000 feet wide, with 500 feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is 500 feet wide, with 250 feet on either side of the runway centerline; and
 3. Height. 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.
- b. **Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. The dimensions of the zones are as follows:
 1. For an existing or proposed instrument runway:
 - (a) Length and Width. An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is 1,000 feet wide at the end of the zone nearest the runway and expands uniformly to 16,840 feet wide at the farthest end of the zone; and
 - (b) Height Limit. The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 50 feet horizontally, except that the height limit shall not exceed 150 feet above the nearest existing or proposed runway end elevation within three (3) 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 50 feet horizontally and continues to the ten-mile limit.
 2. For an existing or proposed visual runway:
 - (a) Length and Width. An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is 500 feet wide at the end of the zone nearest the runway and expands 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; and

- (b) **Height.** The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 40 feet horizontally, except that the height limit shall not exceed 150 feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end.
- c. **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.
- d. **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.

11.3006 Height Restrictions

No building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto 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 11.3005 above:



11.3007 Location Sketch and Zoning Map

The boundaries, Operation Zones, Approach Zones, Transition Zones and Turning Zones of the Seward Municipal Airport are as indicated on the maps identified in Section 11.3001, and on the official zoning map which accompany and are hereby made a part of these regulations, copies of which shall at all times be on file in the office of the City Clerk of Seward, Nebraska.

11.3008 Permit Required, Exceptions, Application Forms and Permit Fees

- a. Permit Required:
It shall hereafter be unlawful to erect, construct, reconstruct, repair or establish any building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or to plant or replant any tree or other object of natural growth within the boundary of the zoned airport hazard area of the Seward Municipal Airport without first obtaining a zoning permit from the City Zoning Administrator and review of the Seward Airport Authority.
- b. Exceptions:
In the outer area of Approach Zones and within Turning Zones, no such permit shall be required for construction of planting which is no higher than seventy-five (75) feet above the elevation of the end of the nearest runway or landing strip, except for any permits required by other sections of these Regulations.
- c. Application Forms:
Application for a zoning permit as required under these regulations shall be made upon a form or forms to be available in the office of the Zoning Administrator and shall indicate the approximate location, ground elevation with reference to the elevation at the end of the nearest runway or landing strip and height of the proposed structure or planting (Mean Sea Level Elevation).
- d. Permit Fees:
The fee for each zoning permit shall be the normal fee charged by the City plus any other additional fees determined by the City and/or the Seward Airport Authority.

11.3009 Non-Conforming Uses and Structures

- a. Within the zoned airport hazard area as hereinbefore defined, no non-conforming building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or object of natural growth shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted or allowed to grow, as the case may be, to a height which constitutes a greater hazard to air navigation than existed before these regulations were adopted; nor above the heights permitted by these regulations if such structures or objects of natural growth have been torn down, destroyed, have deteriorated or decayed to an extent of eighty (80) percent or more of their original condition, or abandoned for a period of twelve (12) consecutive months or more. Transmission lines and communication lines as referred to in these regulations shall be interpreted to mean all poles, wires, guys and all other equipment necessary for the operation and maintenance of same within the airport hazard zone.
- b. 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.

- c. 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.

11.3010 Marking of Non-Conforming Structures

Whenever the Zoning Administrator shall determine, or shall be notified by the Nebraska Department of Aeronautics or the Seward Airport Authority, that a specific non-conforming structure or object exists and has existed prior to the passage of these regulations and within the airport hazard zoned area herein before described at such a height or in such a position as to constitute a hazard to the safe operation of aircraft landing at or taking off from said airport, the owner or owners and the lessor or lessors of the premises on which such structure or object is located shall be notified in writing by the Zoning Administrator and shall, within a reasonable time, permit the marking thereof by suitable lights or other signals designated by the Zoning Administrator as is based on recommendations of the Nebraska Department of Aeronautics and/or Seward Airport Authority. The cost of such marking shall not be assessed against the owner or lesser of said premise.

11.3011 Administrative Agency

The Zoning Administrator of Seward, Nebraska shall administer and enforce these regulations, and Seward Airport Authority shall be the administrative agency provided for in Neb. Rev. Stat. Section 3-319 (Reissued 2007), and shall have all the powers and perform all the duties of the administrative agency as provided by the Airport Zoning Act within the zoning jurisdictional area of the city.

11.3012 Variance from Regulations

- a. 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.

- b. 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.

11.3013 Board of Zoning Adjustment

The Board of Adjustment of Seward, Nebraska shall be the Board of Zoning Adjustment with respect to these regulations, to have and to exercise the powers conferred by Neb. Rev. Stat. Section 3-320, et. Seq. (Reissued 2007), and duties as are conferred and imposed by law.

11.3014 Conflicts

In the event of any conflict between these airport hazard regulations and any other regulations established by these or other regulations, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, the more stringent or restrictive limitation shall govern and prevail.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF SEWARD, SEWARD COUNTY, NEBRASKA BY AMENDING ARTICLE 30 AV AVIATION OVERLAY DISTRICT; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD, SEWARD COUNTY, NEBRASKA:

Section 1. Approval of Amendment to Zoning Ordinance. On March 23, 2015, the Seward Planning Commission conducted a public hearing on the matter of amending Article 30 of the Zoning Ordinance pertaining to the Aviation Overlay District regulations and expanding such overlay regulations as required by LB 140, and reported to the City Council that it recommended approval of the zoning changes. On April 7, 2015, the City Council held a public hearing on said proposed amendment and found and determined that said proposed changes to the Zoning Ordinance are advisable and in the best interests of the City. The City Council further found and determined that public hearings were duly held and notices were duly given. The City Council hereby approves said proposed changes and amendment to the Seward Zoning Ordinance.

Section 2. Amendment to Zoning Ordinance. Pursuant to the Seward Zoning Ordinance, Article 30 is hereby amended to read as follows:

ARTICLE 30 - AV AVIATION OVERLAY DISTRICT

11.3001 Intent

This district is established as an overlay district for application over any primary zoning district in order to protect the safe use, public investment, and utility of public airports and their Airport Hazard Area, within the city of Seward, NE and its extraterritorial zoning jurisdiction, by limiting the location and height of structures within the operation, approach, transition and turning zones around airports which are licensed by the Nebraska Department of Aeronautics, as designated on the Airport Zoning Map prepared by the Nebraska Department of Aeronautics for the Seward Municipal Airport (Dwg. No. ZN-SWT-09 revised March 12, 2014)

11.3002 Designated Public Airport

The designated public airport for which these regulations have been prepared is the Seward Municipal Airport located in Section 5, Township 10 North, Range 3 East of the 6th P.M., in Seward County which is within the planning and zoning jurisdictional area of Seward, Nebraska. Information on the Seward Municipal Airport can be obtained from the Nebraska Department of Aeronautics at www.aero.nebraska.gov or at www.airnav.com/airports/.

11.3003 Definitions

For purposes of the Aviation Overlay, the following terms are defined:

Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and 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 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 such landing or taking off of aircraft; or penetrates any approach, operation, transition, or turning zone.

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

Airport Layout Plan means 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 means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines.

Electric Facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in Section 70-1001.01, R.R.S. 1943, for the transmission or distribution of electrical power to the electric supplier's customers.

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

Height of Structure means the height of any building, structure or object measured from its highest point to the nearest existing or proposed runway end elevation.

Instrument Runway means 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 zoning regulation, 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 means a zone that is longitudinally centered on each existing or proposed runway.

Person means 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 means any city, village, or county.

Proposed Runway means 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 means 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 means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one (1) foot vertically for every seven feet horizontally (7:1). 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 150 feet above the highest elevation on the existing or proposed runway.

Tree means any object of natural growth.

Turning Zone shall comprise all portions of the hazard area not contained in the Operation Zones, Approach Zones and in the Transitional Zones.

Turning Zone's Outer Limit means the area located at a distance of three (3) 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 150 feet above the highest elevation on the existing or proposed runway.

Visual Runway means 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.

11.3004 Hazard Area Description

In accordance with Neb. Rev. Stat. §3-303, every political subdivision that has adopted 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.

The airport hazard area consists of Operation Zones, Approach Zones, Turning Zones and Transitional Zones. The outer boundary of the hazard area is composed of a series of connected tangents and simple curves which also constitute the outer boundaries of the Approach and Turning Zones. The inner boundary of the hazard area is a boundary line consisting of a series of intersecting tangents five hundred (500) feet from and parallel to the centerline of the instrument runway or landing strip and two hundred fifty (250) feet from and parallel to the respective centerlines of all other runways or landing strips and connecting the inner boundaries of adjacent Approach Zones at the ends of the runways, landing strips or proposed runways or landing strips.

11.3005 Zone Descriptions and Regulations

The following are intended for use with this overlay district.

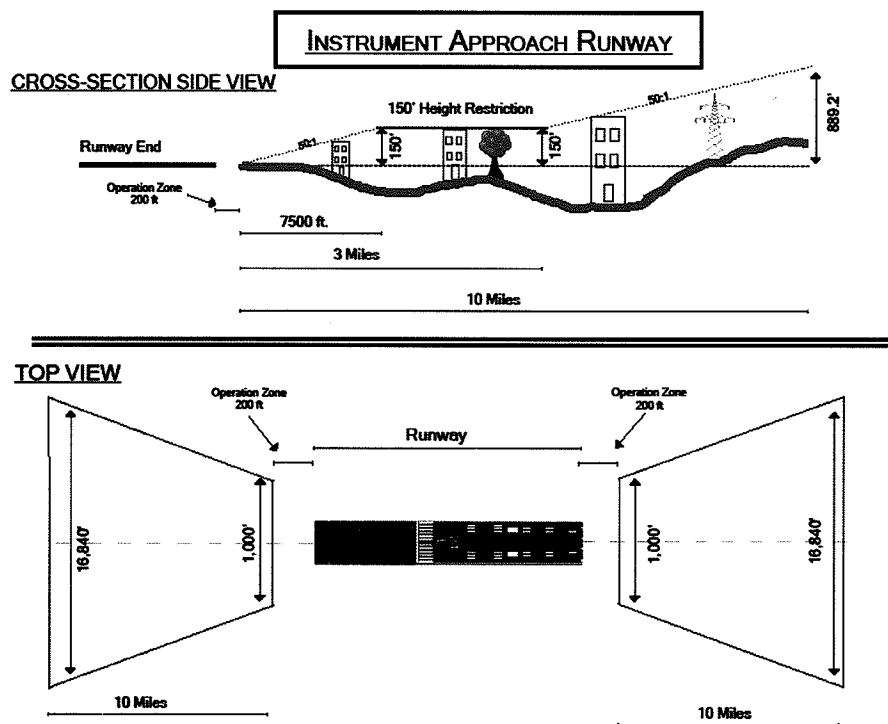
- a. **Operation Zones** are longitudinally centered on each existing or proposed runway:
 - a. Length. For existing and proposed paved runways, the operation zone extends two hundred (200) feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;
 - b. Width. For existing and proposed instrument runways, the operation zone is 1,000 feet wide, with 500 feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is 500 feet wide, with 250 feet on either side of the runway centerline; and
 - c. Height. 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.
- b. **Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. The dimensions of the zones are as follows:
 1. For an existing or proposed instrument runway:
 - (a) Length and Width. An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is 1,000 feet wide at the end of the zone nearest the runway and expands uniformly to 16,840 feet wide at the farthest end of the zone; and
 - (b) Height Limit. The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 50 feet horizontally, except that the height limit shall not exceed 150 feet above the nearest existing or proposed runway end elevation within three (3) 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 50 feet horizontally and continues to the ten-mile limit.
 2. For an existing or proposed visual runway:
 - (a) Length and Width. An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is 500 feet wide at the

end of the zone nearest the runway and expands 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; and

- (b) **Height.** The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 40 feet horizontally, except that the height limit shall not exceed 150 feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end.
- c. **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.
- d. **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.

11.3006 Height Restrictions

No building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto 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 11.3005 above:



11.3007 Location Sketch and Zoning Map

The boundaries, Operation Zones, Approach Zones, Transition Zones and Turning Zones of the Seward Municipal Airport are as indicated on the maps identified in Section 11.3001, and on the official zoning map which accompany and are hereby made a part of these regulations, copies of which shall at all times be on file in the office of the City Clerk of Seward, Nebraska.

11.3008 Permit Required, Exceptions, Application Forms and Permit Fees

- a. Permit Required:
It shall hereafter be unlawful to erect, construct, reconstruct, repair or establish any building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or to plant or replant any tree or other object of natural growth within the boundary of the zoned airport hazard area of the Seward Municipal Airport without first obtaining a zoning permit from the City Zoning Administrator and review of the Seward Airport Authority.
- b. Exceptions:
In the outer area of Approach Zones and within Turning Zones, no such permit shall be required for construction of planting which is no higher than seventy-five (75) feet above the elevation of the end of the nearest runway or landing strip, except for any permits required by other sections of these Regulations.
- c. Application Forms:
Application for a zoning permit as required under these regulations shall be made upon a form or forms to be available in the office of the Zoning Administrator and shall indicate the approximate location, ground elevation with reference to the elevation at the end of the nearest runway or landing strip and height of the proposed structure or planting (Mean Sea Level Elevation).
- d. Permit Fees:
The fee for each zoning permit shall be the normal fee charged by the City plus any other additional fees determined by the City and/or the Seward Airport Authority.

11.3009 Non-Conforming Uses and Structures

- a. Within the zoned airport hazard area as hereinbefore defined, no non-conforming building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or object of natural growth shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted or allowed to grow, as the case may be, to a height which constitutes a greater hazard to air navigation than existed before these regulations were adopted; nor above the heights permitted by these regulations if such structures or objects of natural growth have been torn down, destroyed, have deteriorated or decayed to an extent of eighty (80) percent or more of their original condition, or abandoned for a period of twelve (12) consecutive months or more. Transmission lines and communication lines as referred to in these regulations shall be interpreted to mean all poles, wires, guys and all other equipment necessary for the operation and maintenance of same within the airport hazard zone.
- b. 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.

- c. 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.

11.3010 Marking of Non-Conforming Structures

Whenever the Zoning Administrator shall determine, or shall be notified by the Nebraska Department of Aeronautics or the Seward Airport Authority, that a specific non-conforming structure or object exists and has existed prior to the passage of these regulations and within the airport hazard zoned area herein before described at such a height or in such a position as to constitute a hazard to the safe operation of aircraft landing at or taking off from said airport, the owner or owners and the lessor or lessors of the premises on which such structure or object is located shall be notified in writing by the Zoning Administrator and shall, within a reasonable time, permit the marking thereof by suitable lights or other signals designated by the Zoning Administrator as is based on recommendations of the Nebraska Department of Aeronautics and/or Seward Airport Authority. The cost of such marking shall not be assessed against the owner or lesser of said premise.

11.3011 Administrative Agency

The Zoning Administrator of Seward, Nebraska shall administer and enforce these regulations, and Seward Airport Authority shall be the administrative agency provided for in Neb. Rev. Stat. Section 3-319 (Reissued 2007), and shall have all the powers and perform all the duties of the administrative agency as provided by the Airport Zoning Act within the zoning jurisdictional area of the city.

11.3012 Variance from Regulations

- a. 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.
- b. 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.

11.3013 Board of Zoning Adjustment

The Board of Adjustment of Seward, Nebraska shall be the Board of Zoning Adjustment with respect to these regulations, to have and to exercise the powers conferred by Neb. Rev. Stat. Section 3-320, et. Seq. (Reissued 2007), and duties as are conferred and imposed by law.

11.3014 Conflicts

In the event of any conflict between these airport hazard regulations and any other regulations established by these or other regulations, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, the more stringent or restrictive limitation shall govern and prevail.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 7th DAY OF APRIL, 2015.

CITY OF SEWARD

Joshua Eickmeier, Mayor

ATTEST:

Bonnie Otte, Assistant Administrator,
Clerk-Treasurer