

**CHAPTER 262**  
**AIRPORT ZONING ACT**

Section

- 262-1 Definitions
- 262-2 Airport hazards contrary to public interest
- 262-3 Power to adopt airport zoning regulations
- 262-4 Relation to comprehensive zoning regulations
- 262-4.5 Outdoor lighting
- 262-5 Procedure for adoption of zoning regulations
- 262-6 Airport zoning regulations
- 262-7 Permits, hazard markings, and lighting
- 262-8 Appeals
- 262-9 Application
- 262-10 Enforcement and remedies
- 262-11 Acquisition of air rights

" **§262-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Airport" means any area of land or water designed and set aside for the landing and taking-off of all aircraft and utilized or to be utilized in the interest of the public for such purposes;

"Airport hazard" means any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport, or any use of land which creates a dangerous condition, including the placement of strong lights which blind pilots during such operations;

"Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter;

"Airport protection" means protection against an airport hazard;

"Department" means the department of transportation;

"Director" means the director of transportation or the director's authorized representative;

"Person" means any individual, partnership, corporation, unincorporated association, joint stock association, or any trustee, receiver, assignee, or other similar representative thereof; or the State or any of its political subdivisions, or agencies thereof;

"Structure" means any object constructed or installed by humans, including, but without limitation, buildings, towers, smokestacks, chimneys, and overhead transmission lines;

"Tree" means any object of natural growth. [L 1965, c 140, pt of §1; Supp, §17A-1; HRS §262-1; gen ch 1985, 1993]

#### **Revision Note**

Numeric designations deleted and definitions rearranged.

" **§262-2 Airport hazards contrary to public interest.** An airport hazard endangers the lives and property of users of an airport and of occupants of land in its vicinity, and in effect reduces the size of the area available for the landing, taking-off, and maneuvering of aircraft, thus tending to destroy or impair the utility of an airport and the public investment therein. Accordingly, it is declared:

- (1) That the creation, maintenance, or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; therefore, it is necessary in the interest of the public health, public safety, and general welfare that

the creation, maintenance, or establishment of airport hazards be prevented; and

- (2) That the prevention of the creation, maintenance, or establishment of airport hazards should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

It is further declared that both the prevention of the creation, maintenance, or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes. [L 1965, c 140, pt of §1; Supp, §17A-2; HRS §262-2]

### **Case Notes**

Cited: 17 H. 523, 524.

" **§262-3 Power to adopt airport zoning regulations.** To prevent the creation or establishment of airport hazards, the director of transportation may adopt, amend, repeal, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in this chapter, airport zoning regulations for an airport hazard area in the State, which regulations may divide each area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, subject to section 262-6. [L 1965, c 140, pt of §1; Supp, §17A-3; HRS §262-3]

" **§262-4 Relation to comprehensive zoning regulations.** In the event of conflict between any airport zoning regulations adopted under this chapter and any ordinances or 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 other regulations were adopted by or under the authority of the State or by or under the authority of a county, the more stringent limitation or requirement shall govern and prevail. [L 1965, c 140, pt of §1; Supp, §17A-4; HRS §262-4]

" **[§262-4.5] Outdoor lighting.** To the extent that it is practical and not in conflict with any safety regulation or federal law, regulation, or mandate, if any airport rule or standard relating to outdoor lighting on any ramp or apron area, roadway, or parking lot conflicts with any county ordinance or other rule regarding outdoor lighting, the more stringent requirement or standard shall govern all new installations of outdoor lighting. [L 2007, c 121, §2]

" **§262-5 Procedure for adoption of zoning regulations.** (a)

The director of transportation shall adopt airport zoning regulations in accordance with chapter 91.

(b) At least ninety days before the public hearing on the initial zoning of any airport hazard area, the director shall notify the appropriate state and county planning agencies and any boards or commissions of a similar nature which may be concerned, and thirty days before the public hearing such agencies, boards, and commissions may file with the director their recommendations as to the boundaries of the various zones to be established and the regulations to be adopted therefor. The director shall give due consideration to recommendations so filed. [L 1965, c 140, pt of §1; Supp, §17A-5; HRS §262-5]

" **§262-6 Airport zoning regulations.** (a) All airport zoning regulations adopted under this chapter shall have the force and effect of law. The regulations shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations the director may adopt, the director of transportation 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.

(b) Nonconforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any 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 262-7. [L 1965, c 140, pt of §1; Supp, §17A-6; HRS §262-6; gen ch 1985]

" **§262-7 Permits, hazard markings, and lighting.** (a)

Permits. Any airport zoning regulations adopted under this chapter may require that before any new structure, tree, or use may be constructed, planted, or established, and before any existing use, tree, or structure may be substantially changed, replanted, or substantially altered or repaired, a permit be obtained authorizing such construction, planting, establishment, change, replanting, alteration, or repair. In any event, all the regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, or replanted, a permit must be secured from the department of transportation authorizing the replacement, alteration, repair, rebuilding, or replanting. No permit shall

be granted that would allow the establishment, maintenance, or creation of an airport hazard. Except as provided herein, all applications for permits shall be granted.

(b) Hazard markings and lighting. In granting any permit under this section, the director may, if the director deems such action advisable to effectuate the purposes of this chapter and reasonable under the circumstances, so condition such permit as to require the owner of the structure or tree in question to permit the State, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of an airport hazard. [L 1965, c 140, pt of §1; Supp, §17A-7; HRS §262-7; gen ch 1985]

" **§262-8 Appeals.** Any person aggrieved by any order, requirement, determination, or decision of the director of transportation made in the adoption, amendment, repeal, or administration of airport zoning regulations may appeal the person's grievance to the appropriate circuit court in accordance with chapter 91. [L 1965, c 140, pt of §1; Supp, §17A-8; HRS §262-8; gen ch 1985]

#### **Rules of Court**

Appeal to circuit court, see HRCF rule 72.

" **§262-9 Application.** If the airport zoning regulations adopted under this chapter, although generally reasonable, are finally held to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent as to be in violation of the State Constitution or the Constitution of the United States, the holding shall not affect the application of the regulations to other structures and parcels of land. [L 1965, c 140, pt of §1; Supp, §17A-9; HRS §262-9]

" **§262-10 Enforcement and remedies.** Any person who wilfully violates section 262-7(a) or any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall for each violation, be fined not more than \$1,000 or imprisoned not more than ninety days, or both. In addition the director of transportation may institute, in any court of competent jurisdiction, an action in the name of the State to prevent, restrain, correct, or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the State 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, to effectuate the purposes of this chapter and of the regulations adopted and orders and ruling made pursuant thereto. [L 1965, c 140, pt of §1; Supp, §17A-10; HRS §262-10]

### **Cross References**

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

Injunction of violation of laws, see §603-23.

### **Rules of Court**

Injunction, see HRCF rule 65.

" **§262-11 Acquisition of air rights.** When (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the director of transportation on behalf of the State may acquire, by purchase, grant, or condemnation in the manner provided by chapter 101, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary or proper to effectuate the purposes of this chapter, including acquisition of a fee simple estate. [L 1965, c 140, pt of §1; Supp, §17A-11; HRS §262-11]