

Appendix C: South Dakota Codified Laws

Chapter 50-10, Airport Zoning

Chapter 50-9, Air Navigation Hazards



Chapter 50-10, Airport Zoning



CHAPTER 50-10

AIRPORT ZONING

<u>50-10-1</u>	Definitions.
<u>50-10-2</u>	Airport hazards as danger to life and property.
<u>50-10-2.1</u>	Removal of airport hazards as public purpose--Use of public funds.
<u>50-10-3</u>	Formulation of airport approach plans--Indication of hazardous structures--Permissible zone and height limits--Applicability of federal standards.
<u>50-10-4</u>	Considerations upon adoption or rejection of approach plan--Federal standards.
<u>50-10-5</u>	Local zoning enforcement of approach plan.
<u>50-10-6</u>	Area restrictions provided by local zoning--Conformity to commission approach plan.
<u>50-10-7</u>	Incorporation of approach plan in general zoning regulations--Local incorporation as not affecting commission authority.
<u>50-10-8</u>	Local zoning to be consistent with commission approach plan--Periodic amendment of local zoning.
<u>50-10-9</u>	Preexisting nonconforming structures unaffected--Exceptions.
<u>50-10-10</u>	Permits for replacement or alteration of existing structures--Conditions for grant of permit--Abandoned and deteriorated structures.
<u>50-10-11</u>	Application for variance--Circumstances under which variance may be allowed.
<u>50-10-12</u>	Conditions to grant of permit or variance--Erection of obstruction markers and lights.
<u>50-10-13</u>	Adoption or change of zoning regulations by local governing body--Public hearing--Notice of hearing.
<u>50-10-14</u>	Delegation of zoning administration and enforcement--Permissible delegation.
<u>50-10-15</u>	Board of airport zoning appeals--Powers of board.
<u>50-10-16</u>	Meetings of board--Oaths and attendance of witnesses--Records of proceedings.
<u>50-10-17</u>	Appeals to board--Time for appeal--Procedure.
<u>50-10-18</u>	Appeal as staying proceedings--Exceptions--Court restraining order.
<u>50-10-19</u>	Hearing of appeal--Notice of hearing.
<u>50-10-20</u>	Actions of board--Scope of review.
<u>50-10-21</u>	Board to decide by majority vote.
<u>50-10-22</u>	Appeal to circuit court from board of appeals--Petition--Time for petition.
<u>50-10-23</u>	Certiorari to board of appeals--Writ as not staying proceedings--Grant of restraining order--Return to writ.
<u>50-10-24</u>	Jurisdiction of court--Further proceedings by board of appeals.
<u>50-10-25</u>	Findings of fact as conclusive on court--Objections not urged before board.
<u>50-10-26</u>	Allowance of costs.
<u>50-10-27</u>	Court action against violators--Injunction.
<u>50-10-28</u>	Acquisition of nonconforming structures--Purchase, grant, or condemnation--Circumstances under which acquisition authorized.
<u>50-10-29</u>	Violation of regulation, order or ruling as misdemeanor.
<u>50-10-30</u>	Severability and saving clause.
<u>50-10-31</u>	Citation of chapter.
<u>50-10-32</u>	Definition of terms.
<u>50-10-33</u>	Military airport--Purpose.
<u>50-10-34</u>	Military airport hazard area zoning regulations.
<u>50-10-35</u>	Military airport compatible land use zoning regulations--Implementation of federal law or rules controlling use of adjacent lands--Statement of purpose.

50-10-1. Definitions. Terms used in this chapter mean:

- (1) "Airport," any military airport or any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air;
- (2) "Airport hazard," any structure, or tree, or use of land, which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off;
- (3) "Commission," the South Dakota Aeronautics Commission;
- (4) "Person," any individual, firm, copartnership, corporation, company, limited liability company, association, joint stock association or body politic, including any trustee, receiver, assignee, or other similar representative;
- (5) "Publicly owned," an airport is publicly owned if the portion of the airport used for the landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency, or other public corporation;
- (6) "Structure," any object constructed or installed by human action, including buildings, towers, smokestacks, and overhead transmission lines, but not including any building, or any part of any building, used or useful in serving the public;
- (7) "Tree," any object of natural growth.

Source: SL 1943, ch 2, § 1; SDC Supp 1960, § 2.0501; SL 1970, ch 264, § 1; SL 1994, ch 351, § 144; SL 1996, ch 278, § 7.

50-10-2. Airport hazards as danger to life and property. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of 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 and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly it is hereby declared:

- (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community or the United States served by the airport in question;
- (2) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented;
- (3) That this should be accomplished, to the extent legally possible, by exercise of the police powers, without compensation.

Source: SL 1943, ch 2, § 2; SDC Supp 1960, § 2.0502; SL 1970, ch 264, § 2; SL 1996, ch 278, § 5.

50-10-2.1. Removal of airport hazards as public purpose--Use of public funds. 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 the political subdivisions may raise and expend public funds and acquire land or property interest therein.

Source: SDCL, § 50-10-2 as added by SL 1970, ch 264, § 2.

50-10-3. Formulation of airport approach plans--Indication of hazardous structures--Permissible zone and height limits--Applicability of federal standards. The Aeronautics Commission is hereby empowered and directed to formulate and adopt, and from time to time as may be necessary revise, an airport approach plan for each publicly owned airport in the state. Each such plan shall indicate the circumstances in which structures and trees are or would be airport hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be; provided that the zone and height limits shall in no case be more exacting than is necessary to conform to the current airport approach and turning space standards of any agency of the federal government which may be concerned with the fostering of civil aeronautics.

Source: SL 1943, ch 2, § 3; SDC Supp 1960, § 2.0503.

50-10-4. Considerations upon adoption or rejection of approach plan--Federal standards. In adopting or revising any airport approach plan, the Aeronautics Commission shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the commission may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

Source: SL 1943, ch 2, § 3; SDC Supp 1960, § 2.0503.

50-10-5. Local zoning enforcement of approach plan. Every municipality and county or other political subdivision having within or without its territorial limits an area within which, according to an airport approach plan adopted by the Aeronautics Commission, measures should be taken for the protection of airport approaches, shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area.

Source: SL 1943, ch 2, § 4 (1); SDC Supp 1960, § 2.0504; SL 1965, ch 1.

50-10-6. Area restrictions provided by local zoning--Conformity to commission approach plan. The regulations required by § 50-10-5 shall divide the area into zones, and, within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, prohibit the obstruction, by lights, smoke, electronic devices, or any other means, of the safe operation of aircraft near airports, and impose such other restrictions and requirements as may be necessary to effectuate the Aeronautics Commission's approach plan for the airport.

Source: SL 1943, ch 2, § 4 (1); SDC Supp 1960, § 2.0504; SL 1965, ch 1; SL 1979, ch 320.

50-10-7. Incorporation of approach plan in general zoning regulations--Local incorporation as not affecting commission authority. In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this chapter, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this chapter.

Source: SL 1943, ch 2, § 4 (2); SDC Supp 1960, § 2.0505.

50-10-8. Local zoning to be consistent with commission approach plan--Periodic amendment of local zoning. Any zoning or other regulations applicable to any area within which, according to an airport approach plan adopted by the commission, measures should be taken for the protection of airport approaches, including not only any airport zoning regulations adopted under this chapter but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by this chapter, shall be consistent with, and conform to, the commission's approach plan for such area, and shall be amended from time to time as may be necessary to conform to any revision of the plan that may be made by the commission.

Source: SL 1943, ch 2, § 4 (3); SDC Supp 1960, § 2.0506.

50-10-9. Preexisting nonconforming structures unaffected--Exceptions. All airport zoning regulations adopted under this chapter shall be reasonable, and none 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 § 50-10-28.

Source: SL 1943, ch 2, § 4 (4); SDC Supp 1960, § 2.0507.

50-10-10. Permits for replacement or alteration of existing structures--Conditions for grant of permit--Abandoned and deteriorated structures. Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this chapter, a system may be established for granting permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than eighty percent physically deteriorated, or decayed no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated all applications for permits for replacement, change, or repair of nonconforming uses shall be granted.

Source: SL 1943, ch 2, § 5 (1); SDC Supp 1960, § 2.0508.

50-10-11. Application for variance--Circumstances under which variance may be allowed. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this chapter, may apply to the board of appeals, as provided in § 50-10-15, 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 do substantial justice and be in accordance with the spirit of the regulations.

Source: SL 1943, ch 2, § 5 (2); SDC Supp 1960, § 2.0509.

50-10-12. Conditions to grant of permit or variance--Erection of obstruction markers and lights. In granting any permit or variance under § 50-10-10 or 50-10-11, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this chapter 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 provide for the installation, operation, and maintenance of suitable obstruction markers and obstruction lights thereon.

Source: SL 1943, ch 2, § 5 (3); SDC Supp 1960, § 2.0510.

50-10-13. Adoption or change of zoning regulations by local governing body--Public hearing--Notice of hearing. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the governing body of the political subdivision in question after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of said hearing shall be given at least fifteen days prior to the date of said hearing by publication of a notice of the time and place of holding such hearing in a legal newspaper or a newspaper of general circulation published in the political subdivision or subdivisions in which is located the airport hazard to be zoned; provided that, if there be no such newspaper, or newspaper published in the said subdivision or subdivisions, said notice shall be published in the nearest legal newspaper, or newspaper of general circulation.

Source: SL 1943, ch 2, § 6 (1); SL 1949, ch 8, § 4; SDC Supp 1960, § 2.0511.

50-10-14. Delegation of zoning administration and enforcement--Permissible delegation. The governing body of any political subdivision adopting airport zoning regulations under this chapter may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under § 50-10-10, but such agency shall not have or exercise any of the powers delegated to the board of appeals.

Source: SL 1943, ch 2, § 6 (2); SDC Supp 1960, § 2.0512.

50-10-15. Board of airport zoning appeals--Powers of board. Airport zoning regulations adopted under this chapter shall provide for appointment of a board of appeals to have and exercise the following powers:

(1) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this chapter or of any ordinance adopted pursuant thereto;

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance;

(3) To hear and decide specific variances under § 50-10-11.

Where a zoning board of appeals or adjustment already exist, it may be appointed as the board of appeals. Otherwise, the board of appeals shall consist of five members, each to be appointed for a term of three years and to be removable for cause by the appointing authority upon written charges and after public hearing.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-16. Meetings of board--Oaths and attendance of witnesses--Records of proceedings. The board established pursuant to § 50-10-15 shall adopt rules in accordance with the provisions of any ordinance adopted under this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-17. Appeals to board--Time for appeal--Procedure. Appeals to the board established pursuant to § 50-10-15 may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable 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.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-18. Appeal as staying proceedings--Exceptions--Court restraining order. An appeal pursuant to § 50-10-15 shall stay all proceedings 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 case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-19. Hearing of appeal--Notice of hearing. The board of appeals shall fix a reasonable time for the hearing of an appeal pursuant to § 50-10-15, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-20. Actions of board--Scope of review. The board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partially, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-21. Board to decide by majority vote. The concurring vote of a majority of the members of the board of appeals shall be sufficient 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 it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Source: SL 1943, ch 2, § 6; SDC Supp 1960, § 2.0513.

50-10-22. Appeal to circuit court from board of appeals--Petition--Time for petition. Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the circuit court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

Source: SL 1943, ch 2, § 7; SDC Supp 1960, § 2.0514 (1).

50-10-23. Certiorari to board of appeals--Writ as not staying proceedings--Grant of restraining order--Return to writ. Upon presentation of a petition pursuant to § 50-10-22, the circuit court may allow a writ of certiorari directed to the board of appeals to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Source: SL 1943, ch 2, § 7; SDC Supp 1960, § 2.0514 (2), (3).

50-10-24. Jurisdiction of court--Further proceedings by board of appeals. The circuit court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review pursuant to § 50-10-23, in whole or in part, and if need be, to order further proceedings by the board of appeals.

Source: SL 1943, ch 2, § 7; SDC Supp 1960, § 2.0514 (4).

50-10-25. Findings of fact as conclusive on court--Objections not urged before board. The findings of fact by the board of appeals, if supported by substantial evidence, shall be accepted by the circuit court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objections shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

Source: SL 1943, ch 2, § 7; SDC Supp 1960, § 2.0514 (4).

50-10-26. Allowance of costs. Costs shall not be allowed against the board of appeals unless it appears to the circuit court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

Source: SL 1943, ch 2, § 7; SDC Supp 1960, § 2.0514 (5).

50-10-27. Court action against violators--Injunction. In addition, either the political subdivision within which the property is located or the Aeronautics Commission may institute in any court of competent jurisdiction, an action 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 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 fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

Source: SL 1943, ch 2, § 8; SDC Supp 1960, § 2.0515.

50-10-28. Acquisition of nonconforming structures--Purchase, grant, or condemnation--Circumstances under which acquisition authorized. In any case in which:

- (1) It is desired to remove, lower, or otherwise terminate a nonconforming use; or
 - (2) The approach protection necessary according to the Aeronautics Commission's airport approach plan 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,
- the political subdivision within which the property or nonconforming use is located, the political subdivision owning the airport or served by it, or the commission, shall acquire by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such an air right, easement,

or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purposes of this chapter.

Source: SL 1943, ch 2, § 9; SDC Supp 1960, § 2.0516.

50-10-29. Violation of regulation, order or ruling as misdemeanor. A violation of any regulation, order, or ruling promulgated or made pursuant to this chapter, is a Class 1 misdemeanor.

Source: SL 1943, ch 2, § 8; SDC Supp 1960, § 2.9908; SL 1983, ch 15, § 185.

50-10-30. Severability and saving clause. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the valid provision or application, and to this end the provisions of this chapter are declared to be severable.

Source: SL 1943, ch 2, § 10; SDC Supp 1960, § 2.0517.

50-10-31. Citation of chapter. This chapter shall be known and may be cited as the "Model Airport Zoning Act."

Source: SL 1943, ch 2, § 11; SDC Supp 1960, § 2.0518.

50-10-32. Definition of terms. Terms in §§ 50-10-33 to 50-10-35, inclusive, mean:

- (1) "Centerline," a line extended through the midpoint of each end of a runway;
- (2) "Compatible land use," a use of land adjacent to a military airport that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land because of levels of noise or vibrations or the risk of personal injury or property damage created by the operations of the military airport, including the taking off and landing of military aircraft;
- (3) "Controlled compatible land use area," any area of land located outside military airport boundaries and within a rectangle bounded by lines located no farther than one and one-half statute miles from the centerline of an instrument or primary runway and lines located no farther than five statute miles from each end of the paved surface of an instrument or primary runway unless noise standards exceed these distances;
- (4) "Instrument runway," any existing or planned military runway of at least three thousand two hundred feet which serves or will serve an instrument landing procedure prescribed by Federal Aviation Administration Order 8260.3B "United States Standard for Terminal Instrument Procedures";
- (5) "Military airport," any area of land or water, publicly or privately owned, designed and set aside for the landing and taking off of military aircraft and used in the interest of the public for that purpose;
- (6) "Military airport hazard," any structure or obstruction that obstructs the air space required for the taking off, landing, or flight of military aircraft or that interferes with visual, radar, radio, or other systems for tracking, monitoring, controlling, or acquiring data relating to military aircraft;
- (7) "Military airport hazard area," an area of land or water on which a military airport hazard may exist;
- (8) "Military airport zoning regulation," a military airport hazard area zoning regulation and a military airport compatible land use zoning regulation adopted under §§ 50-10-32 to 50-10-35, inclusive;
- (9) "Obstruction," any structure, object of natural growth, or other object, including a mobile object, that exceeds a height established by C.F.R. 14 Federal Aviation Regulations Part 77 "Objects Affecting Navigable Airspace" or by a military airport hazard area zoning standard;
- (10) "Political subdivision," any municipality or county;
- (11) "Primary runway," any existing or planned paved runway, as shown on the official military airport layout plan, of at least three thousand two hundred feet on which a majority of the approaches to and departures from the military airport occur;
- (12) "Runway," a defined area of a military airport prepared for the landing and taking off of military aircraft along its length.

Source: SL 1996, ch 278, § 1.

50-10-33. Military airport--Purpose. For the purposes of §§ 50-10-32 to 50-10-35, inclusive, a military airport is an airport used by the state or a political subdivision of the state, or by the United States for national defense purposes or for any federal program relating to flight.

Source: SL 1996, ch 278, § 2.

50-10-34. Military airport hazard area zoning regulations. Any political subdivision in which a military airport hazard area is located may adopt, administer, and enforce, under its police power, military airport hazard area zoning regulations for the military airport hazard area to prevent the creation of a military airport hazard. The military airport hazard area zoning regulations may divide a military airport hazard area into zones and for each zone:

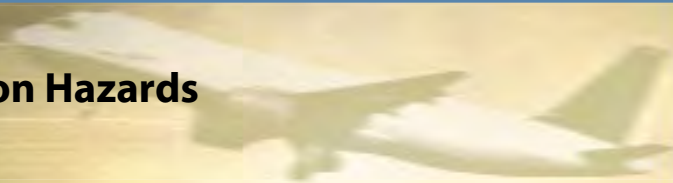
- (1) Specify the land uses permitted;
- (2) Regulate the type and density of structures; and
- (3) Restrict the height of structures and obstructions to prevent the creation of an obstruction to flight operations or air navigation.

Source: SL 1996, ch 278, § 3.

50-10-35. Military airport compatible land use zoning regulations--Implementation of federal law or rules controlling use of adjacent lands--Statement of purpose. A political subdivision may adopt, administer, and enforce, under its police power, military airport compatible land use zoning regulations for the part of a controlled compatible land use area located within the political subdivision. The political subdivision by ordinance or resolution may implement, in connection with military airport compatible land use zoning regulations, any federal law or rules controlling the use of land located adjacent to or in the immediate vicinity of the military airport. The military airport compatible land use zoning regulations shall include a statement that the military airport fulfills an essential national defense purpose.

Source: SL 1996, ch 278, § 4.

Chapter 50-9, Air Navigation Hazards



CHAPTER 50-9

AIR NAVIGATION HAZARDS

- 50-9-1 Height of structures within proximity of airport--Approval of Aeronautics Commission--Certain structures within corporate limits excepted.
 - 50-9-2 Violating structures as danger to person and property--Rules for approval of structures.
 - 50-9-3 Hearing on application for approval--Certain structures approvable without hearing--Notice of hearing--Cease and desist order.
 - 50-9-4 Appeals from order of commission--Procedure.
 - 50-9-5 Erection of unapproved structures as misdemeanor.
 - 50-9-6 Municipal zoning regulations applicable.
 - 50-9-7 Permit for erection of structure exceeding two hundred feet in height required--Violation as misdemeanor.
 - 50-9-8 Erection of certain temporary buildings upon notice--Definition of temporary building.
 - 50-9-9 Rules respecting high buildings--Marking and lighting--Court enforcement of rules.
 - 50-9-10 Conflicting jurisdiction between Aeronautics Commission and local political subdivisions--Superiority of commission--Public hearing.
 - 50-9-11 Repealed.
-

50-9-1. Height of structures within proximity of airport--Approval of Aeronautics Commission--Certain structures within corporate limits excepted. Any public utility, power district, or other governmental subdivision, or any person, association, corporation, limited liability company, or partnership, before engaging in the construction or alteration which extends the height, in the State of South Dakota, of any overhead line, cable, pipeline, outdoor theater, derricks, towers, or other structures within two miles from the nearest boundary of any airport which has been approved by the South Dakota Aeronautics Commission for public use by aircraft, the height of which is over ten feet above the elevation of an airport, for each five hundred feet of distance from the nearest boundary of the airport, before the alteration or construction of any such item or structure, shall file an application with and obtain the approval of the South Dakota Aeronautics Commission, for permission to enter upon and complete such construction or alteration. However, no application is needed if the construction or alteration is within the corporate limits of a municipality and is adjacent to other structures of a permanent character which are an equal or greater height than the construction or alteration proposed.

Source: SL 1953, ch 3, § 1; SDC Supp 1960, § 2.0210; SL 1992, ch 60, § 2; SL 1994, ch 351, § 142.

50-9-2. Violating structures as danger to person and property--Rules for approval of structures. The alteration or construction of overhead lines, cables, pipelines, outdoor theaters, derricks, towers, or other structures not approved by the South Dakota Aeronautics Commission within two miles from the nearest boundary of any airport which has been approved by the South Dakota Aeronautics Commission for public use by aircraft, is declared to be a danger to the public and to life, limb, property and persons in the vicinity thereof. The South Dakota Aeronautics Commission shall adopt and establish and publish reasonable rules pursuant to chapter 1-26 covering the requirements that must be met by any applicant to obtain the approval for the construction or alteration of any such overhead line, cable, pipeline, outdoor theater, derricks, towers, or other structures which is not exempt from the requirements of § 50-9-1.

Source: SL 1953, ch 3, § 2; SDC Supp 1960, § 2.0211; SL 1987, ch 356, § 13.

50-9-3. Hearing on application for approval--Certain structures approvable without hearing--Notice of hearing--Cease and desist order. The South Dakota Aeronautics Commission may in its discretion, approve the application filed, as required by § 50-9-1 without a hearing, provided that, in the event that the commission deems the erection of said structures to create a hazard to the safe use of said airports by aircraft, and a public danger, or finds the same to be in violation of any of the rules and regulations referred to in § 50-9-2 the commission shall assign said application for hearing upon reasonable notice to the applicant and may order and require applicant to cease and desist from erecting such overhead lines, cables, pipelines, outdoor

theaters, towers, or other structures except pursuant to and in conformity to plans and specifications relating to height thereof, approved by said commission.

Source: SL 1953, ch 3, § 4; SDC Supp 1960, § 2.0212.

50-9-4. Appeals from order of commission--Procedure. Any person aggrieved by any action of the Aeronautics Commission may appeal in the manner provided by law and the rules of practice and procedure adopted by the Supreme Court governing appeals from boards and commissions.

Source: SL 1953, ch 3, § 6; SDC Supp 1960, § 2.0213.

50-9-5. Erection of unapproved structures as misdemeanor. The erection or alteration of any of overhead lines, cables, pipelines, towers, outdoor theaters, derricks, or other structures within two miles of the nearest boundary of an airport not exempt from the requirements of § 50-9-1 without the approval of the South Dakota Aeronautics Commission is a Class 1 misdemeanor.

Source: SL 1953, ch 3, § 5; SDC Supp 1960, § 2.9910; SL 1983, ch 15, § 182.

50-9-6. Municipal zoning regulations applicable. Sections 50-9-1 to 50-9-5, inclusive, shall not apply to airports for which zoning regulations have been adopted by municipal, county, or other political subdivisions.

Source: SL 1953, ch 3, § 1; SDC Supp 1960, § 2.0210.

50-9-7. Permit for erection of structure exceeding two hundred feet in height required--Violation as misdemeanor. No person, firm, corporation, limited liability company, or association may erect anywhere in this state a building, structure, or tower of any kind over two hundred feet in height above the terrain, without first filing with the South Dakota Aeronautics Commission a notice and application showing the location and dimensions of the building, structure, or tower, and procuring a permit approving the location from the South Dakota Aeronautics Commission. A violation of this section, or a rule or order adopted pursuant to § 50-9-9, is a Class 1 misdemeanor.

Source: SL 1957, ch 2, § 1; SDC Supp 1960, § 2.0215; SL 1983, ch 15, § 183; SL 1989, ch 406, § 2; SL 1994, ch 351, § 143.

50-9-8. Erection of certain temporary buildings upon notice--Definition of temporary building. Notwithstanding § 50-9-7, temporary buildings or structures not located within the airways or within five miles of an airport, may be erected upon filing with the Aeronautics Commission a notice showing the location thereof without making application and procuring a permit pursuant to § 50-9-7. A temporary building, structure, or tower shall mean any building, structure or tower which shall be dismantled or removed not later than six months from the date the erection of said building or structure is commenced.

Source: SL 1957, ch 2, § 1; SDC Supp 1960, § 2.0215.

50-9-9. Rules respecting high buildings--Marking and lighting--Court enforcement of rules. The South Dakota Aeronautics Commission may, pursuant to chapter 1-26, adopt and enforce rules establishing minimum standards and criteria, including lighting, painting, and marking of any buildings, structures, towers, and hazards referred to in §§ 50-9-2, 50-9-3 and 50-9-7 in the interest of safe operation of aircraft and public safety. In adopting and enforcing rules, the Aeronautics Commission shall consider aviation safety, economic impact, financial impact on applicants applying for permits to build structures, multiple uses of airspace, federal regulations, and other relevant factors. The power and authority to enforce such rules by injunction proceedings in any court of competent jurisdiction instituted in the name of the South Dakota Aeronautics Commission, is hereby conferred.

Source: SL 1957, ch 2, § 2; SDC Supp 1960, § 2.0216; SL 1987, ch 356, § 14; SL 1989, ch 406, § 3.

50-9-10. Conflicting jurisdiction between Aeronautics Commission and local political subdivisions--Superiority of commission--Public hearing. When conflicting jurisdiction arises over the control of the erection of a building, structure, tower, or hazard in relation to an airport, airway, or air navigation facility between the State Aeronautics Commission and any political subdivision of the state, the commission may overrule, change, modify, or amend zoning rules and regulations adopted by any political subdivision or by any airport zoning board created by a political subdivision under the laws of this state, after a public hearing wherein all parties thereto have been given an opportunity to be heard.

Source: SL 1957, ch 2, § 3; SDC Supp 1960, § 2.0217.

50-9-11. Repealed by SL 1983, ch 15, § 184.