

ORDINANCE NO. _____

1 AN ORDINANCE to readopt Ordinance No. 20304 adopted by the City Council
2 on March 14, 2016 amending Chapter 27.59 of the Lincoln Municipal Code relating to Airport
3 Zoning Regulations by amending Section 27.59.010 to revise existing definitions and add new
4 definitions; amending Section 27.59.020 relating to location and boundaries by establishing the
5 area included within the airport hazard area; amending Section 27.59.030 to establish and revise
6 descriptions for the approach zones, the operation zones, the transition zones, and the turning
7 zones; amending Section 27.59.040 relating to the height restrictions to revise language and
8 change references; amending 27.59.060 requiring height permits within the airport hazard area
9 under certain circumstances, and prohibiting the issuance of a height permit for structures or
10 appurtenances that exceed the height restrictions as established by Chapter 27.59; amending
11 Section 27.59.070 relating to airport hazards; amending Section 27.59.080 relating to
12 nonconforming height; amending Section 27.59.090 relating to administration; amending Section
13 27.59.110 relating to powers of the Board of Zoning Appeals by increasing the number of votes
14 required for action to four (4); amending Section 27.59.120 relating to the Airport Zoning
15 Commission by updating statutory references; amending Section 27.59.140 relating to appeals
16 from the Board of Zoning Appeals by updating statutory references; amending Section 27.59.150
17 relating to penalties for violations by deleting references to imprisonment and increasing the
18 maximum fine to \$500.00; adopting a revised Lincoln Airport Zoning Map; and repealing
19 Sections 27.59.010, 27.59.020, 27.59.030, 27.59.040, 27.59.060, 27.59.070, 27.59.080,
20 27.59.090, 27.59.110, 27.59.120, 27.59.140, and 27.59.150 as hitherto existing.

1 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

2 Section 1. That Section 27.59.010 of the Lincoln Municipal Code be amended to
3 read as follows:

4 **27.59.010 Definitions.**

5 As used in this chapter unless the context otherwise requires:

6 **Airport** shall mean the Lincoln ~~municipal~~ airport, located as ~~provided in Section~~
7 ~~27.59.020, below in Sections 4, 5, 6, 7, 8, 9, 17, and 18, Township 10 North, and Sections 31 and~~
8 ~~32, Township 11 North, Range 6 East of the Sixth Principal Meridian, Lancaster County,~~
9 Nebraska.

10 **Airport hazard** shall mean any structure or tree or use of land ~~which obstructs the~~
11 ~~airspace required for the flight of aircraft in landing or taking off at the airport or is otherwise~~
12 ~~hazardous to such landing or taking off of aircraft~~ that penetrates any approach, operation,
13 transition, or turning zone.

14 **Airport hazard area** shall mean any area of land or water upon which an airport hazard
15 might be established if not prevented as provided in this chapter, but such area shall not extend in
16 any direction a distance in excess of the limits provided for approach, operation, transition, and
17 turning zones.

18 **Building Official** shall mean the Director of the Department of Building and Safety of
19 the City of Lincoln, Nebraska, or his or her authorized representative.

20 **City** shall mean the City of Lincoln, Nebraska.

21 **Existing runway** means a runway that has been constructed or is under construction.

22 **Instrument runway** shall mean an existing runway with precision or nonprecision
23 instrument approaches as developed and published by the Federal Aviation Administration or an

1 existing or proposed runway with future precision or nonprecision instrument approaches
2 reflected on the airport layout plan.

3 **Lessee** shall mean any person, other than the owner, in possession of land.

4 **Nonconforming use** shall mean any structure or use of land which does not conform to a
5 requirement of this chapter or an amendment thereto, as of the effective date of this chapter.

6 **Person** shall mean any individual, firm, association, corporation, or body politic and
7 includes any receiver, assignee, or similar representative thereof.

8 **Proposed runway** means a runway that has not been constructed and is not under
9 construction but that is depicted on the airport layout plan that has been conditionally or
10 unconditionally approved by, or has been submitted for approval to, the Federal Aviation
11 Administration.

12 **Runway** shall mean a ~~portion of the airport, having a surface especially developed and~~
13 ~~maintained for the landing and take-off of aircraft~~ defined area at the Airport that is prepared for
14 the landing and takeoff of aircraft along its length. For purposes of Chapter 27.59, only
15 instrument runways as defined herein shall be included within the term “runway”.

16 **Structure** shall mean any man-made object constructed or installed by man, including,
17 but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution
18 lines.

19 **Tree** shall mean any object of natural growth.

20 Section 2. That Section 27.59.020 of the Lincoln Municipal Code be amended to
21 read as follows:

22 **27.59.020 ~~Location and~~ Airport Hazard Area; Boundaries.**

23 ~~The vicinity of the airport, located in Sections 4, 5, 6, 7, 8, 9, 17 and 18, Township 10~~
24 ~~North, and Sections 31 and 32, Township 11 North, Range 6 East of the Sixth Principal~~

1 ~~Meridian, Lancaster County, Nebraska, specifically being the area lying within the outer limits of~~
2 ~~a series of points forming a line which is a horizontal distance of three miles from the airport~~
3 ~~boundary or the corporate limits of the city, whichever is the lesser distance from the airport~~
4 ~~boundary line, is hereby declared an airport hazard area and is hereby zoned as follows:~~

5 ~~The hazard area consists of approach zones, turning zones, and transition zones as~~
6 ~~defined in Section 27.59.030.~~

7 ~~(a) — The outer boundary of the hazard area is composed of a series of connected~~
8 ~~tangents and simple curves which also constitute the outer boundaries of the approach and~~
9 ~~turning zones.~~

10 ~~(b) — The inner boundary of the hazard area is a boundary line consisting of a series of~~
11 ~~intersecting tangents, 500 feet from and parallel to the centerlines of the runways and connecting~~
12 ~~the inner boundaries of adjacent approach zones at the ends of the runways. The boundaries of~~
13 ~~the airport hazard area, approach zones, turning zones and transition zones are delineated and~~
14 ~~shown on the Lincoln Airport Zoning Map.~~

15 All of the area encompassed within the approach zones, operation zones, turning zones,
16 and transition zones as defined in Section 27.59.030, to the extent that such area is located within
17 the corporate limits of the City of Lincoln or within the extraterritorial zoning jurisdiction of the
18 City of Lincoln, is hereby declared an airport hazard area. The boundaries of the airport hazard
19 area, approach zones, operation zones, turning zones, and transition zones are delineated and
20 shown on the Lincoln Airport Zoning Map.

21 Section 3. That Section 27.59.030 of the Lincoln Municipal Code be amended to
22 read as follows:

23 **27.59.030 Zone Descriptions.**

1 (a) ~~An approach zone is located at each end of each existing or proposed runway for~~
2 ~~the landing or taking off of airplanes. Such approach zones begin 200 feet beyond the ends of~~
3 ~~the respective runways, and at such beginning are 1,000 feet in width, 500 feet on each side of~~
4 ~~the respective centerline, and extend and expand uniformly centered along the extended~~
5 ~~centerline of the respective runways to the outer boundary of the approach and turning zones at a~~
6 ~~rate of 30 feet of width for each 100 feet of horizontal length for each runway. Approach zone~~
7 ~~means a zone that extends from the end of each operation zone and is centered along the~~
8 ~~extended runway centerline. The dimensions of an approach zone for existing or proposed~~
9 ~~runways are as follows:~~

10 i. An approach zone extends ten miles from the operation zone, measured
11 along the extended runway centerline. The approach zone is one thousand feet
12 wide at the end of the zone nearest the runway and expands uniformly to sixteen
13 thousand eight hundred forty feet wide at the farthest end of the zone; and

14 ii. The height limit of an approach zone begins at the elevation of the runway
15 end for which it is the approach and rises one foot vertically for every fifty feet
16 horizontally, except that the height limit shall not exceed one hundred fifty feet
17 above the nearest existing or proposed runway end elevation within three miles of
18 the end of the operation zone at that runway end. At three miles from such
19 operation zone, the height limit resumes sloping one foot vertically for every fifty
20 feet horizontally and continues to the ten-mile limit; and

21 (b) ~~The transition zones are the areas bounded by the inner boundary of the hazard~~
22 ~~area, the sides of contiguous inner areas of approach zones and the outer limits of the transition~~
23 ~~zones; said outer limits of the transition zones being the intersections, at elevations of 150 feet~~
24 ~~above the highest elevation at the ends or edges of the closest runway, or proposed runway, of a~~

1 ~~series of contiguous planes originating from bases established by the inner boundary of the~~
2 ~~hazard area and the edges of adjacent inner areas of approach zones; the planes rising from their~~
3 ~~respective bases at the rate of one foot vertically to seven feet horizontally to the lines of~~
4 ~~intersection previously referred to.~~ Operation zone means a zone that is longitudinally centered
5 on each existing or proposed runway. The dimensions of an operation zone for existing and
6 proposed runways are as follows:

7 (i) The operation zone extends two hundred feet beyond the ends of each
8 runway;

9 (ii) The operation zone is one thousand feet wide, with five hundred feet on
10 either side of the runway centerline; and

11 (iii) The height limit of the operation zone is the same as the height of the
12 runway centerline elevation on an existing or proposed runway or the surface of
13 the ground, whichever is higher;

14 (c) Transition zone means a zone that extends outward at a right angle to the runway
15 centerline and the extended runway centerline and upward at a rate of one foot vertically for
16 every seven feet horizontally. The height limit of a transition zone begins at the height limit of
17 the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above
18 the highest elevation on the existing or proposed runway.

19 ~~(e)(d)~~ The turning zones comprise all portions of the zoned area not contained in the
20 approach zones, operation zones, and transition zones. The outer limits of the turning zones are
21 a series of points forming a line which is a horizontal distance of three statute miles from the
22 airport boundary line or the corporate limits of the city, whichever is the lesser distance from the
23 airport. The turning zone's outer limit is the area located at a distance of three miles as a radius
24 from the corners of the operation zone of each runway and connecting adjacent arcs with tangent

1 lines, excluding any area within the approach zone, operation zone, or transition zone. The
2 height limit of the turning zone is one hundred fifty feet above the highest elevation on the
3 existing or proposed runway.

4 Section 4. That Section 27.59.040 of the Lincoln Municipal Code be amended to
5 read as follows:

6 **27.59.040 Height Restrictions.**

7 Except as otherwise permitted by Chapter 27.59, No building or structure, smokestack,
8 chimney, tower, or other structure or appurtenance thereto of any kind or character shall
9 hereafter be erected, constructed, repaired, or established and no tree shall be allowed except as
10 otherwise provided in Section 27.59.090 within the Airport Hazard Area that exceeds the
11 following height restrictions:

- 12 (a) In the approach zones, the height of the planes forming the approach zones;
- 13 (b) In the turning zones, to a height in excess of 150 feet above the elevation at the
14 closest runway end, as shown on the Lincoln Airport Zoning Map.
- 15 (c) In the transition zones, the height of the planes forming the transition slopes;
- 16 (d) Within the ~~inner boundary of the hazard area~~ operation zone and in the existing or
17 proposed runways, the height of the existing or proposed finished grade of said runways. All
18 grades of said runways are hereby established by and referenced to the plans of said airport on
19 file in the office of the City Clerk, which plans are made a part of this chapter by reference.
- 20 (e) Notwithstanding the above, a maximum height of 275 feet shall be permitted in
21 the 275 Foot Maximum Height Zone as shown on the Lincoln Airport Zoning Map.

22 Section 5. That Section 27.59.060 of the Lincoln Municipal Code be amended to
23 read as follows:

1 **27.59.060 Permit Required; Procedure.**

2 (a) Except as provided in subparagraph (b), it is hereafter shall be unlawful to erect,
3 construct, reconstruct, repair, or establish any building, tower, smokestack, chimney, or other
4 structure or appurtenance thereto of any kind or character within the boundary of the Airport
5 Hazard Area of said the Airport without first obtaining a height permit from the Building
6 Official. A height permit shall not be issued for any structure or appurtenance thereto that
7 exceeds the height restrictions set forth in Section 27.59.040.

8 (b) ~~In the outer approach zones and within the turning zones~~ No height permit shall
9 be required generally within the turning zones, or that part of the approach zones located more
10 than seven thousand seven hundred feet from the end of the runway, for construction of any
11 proposed structure that will be which is no higher than seventy-five feet above the elevation of
12 the natural ground at the location point of the proposed construction, except for construction in
13 those specifically "shaded" areas (elevation 1,248 ft. A.M.S.L. or higher) indicated on the airport
14 zoning map Lincoln Airport Zoning Map that are within four miles from the end of a runway.
15 Structures or buildings proposed to be constructed within ~~or in close proximity to~~ such "shaded"
16 areas on said map shall require certification as to elevation. ~~if in the opinion of the building~~
17 ~~official such structure or building may exceed the allowable height of that particular "shaded"~~
18 ~~portion of the map, provided that~~ No certification as to elevation or a height permit shall be
19 required for proposed accessory structures or accessory buildings to dwelling units when said
20 proposed accessory structures or accessory buildings or any attachment thereto do not exceed the
21 elevation of said dwelling unit.

22 (c) Application for a height permit as required under the provisions of this chapter
23 shall be made upon a form which is available in the office of the Building Official. The
24 application shall indicate the location, ground elevation with reference to the elevation at the

1 closest point on a runway, and the height of the proposed structure. Said elevation shall be
2 certified to by a land surveyor, registered by the State of Nebraska, which certificate must
3 accompany said application.

4 (d) Upon completion of any structure or dwelling requiring a height permit, the
5 Building Official shall require a registered professional surveyor to verify the actual height and
6 location of such any structure or building. ~~requiring a height permit.~~ The certification shall be
7 submitted to the Building Official at the point of final construction of the structure or building
8 ~~but~~ and prior to operation or occupying the structure or building. Such information shall be
9 recorded and maintained by the Building Official.

10 Section 6. That Section 27.59.070 of the Lincoln Municipal Code be amended to
11 read as follows:

12 **27.59.070 Airport Hazards.**

13 (a) The Building Official shall examine or cause to be examined any ~~transmission~~
14 ~~line, pole, tree, wires, or other~~ structures or trees natural growth, not included in Section
15 27.59.060, reported to him as an airport hazard within the airport hazard area, and if such is
16 found to be an airport hazard as defined in Section 27.59.010, and is not otherwise approved or
17 authorized by this Chapter, it shall be the duty of the Building Official to give the owner of the
18 property where such airport hazard exists written notice thereof, and to take such measures as are
19 necessary and authorized by law to eliminate or alleviate said airport hazard. For the purpose of
20 aiding the Building Official to determine whether the existence of any such reported
21 ~~transmission line, pole, tree, wires, or other~~ structures or trees ~~natural growth~~ constitute an
22 airport hazard, the Building Official may in each case request a written report from the State
23 Department of Aeronautics under the provisions of *Neb. Rev. Stat.* §§ 3-108 and 3-113 (Reissue
24 ~~1973~~2012) to advise whether or not an airport hazard, as defined in this chapter, exists.

1 (b) Notwithstanding any other provisions of this title, no use may be made of land
2 within any zone established by this ordinance in such a manner as to create electrical interference
3 with radio communication between the airport and aircraft, make it difficult for fliers to
4 distinguish between airport lights and others, result in glare in the eyes of fliers using the airport,
5 impair visibility in the vicinity of the airport, or otherwise endanger the landing, take-off, or
6 maneuvering of aircraft.

7 Section 7. That Section 27.59.080 of the Lincoln Municipal Code be amended to
8 read as follows:

9 **27.59.080 Nonconforming Height.**

10 (a) Within the airport hazard area as hereinbefore defined, the lawful height of a building,
11 structure, tree, or premises existing at the time of the effective date of this chapter may be
12 continued although such height does not conform to the provisions hereof and it shall be
13 considered a nonconforming use. Within the airport hazard area no nonconforming building,
14 structure, ~~smokestack, chimney~~ tree, premises, or appurtenance thereof of any kind or character
15 shall, ~~without first receiving a permit from the Building Official authorizing such work~~ hereafter
16 be replaced, replanted, substantially reconstructed, repaired, or altered without first receiving a
17 permit from the Building Official authorizing such work. A permit shall be granted under this
18 Section if the applicant shows that the replacement, repair, replanting, or alteration of the
19 nonconforming building, structure, tree, premises, or appurtenance thereof would not result in an
20 increase in height for the nonconforming building, structure, tree, or premises as it existed before
21 the effective date of this Section, as amended, to a height which constitutes or a greater hazard to
22 air navigation than existed before the effective date of this chapter Section. For any
23 nonconforming use, no permit shall be required under this subsection for repairs made necessary
24 by fire, explosion, act of God, or the common enemy, or for repairs for which the costs do not

1 exceed sixty percent of the fair market value of the structure, so long as the height of the
2 nonconforming structure is not increased over its preexisting height. ,nor above the heights
3 permitted by this chapter if such structures are torn down, destroyed, burned, deteriorated, or
4 decayed to an extent of sixty percent or more, or abandoned for a period of twelve months or
5 more.

6 (b) Notwithstanding (a) above, an electric supplier owning or operating an electric
7 facility made nonconforming by adoption of this Chapter may, without a permit or approval of
8 the City, repair, reconstruct, or replace such electric facility if the height of such electric facility
9 is not increased over its height as it existed as of the date this Chapter, as amended, was adopted.

10 Any electric facility made nonconforming by adoption of this Chapter which, in the course of
11 being repaired, reconstructed, or replaced will exceed its preexisting height shall require a permit
12 from the City which shall be granted upon a showing that the excess height of the electric facility
13 will not establish or create a greater hazard to air navigation than the electric facility that
14 previously existed at said location. For purposes of this section, an “electric facility” means an
15 overhead electric line, including poles or other supporting structures, owned or operated by an
16 electric supplier as defined in Neb. Rev. Stat. §70-1001.01, for the transmission or distribution of
17 electrical power to the electric supplier’s customers.

18 Section 8. That Section 27.59.090 of the Lincoln Municipal Code be amended to
19 read as follows:

20 **27.59.090 Administration.**

21 It is the duty of the Building Official ~~who is the Director of Building and Safety of the~~
22 ~~City of Lincoln,~~ to administer and enforce this chapter, and said officer is hereby appointed the
23 “administrative agency” provided for in *Neb. Rev. Stat. §3-319 (Reissue 1943, as amended 2014*
24 *Cum. Supp.)*, and shall have all the powers and perform all the duties of the administrative

1 agency as provided by the airport zoning act, until or unless otherwise ordered by the Mayor.
2 Applications for permits and variances shall be made to the Building Official upon a form
3 furnished by said official. Applications which are by this chapter to be decided by the Building
4 Official shall be promptly considered and granted or denied. Applications for action by the
5 Board of Zoning Appeals shall be forthwith transmitted by the Building Official to the Board for
6 hearing and decision.

7 Section 9. That Section 27.59.110 of the Lincoln Municipal Code be amended to
8 read as follows:

9 **27.59.110 Powers of the Board of Zoning Appeals.**

10 The Board of Zoning Appeals has the following powers:

11 (a) To hear and decide appeals from any order, requirement, or decision made by the
12 Building Official in the enforcement of this chapter;

13 (b) To hear and decide any special exceptions to the terms of this chapter which such
14 board may be required to pass upon under this chapter; and

15 (c) To hear and decide specific variances to the extent necessary, where there are
16 peculiar, exceptions, and unusual circumstances in connection with a specific situation where the
17 relief granted would not be contrary to the public interest, but would do substantial justice and be
18 in accordance with the spirit of this chapter. Provided, that any variance may be allowed subject
19 to any reasonable conditions that the Board of Zoning Appeals may deem necessary to effectuate
20 the purpose of this chapter.

21 The concurring vote of four members of the Board shall be necessary to reverse any
22 order, requirement, decision, or determination of the Building Official or to decide in favor of the
23 applicant on any matter upon which the Board is required to pass under the airport zoning
24 regulations or to effect any variation in such regulations.

1 Section 10. That Section 27.59.120 of the Lincoln Municipal Code be amended
2 to read as follows:

3 **27.59.120 Airport Zoning Commission.**

4 The Lincoln City-Lancaster County Planning Commission is hereby appointed the
5 “Airport Zoning Commission,” referred to in *Neb. Rev. Stat.* § 3-308, (~~Reissue 1943~~2014 Cum.
6 Supp.), to have and exercise the powers conferred by *Neb. Rev. Stat.* § 3-308, (~~Reissue 1943~~2014
7 Cum. Supp.), and such other powers and duties as are conferred and imposed by law.

8 Section 11. That Section 27.59.140 of the Lincoln Municipal Code be amended
9 to read as follows:

10 **27.59.140 Appeal from Board of Zoning Appeals.**

11 Any person aggrieved or taxpayer affected by any decision of the Board of Zoning
12 Appeals or governing body of a political subdivision which is of the opinion that a decision of
13 the Board of Zoning Appeals is illegal, may appeal to the District Court of Lancaster County in
14 the manner provided in *Neb. Rev. Stat.* §§ 3-324 et seq. (~~Reissue 1973~~2014 Cum. Supp.).

15 Section 12. That Section 27.59.150 of the Lincoln Municipal Code be amended
16 to read as follows:

17 **27.59.150 Penalty for Violations.**

18 (a) Each violation of any provision of this chapter shall constitute a misdemeanor and
19 shall be punishable by a fine of not less than \$50.00 nor more than \$300.00, or imprisonment for
20 ~~not less than five nor more than thirty days, or both such fine and imprisonment to exceed~~
21 \$500.00. Each day a violation continues to exist shall constitute a separate offense.

22 (b) In any case where use of land is made in violation of this chapter or where any
23 building or structure is erected, constructed, reconstructed, altered, repaired, or converted in
24 violation of this chapter, the city attorney, in addition to other remedies, is hereby authorized to

1 institute on behalf of the city, injunction, mandamus, or any other appropriate action or
2 proceeding to prevent such unlawful use, erection, construction, reconstruction, alteration, or
3 conversion, or to correct or abate such violation.

4 Section 13. That the Lincoln Airport Zoning Map dated February 25, 2002, as
5 most recently amended by Section 7 of Ordinance No. 19714, be superseded and the Lincoln
6 Airport Zoning Map dated August 12, 2015, a copy of which is attached hereto, is hereby
7 adopted by reference into Chapter 27 and shall constitute the Lincoln Airport Zoning Map
8 referred to in Chapter 27 and in Section 27.050.020 of the Lincoln Municipal Code.

9 Section 14. That Sections 27.59.010, 27.59.020, 27.59.030, 27.59.040, 27.59.060,
10 27.59.070, 27.59.080, 27.59.090, 27.59.110, 27.59.120, 27.59.140, and 27.59.150 of the Lincoln
11 Municipal Code as hitherto existing be and the same are hereby repealed.

12 Section 15. Pursuant to Article VII, Section 7 of the City Charter, this ordinance
13 shall be posted on the official bulletin board of the City, located on the wall across from the City
14 Clerk's office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice
15 of passage and such posting to be given by publication one time in the official newspaper by the
16 City Clerk. This ordinance shall take effect and be in force from and after its passage and
17 publication as herein and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2017:

Mayor