

CHAPTER 62**AIR SAFETY AND ZONING****Authority**

N.J.S.A. 27:1A-5, 27:1A-6, 6:1-32 and the Air Safety and Zoning Act of 1983, as amended.

Source and Effective Date

R.1995 d.76, effective January 12, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

Executive Order No. 66(1978) Expiration Date

Chapter 62, Air Safety and Zoning, expires on January 12, 2000.

Chapter Historical Note

Chapter 62, originally Special Aircraft Operating Restrictions, was adopted as Emergency R.1973 d.29, effective January 23, 1973. See: 5 N.J.R. 58(a). The chapter was repealed by R.1983 d.476, effective November 7, 1983. See: 15 N.J.R. 1453(a), 15 N.J.R. 1870(b). Chapter 62, Air Safety and Hazardous Zoning, was adopted as R.1985 d.173, effective April 15, 1985. See: 16 N.J.R. 860(b), 17 N.J.R. 977(b). Subchapters 8, 9, and 10 were adopted as R.1985 d.537 and existing Subchapter 8, Liability, was recodified as Subchapter 11, effective November 4, 1985. See: 17 N.J.R. 1869(a), 17 N.J.R. 2673(b). Pursuant to Executive Order No. 66(1978), Chapter 62 was readopted as R.1990 d.178, effective February 26, 1990. See: 22 N.J.R. 158(a), 22 N.J.R. 981(a).

Pursuant to Executive Order No. 66(1978), Chapter 62 was readopted as R.1995 d.76. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Airports—Condemnation—Municipal Land Use—State Constitution. Judith Nallin, 136 N.J.L.J. 63 (1994).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. AIR SAFETY AND ZONING**

- 16:62-1.1 Definitions
- 16:62-1.2 General requirements and provisions

SUBCHAPTER 2. MUNICIPALITIES

- 16:62-2.1 Municipal requirements

SUBCHAPTER 3. DELINEATION OF AIRPORT SAFETY ZONES

- 16:62-3.1 Delineation of Airport Safety Zones
- 16:62-3.2 Methodology used to delineate Airport Safety Zones
- 16:62-3.3 Delineation of the RUNWAY SUBZONE
- 16:62-3.4 Delineation of the RUNWAY END SUBZONES
- 16:62-3.5 Delineation of the CLEAR ZONES

SUBCHAPTER 4. OBSTRUCTION ORDINANCE STANDARDS

- 16:62-4.1 Minimum obstruction ordinance standards
- 16:62-4.2 Methodology used to define vertical development allowed within an Airport Safety Zone

SUBCHAPTER 5. LAND USE ORDINANCE STANDARDS

- 16:62-5.1 Minimum land use standards

SUBCHAPTER 6. PERMIT FOR CREATION OR EXPANSION OF A PROHIBITED LAND USE OR VERTICAL HEIGHT DEVELOPMENT WITHIN AN AIRPORT SAFETY ZONE

- 16:62-6.1 General provisions
- 16:62-6.2 Municipal approval
- 16:62-6.3 Permit application requirements
- 16:62-6.4 Permit review procedures
- 16:62-6.5 Permit application decisions

SUBCHAPTER 7. PROVISIONS FOR AMENDED AND SPECIAL AIRPORT STANDARDS

- 16:62-7.1 General provisions
- 16:62-7.2 Amended and special standards

SUBCHAPTER 8. PERMITS FOR DEVELOPMENTS IMMUNE TO LOCAL ORDINANCE

- 16:62-8.1 General provisions

SUBCHAPTER 9. EXISTING LAND USES NOT CONFORMING TO THE STANDARDS OF THIS CHAPTER

- 16:62-9.1 General provisions

SUBCHAPTER 10. IMPLEMENTATION DEADLINES

- 16:62-10.1 General provisions

SUBCHAPTER 11. LIABILITY

- 16:62-11.1 Liability

APPENDIX—AIRPORT SAFETY ZONE DIMENSIONS**SUBCHAPTER 1. AIR SAFETY AND ZONING****16:62-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Airpark” means any area of land, adjacent to a public use airport, to be utilized as a combined single family residence and aircraft storage facility.

“Airport” means any area of land or water, or both, designed and set aside for the landing and taking-off of fixed wing aircraft, utilized or to be utilized by the general public for such purposes, publicly or privately owned, and licensed by the Commissioner as a public use airport or landing strip, or a proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C. 16:54 and which has been determined by the

Commissioner as likely to be so licensed within one year of the determination.

"Airport hazard" means:

1. Any use of land or water, or both, which creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport; or
2. Any structure or tree which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport.

"Airport safety zone" means any area of land or water, or both, upon which an airport hazard might be created or established, if not prevented by this chapter.

"Commissioner" means the Commissioner of the Department of Transportation.

"Department" means the Department of Transportation.

"Development" means the construction, reconstruction, creation, or establishment of any structure or planting of a tree.

"Director" means the Director of the Division of Aeronautics.

"Division" means the Division of Aeronautics.

"Person" means any corporation, company, association, society, firm, partnership, joint stock company, individual, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

"Structure" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, chimneys, and overhead transmission lines.

"Tree" means an object of natural vegetative growth.

Amended by R.1989 d.242, effective May 15, 1989.

See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

Added new definition for "Airpark."

Amended by R.1995 d.76, effective February 6, 1995.

See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-1.2 General requirements and provisions

(a) Under the Air Safety and Zoning Act of 1983, as amended, this chapter establishes minimum standards for the control of airport and aeronautical hazards, and standards for land use adjacent to airports, which the municipalities of this State shall implement. These standards are minimum State standards, and municipalities may adopt more rigorous standards for control of the areas and condition under the provisions of the Municipal Land Use Law. The Commissioner may adopt under N.J.A.C. 16:62-7 a special or amended standard for an airport when it is determined that local conditions require it.

(b) No person shall build, rebuild, create or cause to be built, rebuilt or created any object or structure, or plant, or cause to be planted or permit to grow any tree or vegetation, which will interfere with, diminish, change or obstruct the airspace or landing and take-off area available for the landing and take-off of aircraft at airports covered under this chapter.

(c) Nothing in this chapter shall be construed as limiting the power of the Commissioner regarding the design, placement, location, or operation of airports or other aeronautical facilities.

(d) Municipalities of this State are required to implement and maintain land use ordinances in accordance with the provisions of this chapter. These ordinances are subject to review by the Commissioner.

(e) No ordinance adopted under this chapter shall require the removal or lowering of, or other change or alteration of any structure or tree not conforming to the rules when this chapter was adopted, or otherwise interfere with the continuance of any nonconforming use.

(f) Airport safety zones adjacent to airports not licensed by the State of New Jersey or airports which are located within the Port of New York District as defined in N.J.S.A. 32:1-3 are not subject to the specific provisions of this chapter. Although the specific provisions of this chapter may not apply to areas surrounding non-State licensed airports open to the public, this in no way limits the power of municipalities to enact substantially similar ordinances governing the areas in accordance with the purposes of the Municipal Land Use Law.

(g) All persons are hereby put on notice that the standards of this chapter are minimum Statewide standards. Implementations of these standards does not necessarily guarantee a prudent and comprehensive land use and safety program suitable for all airports.

(h) The mechanisms provided for control of aeronautical hazards within the "Air Safety and Zoning Act" rely substantially upon local zoning regulations. The powers to enact traditional zoning ordinances upon navigable waters are constrained; and the operational characteristics and jurisdictions of water facilities may differ substantially from many land facilities; the provisions of this chapter do not apply to seaplane or water facilities unless otherwise provided for by the Commissioner in N.J.A.C. 16:62-7.1. Any interested person may petition the Commissioner for review of Air Safety and Zoning issues under the operation of any Public Use Seaplane Facility.

(i) The Director may provide for informal reviews of permit applications prior to their formal submission to the Department.

(j) Within the provisions of this Chapter, Interstate highways are considered to be a 17 foot vertical development, other public roads are considered to be a 15 foot vertical development, a private road is considered to be a 10 foot vertical development, and railroads are considered to be a 23 foot vertical development.

(k) The review of applications under this chapter is limited to the purposes of this chapter as they relate to the public health, safety and welfare.

(l) In the event that an airport owner or operator has an agreement with the Federal Aviation Administration for the control of airport hazards, the airport owner or operator shall comply with the most protective provisions of both this chapter and any agreement with the Federal Aviation Administration.

(m) This chapter shall not apply to:

1. Any person who has submitted a complete application, as defined and required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., for approval of the proposed development as of April 15, 1985 or as of May 15, 1989 for commercial and industrial development proposed to be located in the clear zone.

2. Any person immune to local ordinance, whose proposed development has progressed beyond the preliminary engineering stage, as of April 15, 1985 or as of May 15, 1989 for commercial and industrial development proposed to be located in the clear zone.

Amended by R.1989 d.242, effective May 15, 1989.
See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

In (f): Added language "or airports which are located within the Port of New York District as defined in N.J.S.A. 32:1-3" regarding airports not subject to chapter provisions. Deleted language listing airports not licensed by New Jersey and added reference to new Appendix A, which lists licensed public use airports that are subject to chapter rules.

In (n)1: Deleted "at the time of the adoption of this chapter" and added new language beginning with "as of April 15, 1985 ...".

In (n)2: Added language specifying April 15, 1985 date and amendments regarding clear zone commercial and industrial development.
Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

SUBCHAPTER 2. MUNICIPALITIES

16:62-2.1 Municipal requirements

(a) Each municipality which contains within its boundaries any part of a delineated airport safety zone, as defined by N.J.A.C. 16:62-3.1, shall enact an ordinance or ordinances incorporating the standards promulgated under this chapter. These standards shall also become a part of the masterplan of development for each affected municipality which has a masterplan.

(b) Each municipality affected under this chapter shall transmit to the Division at time of adoption, amendment, or when requested, a valid copy of the ordinance(s) and a local development masterplan shall be transmitted to the following address:

New Jersey Department of Transportation
Division of Aeronautics
Air Safety and Zoning Permits
1035 Parkway Avenue
CN 610
Trenton, New Jersey 08625

(c) The Director will review ordinances and masterplans enacted by municipalities to implement the standards of this chapter.

(d) No variance, or other relief from the standards promulgated by or under this chapter may be granted by a municipality to itself or any person except upon the condition that the variance or relief is contingent upon the issuance of a permit allowing the variance or relief by the Commissioner.

(e) Municipalities which contain within their boundaries airports regulated by the provisions of this chapter, may not hereafter classify those airports as non-conforming land uses within the context of their ordinances or master plans of development. Those municipalities which may currently classify an airport as non-conforming land use within the context of their ordinances or master plans of development, shall amend those ordinances or plans to eliminate that non-conforming status.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

SUBCHAPTER 3. DELINEATION OF AIRPORT SAFETY ZONES

16:62-3.1 Delineation of Airport Safety Zones

(a) This subchapter describes the methodology to be used in delineating Airport Safety Zones.

(b) The methodology will be applicable for most airports in New Jersey. However, in certain instances, as a result of local conditions, it may be necessary to establish special standards for an airport. Subchapter 7 of these regulations has been reserved for this purpose.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

Case Notes

Air Safety and Zoning Act of 1983 was not unconstitutional. *Patzau v. New Jersey Dept. of Transp.*, 271 N.J.Super. 294, 638 A.2d 866 (A.D.1994), certification denied 138 N.J. 268, 649 A.2d 1288.

16:62-3.2 Methodology used to delineate Airport Safety Zones

(a) An Airport Safety Zone shall be established for each runway at an airport.

(b) Each Airport Safety Zone shall consist of a RUNWAY SUBZONE, two RUNWAY END SUBZONES and two CLEAR ZONES.

(c) The overall Airport Safety Zone for an airport is geometrically constructed by defining and locating the RUNWAY SUBZONE and RUNWAY END SUBZONES for each runway open to the public on an airport open to the public. The outermost borders of the subzones comprise the outermost boundary of the Airport Safety Zone. The area within those outermost boundaries is that area regulated by the provisions of this chapter.

(d) The methodology used to delineate the overall construction and outermost boundaries of the Airport Safety Zone for an airport is further graphically depicted in Figure 3.

Amended by R.1989 d.242, effective May 15, 1989.
See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

In (b): Added "and two CLEAR ZONES."
Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-3.3 Delineation of the RUNWAY SUBZONE

(a) The RUNWAY SUBZONE of an Airport Safety Zone shall consist of a rectangle having the same centerline and length as the runway, unless a shorter length is necessitated by limited property ownership at the airport.

(b) The width of the RUNWAY SUBZONE shall be 2350 feet.

(c) The exact length of the RUNWAY SUBZONE shall be determined by one of the two following methods.

1. For most airports, the length of the RUNWAY SUBZONE will be the same as the physical length of the runway.

2. If the physical end of a runway is closer than 200 feet from the property or easement line of the airport, as measured along the runway's extended centerline, then the end of the RUNWAY SUBZONE shall be defined by a line drawn perpendicular to the runway centerline at a point 200 feet inside of the airport property or easement line. In this case, a portion of the runway will extend beyond the bounds of the RUNWAY SUBZONE.

(d) The methodology used to delineate the RUNWAY SUBZONE of an Airport Safety Zone is illustrated in Figure 1.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-3.4 Delineation of the RUNWAY END SUBZONES

(a) The RUNWAY END SUBZONES of an Airport Safety Zone shall consist of trapezoids located at either end of the RUNWAY SUBZONE along the flight approach and departure path.

(b) Each RUNWAY END SUBZONE shall extend 3000 feet from the end of the RUNWAY SUBZONE, as measured along the extended centerline of the runway.

(c) The base of the RUNWAY END SUBZONE shall be defined by the end of the RUNWAY SUBZONE, and shall have a width of 2350 feet. The width of the RUNWAY END SUBZONE shall narrow as the distance from the end of the RUNWAY SUBZONE increases. Its final width shall be 850 feet.

(d) The methodology used to delineate the RUNWAY END SUBZONE of an Airport Safety Zone is illustrated in Figure 2.

Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

16:62-3.5 Delineation of the CLEAR ZONES

(a) The CLEAR ZONES of an Airport Safety Zone shall consist of trapezoids located within the RUNWAY END SUBZONE along the flight approach and departure path.

(b) Each CLEAR ZONE shall extend 1000 feet from the end of the RUNWAY SUBZONE, as measured along the extended centerline of the RUNWAY.

(c) The base of the Clear Zone shall be co-located with the end of the RUNWAY SUBZONE, and shall have a width of 250 feet. The width of the CLEAR ZONE shall increase as the distance from the end of the Runway Safety Zone increases. Its final width shall be 450 feet.

(d) The methodology used to delineate the CLEAR ZONE of an Airport Safety Zone is illustrated in Figure 7.

New Rule, R.1989 d.242, effective May 15, 1989.
See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

Added "Delineation of the CLEAR ZONES" and Figure 7.
Amended by R.1995 d.76, effective February 6, 1995.
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).