

3-401. Obstructions to air navigation; regulation; purpose.

There is hereby recognized, declared, and found (1) to exist, in behalf of the citizens of the United States, a public right of freedom of transit in air commerce through the air space of the State of Nebraska, (2) that any obstruction to air navigation (a) interferes with the public right of freedom of transit in air commerce, (b) endangers the lives and property of those using the air space for travel and transportation by air, and (c) endangers the lives and property of the occupants of land in the State of Nebraska, and (3) that the public health, safety, and welfare require that the erection and maintenance of obstructions to air navigation be regulated and controlled.

3-402. Terms, defined.

As used in sections [3-401](#) to [3-409](#), unless the context otherwise requires:

(1) Structure shall mean any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys;

(2) Obstruction shall mean any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area; and

(3) Person shall mean any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company.

3-403. Structures; erection, maintenance in excess of one hundred fifty feet; permit required.

It shall be unlawful for any person, firm, or corporation, without having first applied for and obtained a permit in writing from the Department of Aeronautics of the State of Nebraska, to build, erect or maintain any structure within the State of Nebraska, the height of which exceeds one hundred fifty feet above the surface of the ground at point of installation.

3-404. Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations.

The application for the permit, required by section [3-403](#), shall be made in writing on forms prescribed by the Department of Aeronautics and shall contain or be accompanied by details as to the location, construction, height, and dimensions of the proposed structure, the nature of its intended use, and such other information as the Director of Aeronautics may require. Upon the filing of such application the director shall make an investigation and an aeronautical study of such proposed construction and its effect, if any, upon air navigation, and the health, welfare, and safety of the public. If the director,

upon such investigation, shall determine that such proposed structure will not constitute a hazard to air navigation and will not interfere unduly with the public right of freedom of transit in commerce through the air space affected thereby, he shall issue to the applicant a permit, required by section [3-403](#), authorizing the erection and construction of such structure, subject to such conditions as to marking and lighting as the department may prescribe by its rules and regulations, authorized by section [3-407](#). If he does not so determine, he shall deny the application. In making such investigation, aeronautical study, and determination, the director shall consider (1) the character of flying operations expected to be conducted in the area concerned, (2) the nature of the terrain, (3) the character of the neighborhood, (4) the uses to which the property concerned is devoted or adaptable, (5) the proximity to existing airports, airways, control areas, and control zones, (6) the height of existing, adjacent structures, and (7) all the facts and circumstances existing. He shall impose only such restrictions or requirements as may be reasonably necessary to effectuate the purpose of sections [3-401](#) to [3-409](#).

3-405. Appeal; procedure.

Any person aggrieved by any action of the Department of Aeronautics in granting or denying a permit under the terms of sections [3-401](#) to [3-409](#) may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

3-406. Existing structures; structures erected under authority of federal or state agency; zoning regulations; applicability of sections.

The provisions of sections [3-403](#) to [3-405](#) shall not apply to structures hereafter erected under the authority of a license or permit issued by a federal agency or other state agency now having specific statutory jurisdiction over the air space, including authority to prohibit or regulate the height of structures for the promotion of safety in aviation, nor to existing structures. Nothing in sections [3-401](#) to [3-409](#) shall be construed to limit or abridge any right, power, or authority to zone property under the provisions of any other law of this state or of the federal government except, that in the event of any conflict between the regulations for height limits of structures, lighting, and marking adopted under the provisions of sections [3-401](#) to [3-409](#), and any other regulations applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

3-407. Structures; lighting; rules and regulations; department adopt.

All structures outside the corporate limits of cities and villages, exceeding a height of two hundred feet above the surface of the ground, and all structures within the corporate limits of cities and villages exceeding a height of five hundred feet shall be marked and lighted in accordance with rules and regulations established by the Department of Aeronautics. The department is authorized to adopt and promulgate rules and regulations for the marking and lighting of such structures in a manner calculated to prevent collisions with such structures by aircraft. It shall be the duty of the persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

3-408. Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections [3-401](#) to [3-409](#), (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted by the Department of Aeronautics pursuant hereto, as authorized by section [3-407](#), (4) failing to do and perform any act required hereby, or (5) violating the terms of any permit issued pursuant to the provisions of sections [3-401](#) to [3-409](#), shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of the provisions of sections [3-401](#) to [3-409](#) shall continue in existence, shall constitute a separate offense.

3-409. Structure; violations; injunction; removal.

In addition to the penalties provided for by section [3-408](#), the erection and maintenance of any structure in violation of the provisions of sections [3-401](#) to [3-409](#) may be enjoined by any court of competent jurisdiction in an action for that purpose commenced by the Department of Aeronautics or any other interested person. The erection of such structure and permitting the same to stand or remain, in violation of the provisions of sections [3-401](#) to [3-409](#), is hereby declared to be a nuisance and the department, or its authorized agent, is authorized to go upon the premises and abate such nuisance by removing such structure after five days' notice to the interested parties, to be served by mail addressed to them at their last-known place of business or residence. The expense incident to the removal of such structure shall be paid by the owners thereof and if the department removes such structures as provided in this section the expense incurred by the department may be recovered from the sale of the structure or its salvage material.