Chapter 492

1971 REPLACEMENT PART

Airports and Landing Fields

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STATE ASSISTANCE

492.010 Definitions. When used in the laws of this state relating to aeronautics, unless the context otherwise provides:

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his duties at such school, university or institution.

(3) "Aircraft" means any contrivance used or designed for navigation of or flight in the air.

(4) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft engines, propellers or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(5) "Air navigation facility" means any facility other than one owned or operated by the United States used in, available for use in, or designed for use in, aid of air navigation, including airports and any structures, mechanisms, lights, beacons, markers, communicating system or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking-off, navigation and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(6) "Airport" means any area of land or water, within or without this state, which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.

(7) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport, or is otherwise hazardous to such landing or taking off.

(8) "Air school" means:

(a) Any aeronautics instructor who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics.

(b) Any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics, whether for or without hire or reward; but excludes any public school, university or institution of higher learning duly accredited and approved for carrying on collegiate work.

(9) "Board" means the Oregon State Board of Aeronautics.

(10) "Civil aircraft" means any aircraft other than a public aircraft.

(11) "Administrator" means the Aeronautics Administrator of this state.

(12) "Municipality" means any county, city, town, village, borough, authority, district or other political subdivision or public corporation of this state. "Municipal" means pertaining to a municipality as defined in this section.

(13) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(15) "Public aircraft" means any aircraft used exclusively in the service of any government or of any political subdivision

thereof, including the government of any state, territory or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(16) "State" or "this state" means the State of Oregon and territory over which any municipality of the State of Oregon has jurisdiction.

(17) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the board as a route suitable for air navigation.

492.020 Availability of services of board. The board may, in so far as is reasonably possible, make available its engineering and other technical services with or without charge, to any person requesting such services in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

492.030 Financial assistance by board. The board may render financial assistance by grant or loan, or both, to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, out of appropriation made by the legislature for such purposes. The financial assistance may be furnished in connection with federal or other financial aid for the same purposes.

492.040 Board as municipal agent. The board shall, upon request, act as agent of any municipality or municipalities acting jointly, in accepting, receiving, receipting for and disbursing federal moneys and other moneys, public or private, made available to finance in whole, or in part, the planning, acquisition, construction, improvement, maintenance or operation of a municipal airport or air navigation facility. The board shall upon request, act as its or their agents in contracting for and supervising such planning, acquisition, construction, improvement, maintenance or operation. All municipalities are authorized to designate the board as their agent for such purposes.

492.050 Establishment of airports and air navigation facilities by board. (1) The board may, on behalf of and in the name of the state, out of moneys made available for such purposes, plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the state, including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers.

(2) For such purposes the board may, by purchase, gift, devise, lease, condemnation or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, or to prevent the establishment of airport hazards. In like manner the board may acquire existing airports and air navigation facilities; provided it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality.

492.060 Disposal of property. The board may by sale, lease, or otherwise, dispose of any property mentioned in ORS 492.050, any airport, air navigation facility, or portion thereof or interest therein. The disposal by sale, lease or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the board may deem in the best interest of the state.

492.070 Effect of statute on airport zoning. ORS 492.010 to 492.250, 492.310, 492.320, 492.340, 492.350 and 492.370 do not limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning.

492.080 Joint exercise of power. The board may exercise any powers granted by ORS 492.050 to ORS 492.100 jointly with any

municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

492.090 Condemnation by board. In the condemnation of property authorized by ORS 492.050, the board shall proceed in the name of the state in the manner provided by ORS chapter 35. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage. Notwithstanding the provisions of any other statute, or the charter of any municipality, the board may take possession of any property to be condemned at any time after the commencement of the condemnation proceedings. The board shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. [Amended by 1971 c.741 §31]

492.100 Condemnation of railroad or public utility property. No operating property of any railroad as defined in ORS 760.005 and 760.010, or any public utility as defined in ORS 757.005 shall be condemned pursuant to ORS 492.050 and 492.090 unless the Public Utility Commissioner, after notice and hearing in accordance with his rules of procedure, has found that public convenience and necessity require such condemnation. All administrative expenses incurred in any such hearing shall be paid by the party not prevailing therein.

492.110 Commercial concessions at state airports. (1) In operating an airport or air navigation facility owned or controlled by the state the board may enter into contracts, leases and other arrangements for a term not exceeding 30 years with any persons:

(a) Granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or

(c) Making available services to be furnished by the board or its agents at such airport or air navigation facility.

(2) In each such case the board may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the state; provided, that in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion or facility thereof.

492.120 Operation of state airports by private persons. (1) The board may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 30 years the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state; provided, that no such person shall be granted any authority to operate the airport other than as a public airport, or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the board might not have undertaken under ORS 492.110.

(2) The board shall grant no exclusive right for the use of any airway, airport, or air navigation facility under its jurisdiction. This subsection shall not prevent the making of contracts, leases, and other arrangements pursuant to this section or ORS 491.110.

492.130 Liens of state for repairs, improvements or services to personal property. To enforce the payment of any charges for repairs to, or improvements, or storage or care of any personal property made or furnished by the board or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the board as provided by law.

492.140 Use of federal and other moneys. The board may accept, receive, receipt for, disburse and expend federal moneys, and other moneys, public or private, made available to accomplish, in whole or in part, any of the purposes of ORS 491.110 or 491.120. In accepting federal moneys under this subsection, the board shall have the same authority to enter into contracts on behalf of the state as is granted to the board with respect to federal moneys accepted on behalf of municipalities.

492.150 State airway system. The board may designate, design and establish, expand or modify a state airway system which

will serve the interest of the state. It may chart such airways system and arrange for publication and distribution of such maps, charts, notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, provided that such facilities conform to federal safety standards.

492.160 Exemptions from ORS 492.170 to 492.240. The provisions of ORS 492.170 to 492.240 do not apply to airports owned or operated by the United States, nor to airports or landing strips existing on July 5, 1947. The board may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under ORS 492.170 to 492.240, or from any requirement of such a rule or regulation, if it finds that the application of such rule, regulation or requirement would be an undue burden on such class and is not required in the interest of public safety.
[Amended by 1961 c.107 §1]

492.170 Approval of airport sites; certificate without charge. Except as provided in ORS 492.160, the board shall provide for the approval of airport sites and the issuance of certificates of such approval. No charge shall be made for any such approval, and certificates of such approval shall be issued without charge to all persons requesting them.

492.180 Application for site approval. Subject to the rules of procedure adopted by the board providing for such approvals, any municipality or person desiring or planning to construct or establish an airport within five miles of the nearest boundary of any existing commercial or public-use airport must, prior to the construction or establishment of the proposed airport, submit to the board an application for approval of the site which shall include an outline plan and written description of the project, showing particularly the airport location in respect to surrounding topography that could affect the airport location.
[Amended by 1961 c.107 §2]

492.190 Approval conditions. The board shall with reasonable dispatch grant approval of a site if it is satisfied that the site is adequate for the proposed airport, that such proposed airport, if constructed or established, will conform to minimum standards of safety and that safe air traffic patterns could be worked out for such proposed airport and for all existing airport and approved airport sites in its vicinity. An approval of a site may be granted subject to any reasonable conditions which the board may deem necessary to effectuate the purposes of ORS 492.170 to 492.240, and shall remain in effect, unless sooner revoked by the board, until a license for an airport located on the approved site has been issued pursuant to ORS 492.210.

492.200 Revocation of approval. The board may, after notice and opportunity for hearing to holders of certificates of approval, revoke such approval when it reasonably determines:

(1) That there has been an abandonment of the site as an airport site; or

(2) That there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport or to comply with the conditions of the approval; or

(3) That prior to commencement of construction and because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted.

492.210 Licensing of airports. Except as provided in ORS 492.160 the board is authorized to provide for the licensing of airports and the annual renewal of such licenses. It may charge license fees not exceeding $1 for each original license, and not exceeding $1 for each renewal thereof. Upon the promulgation of a rule or regulation providing for such licensing, the board shall with reasonable dispatch, upon receipt of an application for an original license and the payment of the duly required fee therefor, issue an appropriate license if it is satisfied that the airport conforms to minimum standards of safety and that safe air traffic patterns can be worked out for such airport and for all existing airports and approved airport sites in its vicinity. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable

conditions that the board may deem necessary to effectuate the purposes of ORS 492.170 to 492.240.

492.220 Revocation of license; refusal of renewal. The board may, after notice and opportunity for hearing to the licensee, revoke any license or renewal thereof, or refuse to issue a renewal, when it shall reasonably determine:

(1) That there has been an abandonment of the airport as such; or

(2) That there has been a failure to comply with the conditions of the license or renewal thereof; or

(3) That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued.

492.230 Public hearing regarding site or license. In connection with the grant of approval of a proposed airport site or the issuance of an airport license under ORS 492.170 to 492.220 the board may, on its own motion, or upon the request of an affected or interested person, hold a hearing open to the public on any issue.

492.240 Unlicensed airport operation prohibited. Except as provided in ORS 492.160, no person, municipality or officer or employe thereof, shall operate an airport without an appropriate license for such, as is duly required by rule or regulation issued pursuant to ORS 492.210.

492.250 Appeal from decision of board. An appeal from any decision of the Oregon State Board of Aeronautics may be taken to the circuit court for the county in which the appellant resides or the circuit court for Marion County, within the time and manner now provided for appeals from justice of the peace courts in civil actions. All service pertaining to any appeals herein shall be made upon the administrator of aeronautics. The cause on review shall be tried by the court de novo. No evidence shall be received by the court except that which can be identified as having been introduced or tendered before the board. The court shall have exclusive jurisdiction to affirm, modify or set aside the decision brought up for review, in whole or in part; or, in its discretion, may order further proceedings by the board.

MUNICIPAL AIRPORTS

492.310 Authority to establish airports. All municipalities of this state, separately or jointly or in cooperation with the Federal Government or state, may acquire, establish, construct, expand or lease, control, equip, improve, maintain, operate, police and regulate airports for the use of aircraft, either within this state or within any adjoining state, and may use for such purposes any available property owned or controlled by such municipalities or political subdivisions.

492.320 Acquisition of lands declared to be for public purpose. All lands heretofore or hereafter acquired, owned, leased, controlled or occupied by municipalities, for the purposes specified in ORS 492.310 are declared to be acquired, owned, leased, controlled or occupied for public and governmental and municipal purposes.

492.330 Delegation of authority to develop and maintain airports; regulations for charges, fees and tolls. Municipalities of this state which establish airports, or which acquire, lease or set apart real property for such purposes, may:

(1) Delegate the authority for the planning, construction, equipment, improvement, maintenance and operation thereof in any offices, board or body of such municipality.

(2) Provide by regulation for charges, fees and tolls for the use of such airport and civil penalties for the violation of such regulations.

492.340 Municipal acquisition of property for airports. Private property, or any interest therein of whatever kind, and an easement for the operation of aircraft and all operations incidental thereto, to and from the property for the purposes specified in ORS 492.310, may be acquired by any municipality, by gift, grant, purchase, lease or contract, if it is able to agree with the property owners on the terms of acquisition. If they are unable to agree upon terms, private property may be acquired by condemnation in the manner provided in ORS chapter 35. As an alternative, the municipality, if a port, may condemn said private property, or any interest therein, for the operation of aircraft and all operations incidental thereto, in the same manner and procedure as is then provided by statute for condemnation

of property by corporations organized for construction and operation of railroads.
[Amended by 1971 c.741 §32]

492.350 Source of airport funds. The purchase price or compensation for real or other property acquired in accordance with ORS 492.340 and the cost and expenses for the development, improvement, maintenance and operation of airports, may be paid for by appropriation of moneys available; or entirely or in part from the proceeds of the sale of bonds of the municipality, as the governing body of the municipality may determine, subject, however, to the authorization therefor at a regular or special election, if such authorization is a prerequisite to the issuance of bonds of the municipality for public purposes generally.

492.360 Use of funds from operation. The officials of any municipality acquiring, establishing, developing, operating, maintaining or controlling an airport under authority of ORS 492.310 may use for such purposes funds derived from operation of the airport.

492.370 Authorization to budget and levy taxes. Any municipality acting under authority of ORS 492.310 may provide in its annual budget and tax levy an amount of money necessary for the maintenance and operation of such airports.

492.380 Authority as supplemental. The authority conferred by ORS 492.310, 492.320, 492.340, 492.350 and 492.370 is in addition and supplemental to the authority conferred by any other law.

492.390 Acquisition by municipality of real property contiguous to airport; subsequent use or disposition; financing acquisition or use. (1) In addition to the authority conferred upon them by any other law, any municipality of this state acquiring, establishing, developing, operating, maintaining or controlling an airport under ORS 492.310 to 492.380, may acquire real property, or any interest therein of whatever kind, contiguous to the airport by gift, grant, purchase, lease or contract for future development and expansion of the airport or its facilities. Until needed for such future development and expansion, the municipality may use the real property or interest therein so acquired by renting, leasing, controlling or occupying it.

(2) If any real property owned by any municipality referred to in subsection (1) of this section and held for the use of an airport or its facilities is determined not to be needed for such purposes by the governing body of a municipality controlling the airport, such governing body may lease, occupy, use, sell, convey or dispose of such real property. Any sale of real property shall be made in accordance with the provisions of ORS 275.110 and 275.120. The proceeds of any sales made by the municipality shall apply against any indebtedness acquired under ORS 492.350. If no indebtedness exists, such funds shall be deposited to the general fund of such municipality.

(3) All funds needed by any municipality to carry out any provision of this section may be provided in the same manner as funds may be provided under ORS 492.350 or 492.370, or both.
[1961 c.701 §§1, 2, 3]

AIRPORT ZONING ACT

492.510 Citation of short title. ORS 492.510 to 492.710 shall be known and may be cited as the Airport Zoning Act.

492.520 Definitions. As used in ORS 492.510 to 492.710, unless the context otherwise requires:

(1) "Airport" means any area of land or water designated and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes, whether or not such airport is publicly or privately owned.

(2) "Airport hazard" means any structure or tree or use of land which unreasonably obstructs the airspace required for the safe flight of aircraft in landing or taking-off at any airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in ORS 492.530 to 492.710.

(4) "Political subdivision" means any municipality, city, town, village or county.

(5) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.

492.530 Declaration of policy. It hereby is found 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 such airport hazard is of the obstruction type, it 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 interests therein. Accordingly, it hereby is declared:

(1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community 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 power; and

(4) 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 political subdivisions may raise and expend public funds and acquire land or property interests therein.

492.540 Authority to adopt airport zoning regulations. In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer and enforce, under the police power and in the manner and upon the conditions prescribed in ORS 492.540 to 492.710, airport zoning regulations for such airport hazard area. The regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

492.550 Joint airport zoning board; authority to adopt airport zoning regulations. Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of the political subdivision, or partly within and partly without the political subdivision owning or controlling the airport, the political subdivisions within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board. The board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by ORS 492.540 in the political subdivision within which the airport hazard area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

492.560 Incorporation of airport zoning regulations in comprehensive zoning regulations. (1) If a political subdivision adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) In the event of conflict between any airport zoning regulation adopted under authority of ORS 492.540 or 492.550 and any other regulation applicable to the same area, if the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and if such other regulation was adopted by the airport zoning commission or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

492.570 Manner of adopting or amending zoning regulations. No airport zoning regulations shall be adopted, amended or changed under ORS 492.540 to 492.610 except by action of the governing body of the political subdivision in question, or the joint airport zoning board provided for in ORS 492.550 after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in

which is located the airport hazard area to be zoned.

492.580 Airport zoning commission. Prior to the zoning of any airport hazard area under authority of ORS 492.540 or 492.550, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. The commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of the commission. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

492.590 Character of regulations which may be adopted. (1) All airport zoning regulations adopted under authority of ORS 492.540 or 492.550 shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of ORS 492.510 to 492.710. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Except as provided in ORS 492.630, no airport zoning regulation adopted under authority of ORS 492.540 or 492.550 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.

492.600 Railroad and public utility as airport hazards. (1) No structure or facility of any common carrier railroad shall be deemed to be an airport hazard unless the Public Utility Commissioner, after notice and hearing in accordance with his rules of practice, shall find that such structure, facility or equipment is not reasonably necessary for the proper performance of the common carrier obligations of such railroad; provided that no new railroad trackage or facilities shall be constructed without a permit as provided in ORS 492.610 on railroad right of way within 1,500 feet of any airport established prior to the use of such right of way for railroad purposes.

(2) No airport zoning regulations adopted under authority of ORS 492.540 or 492.550 shall require the alteration or relocation of the operating property of any public utility, as defined in ORS 757.005, without the consent of such utility or unless the Public Utility Commissioner, after notice and hearing in accordance with his rules of procedure, determines that such alteration or relocation is justified by the public interest.

(3) All administrative expenses incurred in any such hearing shall be paid by the party not prevailing therein. All actual and necessary expenses incurred in making such alteration or change, if any, shall be borne by the municipality.

492.610 Permit required for new and nonconforming structures. Any airport zoning regulations adopted under authority of ORS 492.540 or 492.550 may require that a permit be obtained before any new structure or use may be made and before any existing use or structure may be substantially changed or substantially altered or repaired, in a manner that would cause or substantially increase any airport hazard. In any event, however, all such regulations shall provide that 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 regulation authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided in this section, all applications for permits shall be granted.

492.620 Variance from zoning regulations. 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 authority of ORS 492.540 or 492.550, may apply to the board of adjustment for a variance from the zoning regulations in question. 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 would do substantial justice and be in accordance with the spirit of the regulations and ORS 492.510 to 492.710.

492.630 Attaching conditions to permits or variances. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of ORS 492.510 to 492.710. In granting any permit or variance under ORS 492.610 or 492.620, the administrative agency or board of adjustment may if it deems such action advisable to effectuate the purposes of ORS 492.510 to 492.710 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 install, operate, and maintain thereon such markers and lights as are necessary to indicate to flyers the presence of an airport hazard.

492.640 Agency to administer and enforce regulations. All airport zoning regulations adopted under authority of ORS 492.540 or 492.550 shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision. In no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this section shall include that of hearing and deciding all permits under ORS 492.610. The administrative agency shall not have or exercise any of the powers delegated by ORS 492.650 to 492.670 to the board of adjustment.

492.650 Board of adjustment; powers; members; appointment; removal. (1) All airport zoning regulations adopted under authority of ORS 492.540 or 492.550 shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision or determination made by the administrative agency in the enforcement of the airport zoning regulations.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under ORS 492.620 and 492.630.

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

492.660 Vote required for board decisions; rules and procedures. (1) The concurring vote of a majority of the members of the board of adjustment 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 the airport zoning regulations, or to effect any variation in such regulations.

(2) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. 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 hearings 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 immediately shall be filed in the office of the board and shall be a public record.

492.670 Appeal to board of adjustment from administrative agency. (1) Any person aggrieved by any decision of any administrative agency made in its administration of airport zoning regulations adopted under authority of ORS 492.540 or 492.550, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of any such administrative agency is an improper application of such airport zoning regulations, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time fixed 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 forthwith shall transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal 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 cases proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice, due notice to the parties in interest and decide such appeals within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of ORS 492.510 to 492.710, reverse, affirm wholly or partly, 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.

492.680 Appeal to circuit court from board of adjustment. (1) Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is improper, may present to the circuit court a verified petition setting forth that the decision is improper, in whole or in part, and specifying the grounds thereof. The petition shall be presented to the court within 30 days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court shall review the board's decision. The filing of the petition shall not, of course, stay proceedings upon the decision appealed from, but the court on application, and on notice to the board, for good cause shown, may grant a supersedeas.

(3) The board of adjustment shall file with the court to which the appeal is taken the original papers acted upon by it or certified copies thereof.

(4) The cause on appeal shall be tried de novo. The court shall have exclusive jurisdiction to affirm, modify or set aside the decision appealed from, in whole or in part, and if need be, to order further proceedings by the board of adjustment.

(5) Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith or with malice, in making the decision appealed from.

492.690 Effect of unconstitutional regulations. In any case in which airport zoning regulations adopted under ORS 492.540 or 492.550, although generally reasonable, are held by a court so to interfere with the use or enjoyment of a particular structure or parcel of land to such extent, or to be so onerous in their application to such structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of the state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures or parcels of land.

492.700 Injunctive relief. Any political subdivision or agency adopting zoning regulations under authority of ORS 492.540 or 492.550 may institute in any court of competent jurisdiction, a suit to prevent, restrain, correct or abate any violation of ORS 492.510 to 492.710, or of any airport zoning regulation adopted under ORS 492.540 or 492.550, or of any order or ruling made in connection with their administration or enforcement. 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 ORS 492.510 to 492.710 and of the regulations adopted and orders and rulings made pursuant thereto.

492.710 Municipal acquisition of air rights, navigation easements or other interests. In any case in which:

(1) It is desired to remove, lower or otherwise terminate a nonconforming structure or use; or

(2) The approach protection necessary, because of constitutional limitations, cannot be provided by airport zoning regulations under ORS 492.540 or 492.550; or

(3) It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations,

the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may 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 air right, navigation easement or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purpose of ORS 492. 510 to 492.710.

MISCELLANEOUS

492.760 Marks and lights on structures or obstructions; acquisition of right or easement. Every municipality which develops or operates an airport may acquire the right or easement for a term of years or perpetually, to place and maintain suitable marks for the daytime, and to place, operate and maintain suitable lights for the nighttime marking of buildings or other structures or obstructions, to enhance the safety of aircraft utilizing such airport. Such rights or easements may be acquired by grant, purchase, lease or condemnation in the same manner as is provided in ORS chapter 35.

[Amended by 1971 c.741 §33]

492.770 Designation of landing places on public lands; rules governing user. (1) Landing places for aircraft may from time to time be designated, set apart and marked by the board or other public officials who are in charge of any land owned or controlled by the state or by any municipality, or park commission.

(2) Such officials may make reasonable rules and regulations subject to the approval of the board governing the use of the landing places by aviators and other persons, and may change the rules and regulations from time to time. The rules and regulations shall be such as will promote the safe and orderly use of the airports affected. All aviators and other persons using such landing places shall at all times comply with all such rules and regulations.

492.780 Use of certain ocean beaches as landing fields. Except as permitted under ORS 492.800, no person shall use for a landing field for aircraft any part of the Oregon shore of the Pacific Ocean between high and low tide, commonly known as the "beach," and which by law has been made a state recreation area, except for an emergency.

[Amended by 1965 c.368 §9]

492.790 Petition to set aside shore as landing field. Any person, municipality or municipal corporation desiring to use for a landing field for aircraft any part of the Oregon shore of the Pacific Ocean described in ORS 492.780 shall petition the State Highway Commission to set aside and designate a particular area of the shore for a landing field for aircraft. The petition shall clearly describe the area sought for such purpose and shall contain information giving the type and number of aircraft which will use such field, the extent to which and the purpose for which such field shall be so used, together with such other information as the commission may require. Before the petition is filed with the commission it shall be approved in writing by the Oregon State Board of Aeronautics.

492.800 Action on petition; order setting aside area for landing field; user permits; revocation of order or permit. The highway commission shall give due consideration to each petition submitted under ORS 492.790, and may in its discretion hold a public hearing in the vicinity in which it is proposed to establish the landing field, at which hearing all persons interested may appear and be heard. If after due consideration the commission is of the opinion that the best interests of the general public will be served by granting the petition, an order may be made which shall be entered in the minutes of the commission. The order shall provide that the described area shall be set aside as a landing field for aircraft and the order may authorize the issuance of a permit to the applicant to use the field for said purpose. The permit shall contain such conditions and safeguards with respect to policing and other matters incident to the public welfare as the commission deems proper for the safety of the general public. The commission may, for a violation of any of the terms or conditions of the permit, recall and cancel the same. The commission may in its discretion vacate the order setting aside the area for a landing field whenever in the judgment of the commission the interests of the general public warrant such action.

492.810 Enforcement of ORS 492.780 to 492.800. The law enforcing agencies authorized to enforce the laws of the state with respect to the rules of the road and the regulation of motor vehicles using the public highways of the state are likewise authorized to enforce ORS 492.780 and 492.800.

PENALTIES

492.990 Penalties. Violation of ORS 492.780 is punishable, upon conviction, by a fine not exceeding $500, or by imprisonment in the county jail for not to exceed 90 days, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel