

## CHAPTER 12 – PLANNING & ZONING

### ARTICLE 11 - AIRPORT ZONING

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**Sections 12-11-101 to 199, inclusive. Airport zoning - general provisions.**

**Section 12-11-101 Definitions.**

As used in this article unless the context otherwise requires:

1. "**Airport**" means the Pierre Municipal Airport.
2. "**Airport hazard**" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at the airport or as is otherwise hazardous to such landing or taking-off of aircraft.
3. "**Nonconforming use**" means any structure or tree or use of land which does not conform to a regulation prescribed in this article or an amendment thereto as of the effective date of such regulations.
4. "**Person**" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.
5. "**Structure**" means any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, and overhead transmission lines.
6. "**Tree**" means any object of natural growth.

**Source:** R.O. Pierre, 1957, 2.0102.

**Cross reference:** Section 2-3-306, airport manager.

**Section 12-11-102 Administration and enforcement of this article - permits and variances - powers and duties of airport manager and Board of Adjustment.**

It shall be the duty of the airport manager to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the airport manager upon a form furnished by him. Applications which are by this article to be decided by the airport manager shall be promptly considered and granted or denied by him. Applications for action by the Board of Adjustment shall be transmitted forthwith by the airport manager to the Board for Hearing and Decision.

**Source:** R.O. Pierre, 1957, 2.0108.

**Cross Reference:** Sections 2-4-301 to 399, inclusive, Board of Adjustment; Section 2-3-306, airport manager.

**Section 12-11-103 Application of this article in cases of conflict.**

Where this article imposes a greater or more stringent restriction upon the use of land than is imposed or required by any other ordinance or regulations, the provisions of this article shall govern.

**Source:** R.O. Pierre, 1957, 2.0114.

**Section 12-11-104 Adoption of airport zones - zoning map and descriptions - custody of and maintenance by city finance officer.**

1. For the purpose of this article, all of the land lying within the outer boundary of the zoned area of the airport is divided into the following zones and areas:

a) Inner zone

1. landing area
2. inner areas of approach zones
3. transition zones

b) Outer zone

1. outer areas of approach zones

## 2. turning zones

2. The boundaries of these zones and areas are hereby established as shown on the airport approach plan and zoning map which map is on file in the office of the director of public works.

The boundaries of said zones and areas may be amended and supplemented from time to time and the director of public works shall maintain said map up-to-date at all times.

**Source:** R.O. Pierre, 1957, 2.0103.

### **Section 12-11-105 Permit required for future uses.**

No material change shall be made in the use of land and no structure or tree shall be erected, altered, planted or otherwise established, in any zone hereby created, unless a permit therefore shall have been applied for and granted. Each such application shall indicate the purpose for which the permit is desired with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

**Source:** R.O. Pierre, 1957, 2.0109.

### **Section 12-11-106 Permit required to alter, change, repair or replace any existing use, structure or growth.**

Before any existing use, structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher or replanted within any zone hereby created, a permit must be secured authorizing such replacement, change or repair. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use, structure or tree to be made or become higher or become a greater hazard to air navigation than it was on the effective date of this article or amendment or than it is when the application for a permit is made. Except as indicated, all applications for such permit shall be granted.

**Source:** R.O. Pierre, 1957, 2.0109.

### **Section 12-11-107 Abandonment or destruction of non-conforming uses - power of airport manager to order changes - costs assessed for failure to comply.**

Whenever the airport manager determines that a non-conforming structure or tree has been abandoned or more than 80 per cent torn down, physically deteriorated or decayed.

a) no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and,

b) whether application is made for a permit under this paragraph or not, the airport manager may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct or equip such objects as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such an order after ten days' notice thereof, the airport manager may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense thereof upon the object or the land whereon it is or was located.

Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object land, the sum shall bear interest at the rate of 12 percent per annum until paid and shall be collected in the same manner as are general taxes. Except as indicated herein, all applications for permits for replacement, change, or repair of non-conforming uses shall be granted.

**Source:** R.O. Pierre, 1957, 2.0109.

**Section 12-11-108 Variances permitted by Board of Adjustment in cases of practical difficulty or unnecessary hardship.**

Any person desiring to erect or increase the height of any structure or permit the growth of any tree or use his property not in accordance with the regulations prescribed in this article, may apply to the Board of Adjustment for a variance from such regulations. such variance shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this article.

**Source:** R.O. Pierre, 1957, 2.0109.

**Section 12-11-109 Permits and variances may be conditioned to require marking and lighting of airport hazards.**

Any permit or variance granted may, if such action is deemed advisable to effectuate the purposes of this article and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the city at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

**Source:** R.O. Pierre, 1957, 2.109.

**Section 12-11-110 Certain uses declared unlawful and prohibited.**

Except as otherwise provided in this article, it shall be unlawful to put any land located within any zone hereby created to any of the following prohibited uses:

- 1) Transformer stations
- 2) High power transmission lines
- 3) Manufacturing establishments or other uses which produce smoke interfering with the safe use of the airport.
- 4) All plants and businesses of every kind which emit or discharge gases and odors that would interfere with the health or safety of the public in the use of the airport.
- 5) Businesses or structures of any kind that may be detrimental or injurious to the health, safety, and general welfare of the public in the use of the airport.
- 6) Any other use which would create electrical interference with radio communication between the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport or otherwise endanger the landing, taking-off or maneuvering of aircraft.

**Source:** R.O. Pierre, 1957, 2.0105.

**Section 12-11-111 Existing non-conforming uses excepted from application of article - requirement for marking and lighting airport hazards.**

The regulations prescribed by this article shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any non-conforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which has begun prior to the effective date of this article and is diligently prosecuted and completed within two years thereof.

Notwithstanding the preceding provisions of this section, the owner of any non-conforming structure or tree is hereby required to permit the installation, operation and maintenance of such markers and lights as shall be deemed necessary by the airport manager to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the city.

**Source:** R.O. Pierre, 1957, 2.0107.

**Section 12-11-112 Requirement for conforming to certain height limitations.**

Except as otherwise provided in this article, no structure or tree shall be erected, altered, allowed to grow or be maintained in any part of the inner or outer zones created by this article to a height in excess of the height limits hereby established for such zones.

The height limits for each of the zones and areas herein created are hereby established as shown and noted on the airport approach plan.

**Source:** R.O. Pierre, 1957, 2.0104.

**Cross reference:** Section 12-11-104, adoption of airport zones.

**Section 12-11-113 Spacing and classification of additional airports - exceptions and variances permitted by Board of Adjustment.**

Within a radius of eight (8) miles from the center of the Pierre Municipal Airport no airport of Class 1 or greater, as hereinafter defined, shall have been applied for and granted, in accordance with the provisions of this article.

Except as otherwise provided, the minimum distance between the Pierre Municipal Airport and any other airport hereafter established, measured from center to center, shall be not less than provided in the following schedule:

Class of Other Airport	Distance from Pierre Municipal Airport
I	7 miles
II	8 miles
III	9 miles
IV or larger	10 miles

Airport classification for the purpose of this article shall be in accord with the following schedule:

**Length of Longest Landing Strip**

	Class
Under 2700 feet plus 1/4 elev. above sea level	I
2700 to 3700 feet plus 1/4 elev. above sea level	II
3700 to 4700 feet plus 1/4 elev. above sea level	III
Over 4700 feet plus 1/4 elev. above sea level	IV or larger

Exceptions to the spacing requirements hereinabove provided in this section may be granted by the Board of Adjustment which is hereby authorized to allow lesser distances between the Pierre Municipal Airport and any other airport proposed to be established but only after public hearing duly held in accord with the provisions of this article, and when owing to special conditions, the Board of Adjustment duly finds that a literal enforcement of these provisions would result in unnecessary hardship and such variance would not be contrary to the public interest. Prior to granting any such exception or variance, the Board of Adjustment shall, for the purpose of study and recommendation, refer the matter to the South Dakota Department of Transportation and to any local aviation commission,

airport zoning commission and any local planning body having jurisdiction over the area affected.

If any of the aforementioned bodies to whom the matter shall have been referred does not within forty-five (45) days transmit a report to the Board of Adjustment, then it shall be deemed to have approved the proposal, provided, however, that upon request of any said body, the Board of Adjustment shall grant a reasonable extension of such time.

In granting such exception or variance, the Board of Adjustment shall impose special conditions which will insure that the public interest is maintained.

**Source:** R.O. Pierre, 1957, 2.0106.

**Section 12-11-114 Requirements and procedures for appeals of decisions arising pursuant to this article.**

Any person aggrieved or taxpayer affected, by any decision of the airport manager, made in his administration of this article or any governing body of a political subdivision, if of the opinion that a decision of the airport manager is an improper application of these regulations may appeal to the Board of Adjustment.

All appeals hereunder must be taken within a reasonable time, as provided by the rules of the Board of Adjustment, by filing with the airport manager and with the board, a notice of appeal specifying the grounds thereof. The airport manager shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

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

The board may, in conformity with the provisions of this article, reverse or 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 airport manager.

**Source:** R.O. Pierre, 1957, 2.0110.

**Section 12-11-115 Judicial review of decisions of the Board of Adjustment.**

Any person aggrieved, or taxpayer affected by any decision of the 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 the Board of Adjustment is illegal may present to the circuit court, a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

Upon presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice of the board and on due cause shown, grant a restraining order.

The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Adjustment. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive and no objection to a decision of the Board shall be considered by the court unless such objection shall have been urged before the board or, if it was not so urged, unless there were reasonable grounds for failing to do so.

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

In any case where these regulations, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States such holding shall not affect the application of such regulations to other structures and parcels of land.

**Source:** R.O. Pierre, 1957, 2.0112.

**Section 12-11-116 Official Airport Noise Zone Map and description.**

The location, size, shape, and boundaries of the zones to which the provision of the text of this ordinance are applicable, shall be indicated on the Official Airport, Noise Zone Map in the City Engineer's Office and by description incorporated herein and by this reference made a part thereof and said map, after being adopted by reference as a part of this ordinance, and so certified by the City Auditor and together with the text, shall be maintained by the City Engineer and said map shall be the official zoning map, for the purpose of enforcement of this ordinance. In case of doubt or dispute, the description of said zones shall govern.

**Source:** Ordinance No. 1029. 1979.

**Section 12-11-117 Legal boundary descriptions for Airport Noise Zone A.**

West 1/2 Section 26-111-79.

Southeast 1/4 Section 26-111-79.

South 1/2, southeast 1/4, northeast 1/4 Section 26-111-79.

Southwest 1/4, northeast 1/4 Section 26-111-79.

Southwest 1/4, northwest 1/4, northeast 1/4 Section 26-111-79.

Southwest 1/4, southwest 1/4 Section 23-111-79 lying south of U.S. Highway 14 and 83.

West 1/2, southeast 1/4, southwest 1/4, Section 23-111-79 lying south of U.S. Highway 14 and 83.

Southwest 1/4 Section 25-111-79.

South 1/2, southwest 1/4, northwest 1/4 Section 25-111-79.

Southeast 1/4, northwest 1/4, Section 25-111-79.

South 1/2, northeast 1/4, Section 25-111-79.

West 1/2, southeast 1/4 Section 25-111-79.

North 1/2, northeast 1/4, southeast 1/4 Section 25-111-79.

Section 36-111-79.

North 1/2, northeast 1/4 Section 35-111-79.

Northeast triangular 1/2, NE 1/4, NW 1/4, Section 35-111-79.

Southeast 1/4, northeast 1/4 Section 35-111-79.

Northeast 1/4, southeast 1/4, Section 35-111-79.

Northeast triangular 1/2, SW 1/4, NE 1/4, Section 35-111-79

Southwest 1/4, southwest 1/4 Section 31-111-78.

Northwest 1/4, Section 6-110-78.

North 1/2, southwest 1/4, Section 6-110-78.

Northeast 1/4, southeast 1/4, Section 1-110-79.

Southeast 1/4, northeast 1/4, Section 1-110-79.

East 1/2, southwest 1/4, northeast 1/4, Section 1-110-79.

North 1/2, northeast 1/4, Section 1-110-79.

Northeast 1/4, northwest 1/4, Section 1-110-79.

East 1/2, East 1/2, Section 27-111-79, lying east of U.S. Highway 14 and 83 Truck Route.

Southeast 1/4, Southeast 1/4, Section 22-111-79 lying south of U.S. Highway 14 and 83.

**Source:** Ordinance 1029, 1979; Ord. 1370, 1995.

**Section 12-11-118 Statement of purpose for Airport Noise Zone A.**

This zone provides for development around the airport that will allow the highest use of the land, yet will be compatible with airport operations. Airport Noise Zone A is a relatively high noise area best suited for agricultural use or industrial use when a high noise level can be tolerated. This zone limits or restricts the uses which are permitted for the zoning districts which lie within the boundaries of Airport Noise Zone A. Any structural development must meet the criteria for height restrictions as well as compatibility.

**Section 12-11-119 Principal permitted uses.**

The following are permitted as the principal uses of any parcel of property in the Airport Noise Zone A:

1. Aviation associated activity.
2. Any use which can meet the purposes and performance standards set forth for the respective zoning districts, but no specifically excluded or specifically mentioned as belonging in another less restrictive district.

**Source:** Ordinance 1029, 1979.

**Section 12-11-120 Certain uses lying in Airport Noise Zone A declared incompatible and excluded.**

The following uses are hereby declared incompatible with the purpose of airport noise zone A and are hereby expressly excluded:

1. All residential dwellings.
2. Auditoriums, concert halls, music shells, and outdoor theaters.
3. Churches, schools, colleges, rest homes, retirement homes, and similar facilities.
4. Hospitals and clinics.
5. Office buildings.
6. Mortuaries, funeral homes and funeral chapels.
7. Industrial and manufacturing establishments or other uses which produce smoke interfering with the safe use of the airport.
8. Any other use which would create electrical interference with radio communications between the airport and aircraft, make it difficult for fliers to distinguish between airport lights and others result in glare in the eyes of fliers using the airport, impair visibility in the vicinity of the airport.

**Section 12-11-121 Accessory uses.**

Any accessory use normally appurtenant to a permitted use shall be allowed provided such a use shall conform with all performance standards set forth under airport zoning.

**Source:** Ordinance 1029, 1979.

**Section 12-11-122 Legal Boundary Descriptions for Airport Noise Zone B**

South 1/2, south 1/2, Section 15-111-79

Section 22-111-79

Southeast 1/4, Section 23-111-79.

Northwest 1/4, Section 23-111-79.

Southwest 1/4, Section 23-111-79 lying north of U.S. Highway 14 and 83.

East 1/2, east 1/2, southwest 1/4, Section 23-111-79 lying south of U.S. Highway 14 and 83.

East 1/2 of Section 27-111-79 lying west of U.S. Highway 14 and 83 Truck Route.

North 1/2, southeast 1/4, northeast 1/4, Section 26-111-79.

Northeast 1/4, northeast 1/4, Section 26-111-79.

East 1/2, northwest 1/4, northeast 1/4, Section 26-111-79.

Northwest 1/4, Northwest 1/4, northeast 1/4, Section 26-111-79.

North 1/2, north 1/2, Section 25-111-79.

North 1/2, southwest 1/4, northwest 1/4, Section 25-111-79.

Southeast 1/4, southeast 1/4, Section 25-111-79.

South 1/2, northeast 1/4, southeast 1/4, Section 25-111-79.

West 1/2, Section 30-111-79.

North 1/2, northeast 1/4 Section 34-111-79.

Northwest 1/4, northwest 1/4, Section 35-111-79.

Southwest triangular 1/2, NE 1/4, NW 1/4, Section 35-111-79.

Southwest triangular 1/2, SW 1/4, NE 1/4, Section 35-111-79.

Northwest 1/4, southeast 1/4, Section 35-111-79.

South 1/2, southeast 1/4, Section 35-111-79.

North 1/2, southwest 1/4, Section 31-111-78.

Southeast 1/4, southwest 1/4, Section 31-111-78.

Northwest 1/4, northwest 1/4, Section 1-110-79.

South 1/2, northwest 1/4, Section 1-110-79.

West 1/2, southwest 1/4, northeast 1/4, Section 1-110-79.

Northwest 1/4, southeast 1/4, Section 1-110-79.

South 1/2, southeast 1/4, Section 1-110-79.

South 1/2, southwest 1/4, Section 6-110-78.

East 1/2, Section 6-110-78.

Section 7-110-78.

West 1/2, Section 8-110-78.

**Source:** Ordinance 1029, 1979.

**Section 12-11-123 Statement of purpose for Airport Noise Zone B.**

Airport Noise Zone B ordinarily is a relatively lower noise area with no restrictions. Hospitals, churches, auditoriums and such should consider sound control in design of facilities if located in areas of this zone closest to the airport. The reason for the establishment of Noise Zone B is to notify the general public that such an area is in the established airport approach zones and as such may be subjected to noise pollution.

**Section 12-11-124 to 199, inclusive. Reserved.**