

## **IC 8-21-10**

### **Chapter 10. Regulation of Tall Structures**

#### **IC 8-21-10-1**

##### **Purpose**

Sec. 1. The safety, welfare, and protection of persons and property in the air and on the ground and of the maintenance of electronic communication within this state requires that the navigable airspace overlying the state and the approaches to and the air traffic pattern area of any public-use airport in the state be maintained in an unobstructed condition for the safe flight of aircraft and the comfort and safety of the citizens of this state. To that end, the location and height of structures and the use of land related to those structures and near public-use airports is regulated.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-2**

##### **Definitions**

Sec. 2. As used in this chapter:

"Department" refers to the Indiana department of transportation.

"Noise sensitive purpose" means the use of a building or structure as a residence, school, church, child care facility, medical facility, retirement home, or nursing home.

"Permit" means a permit issued by the department under this chapter.

"Person" means any individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or body politic, including any trustee, receiver, assignee, or other similar representative.

"Public-use airport" means any area, site, or location, either on land, water, or upon any building, which is specifically adapted and maintained for the landing and taking off of aircraft, and utilized or to be utilized in the interest of the public for such purposes. The term does not include:

- (1) any private use airport or landing field; or
- (2) any military airport solely occupied by any federal branch of government using that airport for military air purposes.

"Structure" means any object constructed or installed by man including, but not limited to, cranes, buildings, towers, smokestacks, electronic transmission or receiving towers, buildings used for a noise sensitive purpose, and antennae and overhead transmission lines.

*As added by P.L.117-1983, SEC.1. Amended by P.L.18-1990, SEC.164; P.L.8-1993, SEC.150; P.L.96-1998, SEC.1; P.L.54-2002, SEC.1.*

#### **IC 8-21-10-3**

##### **Permit requirements**

Sec. 3. (a) Unless a permit has been issued by the department, a person may not erect, alter, or add to the height of any structure which falls within any one (1) of the following categories:

(1) Any construction or alteration of more than two hundred (200) feet above ground level at its site.

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one (1) of the following slopes:

(A) One hundred (100) to one (1) for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of any public-use airport with at least one (1) runway more than three thousand two hundred (3, 200) feet in actual length, excluding heliports.

(B) Fifty (50) to one (1) for a horizontal distance of ten thousand (10,000) feet from the nearest point of the nearest runway of any public-use airport with its longest runway no more than three thousand two hundred (3, 200) feet in actual length, excluding heliports.

(C) Twenty-five (25) to one (1) for a horizontal distance of five thousand (5,000) feet from the nearest point of the nearest landing and takeoff area of any public-use heliport.

(3) Any construction or alteration of traverse ways used, or to be used, for the passage of mobile objects if the standards set forth under subdivisions (1) and (2) would be exceeded, but only after the heights of these traverse ways are increased by:

(A) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(B) Fifteen (15) feet for any other public roadway.

(C) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(D) Twenty-three (23) feet for a railroad.

(E) For a waterway or any other traversed way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(b) Unless:

(1) a permit for construction in a noise sensitive area has been approved by the department;

(2) the holder of a permit for construction in a noise sensitive area has filed a copy of the permit for construction in a noise sensitive area with the county recorder of the county in which the structure is located, as provided in subsection (d); and

(3) a certified copy of the recorded permit for construction in a noise sensitive area, with the recording data from the county recorder on the copy of the permit, has been received by the department;

a person may not erect a building used for a noise sensitive purpose

within an area lying one thousand five hundred (1,500) feet on either side of the centerline and the extended centerline of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport.

(c) A person applying for a permit under subsection (a) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport located within a five (5) nautical mile radius surrounding the structure, regardless of county lines, if the structure that is the subject of the permit is:

- (1) a new structure; or
- (2) an existing structure to which additional height is added.

(d) A person applying for a permit for construction in a noise sensitive area under subsection (b) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport if the public use airport is located within a distance of one (1) nautical mile from the boundary of the property that contains the building used for a noise sensitive purpose.

(e) Notice under subsections (c) and (d) must be sent by certified or registered mail, with return receipt requested, and must include the:

- (1) name, telephone number, and a contact person for the:
  - (A) applicant;
  - (B) department; and
  - (C) plan commission that has jurisdiction over the site of the structure;
- (2) location of the structure, including a legal description;
- (3) height of the structure; and
- (4) Federal Aviation Administration aeronautical study number assigned to the application, if applicable to the type of permit for which notice is required.

(f) The applicant for a permit under subsection (b) shall record each permit issued by the department in the office of the county recorder for the county where the structure is located, not later than five (5) business days after the department issues the permit. If a structure is located in more than one (1) county, the county that contains the majority of the structure is the county in which the permit must be filed.

(g) A permit issued under subsection (b) is valid only after the department receives a certified copy of the recorded permit with the recording data from the county recorder of the county in which the structure is located.

(h) A permit issued under subsection (b) must contain the following statement:

"The permittee acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this permit experiences or may experience significant levels of aircraft operations, and that the permittee is erecting a building designed for noise sensitive use upon the real estate, with the

full knowledge and acceptance of the aircraft operations as well as any effects resulting from the aircraft operations."

(i) An applicant for a permit under subsection (a) must provide written evidence to the department that the structure being constructed does not violate section 7 of this chapter with regard to an existing public use airport, if a public use airport is located within a five (5) nautical mile radius surrounding the structure that is the subject of the permit.

(j) Unless a denial of permit is issued by the department, a Determination of No Hazard to Air Navigation from the Federal Aviation Administration is a permit under this section, and a separate permit will not be issued by the department.

*As added by P.L.117-1983, SEC.1. Amended by P.L.54-2002, SEC.2.*

### **IC 8-21-10-3.1**

#### **Written authorization for installation or modification of structure within surface of public use airport; removal of structure**

Sec. 3.1. (a) As used in this section, "structure" does not mean a tower that is principally used for the attachment of radio communications transmission or reception equipment if the tower and its location:

- (1) comply with all Federal Aviation Administration regulations;
- (2) comply with section 3 of this chapter; and
- (3) are approved by the local zoning board.

(b) As used in this section, "surface" means an airport's primary or approach imaginary surface established by section 8 of this chapter.

(c) Before a person may:

- (1) erect;
- (2) install; or
- (3) modify to add to the height of;

a structure within the surface of a public use airport, the person must obtain a written authorization from the public use airport owner or operator.

(d) The written authorization may contain terms and conditions to ensure aviation safety that are considered necessary by the owner or operator of the public use airport.

(e) A person who obtains written authorization shall strictly comply with any terms and conditions required by the written authorization.

(f) The public use airport owner or operator may require the immediate removal of a structure from a surface if:

- (1) the person who obtains written authorization under subsection (c) violates any part of the written authorization; or
- (2) the person erecting, installing, or modifying the structure fails to obtain written authorization under subsection (c) from the owner or operator of the public use airport.

(g) Removal of a structure for violation of this section may be immediate and does not require a hearing or notification of the department. The public use airport owner or operator may enlist the aid of law enforcement officers in effecting the removal of the structure.

*As added by P.L.96-1998, SEC.2.*

#### **IC 8-21-10-4**

##### **Permit application; forms**

Sec. 4. Application for a permit shall be made on forms prescribed and furnished by the department or by filing a copy of the Federal Aviation Administration's Form 7460-1, Notice of Proposed Construction or Alteration, with the department.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-5**

##### **Failure to file permit application; order to show cause**

Sec. 5. In any instance where the department learns or has reasonable grounds to believe that any person is erecting or adding to a structure that would be subject to this chapter, but concerning which no application for a permit has been filed, the department may on its own motion issue an order to such person to appear before the department and show cause why an application for a permit to erect or add to the structure need not be obtained. A date for a hearing on the order shall be set out in such order.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-6**

##### **Investigation of permit application**

Sec. 6. (a) Upon receiving an application for a permit, the department shall make such investigation as may be necessary to properly process the application under this chapter. The investigation shall be conducted so as to determine, in the opinion of the department, if the proposed structure erected in the proposed location would have a substantial adverse effect upon the safe and efficient use of the navigable airspace and would be a hazard to air navigation if constructed. The department may take into consideration findings and recommendations of other governmental agencies or interested persons concerning the proposed structure; however, such findings or recommendations are not binding on the department. Further, the requirements of this chapter do not supersede any other law.

(b) The department must consider an application for a permit for a period of sixty (60) days before making a final determination on the permit if:

- (1) a public use airport is located within a five (5) nautical mile radius surrounding the structure, regardless of county lines; and
- (2) the structure that is the subject of the permit is:
  - (A) a new structure; or

(B) an existing structure to which additional height is added.  
*As added by P.L.117-1983, SEC.1. Amended by P.L.54-2002, SEC.3;  
P.L.42-2011, SEC.21.*

#### **IC 8-21-10-7**

##### **Obstruction standards**

Sec. 7. (a) This section applies to:

- (1) an existing public use airport; and
- (2) a public use heliport.

(b) If any of the obstruction standards set forth in this subsection are exceeded, the proposed structure is presumed to have a substantial adverse effect upon the safe and efficient use of the navigable airspace and would be a hazard to air navigation if constructed. Except as provided in section 9 of this chapter, the department shall not issue a permit for any proposed structure that would exceed any of the following obstruction standards:

- (1) A height that is five hundred (500) feet above ground level at the site of the object anywhere in the state.
- (2) A height that is two hundred (200) feet above ground level or above the established airport elevation, whichever is higher, within three (3) nautical miles of the established reference point of a public-use airport, excluding heliports, and that height increases in the proportion of one hundred (100) feet for each additional nautical mile of distance from the airport up to a maximum of five hundred (500) feet.
- (3) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, as defined by federal law and regulations, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.
- (4) A height within an enroute obstacle clearance area, as defined by federal law and regulations, including turn and termination areas of a federal airway or approved off-airway route that would increase the minimum obstacle clearance altitude.
- (5) The surface of a takeoff and landing area of a public-use airport or heliport or any imaginary surface as established under section 8 of this chapter. However, no part of the takeoff or landing area itself will be considered to be an obstruction.

(c) Except for traverse ways on or near an airport with an operative ground traffic control service, furnished by an air traffic control tower or by the airport management and coordinated with the air traffic control service, the standards set forth above in subsection (b) apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by the following:

- (1) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.
- (2) Fifteen (15) feet for any other public roadway.
- (3) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.
- (4) Twenty-three (23) feet for a railroad.
- (5) For a waterway or any other traverse way not covered by subdivisions (1) through (4), an amount equal to the height of the highest mobile object that would normally traverse it.

*As added by P.L.117-1983, SEC.1. Amended by P.L.54-2002, SEC.4.*

### **IC 8-21-10-8**

#### **Airport and heliport imaginary surfaces**

Sec. 8. (a) The following airport imaginary surfaces are established with relation to any public-use airport and to each runway:

- (1) Horizontal surface: a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radii of each arc is five thousand (5,000) feet for all runways designated as utility or visual, and ten thousand (10,000) feet for all other runways.
- (2) Conical surface: a surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four thousand (4,000) feet.
- (3) Primary surface: a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of the runway, but when the runway has no specially prepared hard surface, the primary surface ends at each end of that runway. The width of a primary surface is the following:
  - (A) Two hundred fifty (250) feet for utility runways having only visual approaches.
  - (B) Five hundred (500) feet for utility runways having nonprecision instrument approaches.
  - (C) For other than utility runways, the width is the following:
    - (i) Five hundred (500) feet for visual runways having only visual approaches.
    - (ii) Five hundred (500) feet for nonprecision instrument runways having visibility minimums greater than three-fourths (3/4) of a statute mile.

- (iii) One thousand (1,000) feet for a nonprecision instrument runway, having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) of a statute mile, and for precision instrument runways.
- (4) Approach surface: a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end. The following also applies to the approach surface:
- (A) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of the following:
    - (i) One thousand two hundred fifty (1,250) feet for that end of a utility runway with only visual approaches.
    - (ii) One thousand five hundred (1,500) feet for that end of a runway other than a utility runway with only visual approaches.
    - (iii) Two thousand (2,000) feet for that end of a utility runway with a nonprecision instrument approach.
    - (iv) Three thousand five hundred (3,500) feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths (3/4) of a statute mile.
    - (v) Four thousand (4,000) feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) of a statute mile.
    - (vi) Sixteen thousand (16,000) feet for precision instrument runways.
  - (B) The approach surface extends for a horizontal distance of the following:
    - (i) Five thousand (5,000) feet at a slope of twenty (20) to one (1) for all utility and visual runways.
    - (ii) Ten thousand (10,000) feet at a slope of thirty-four (34) to one (1) for all nonprecision instrument runways other than utility.
    - (iii) Ten thousand (10,000) feet at a slope of fifty (50) to one (1) with an additional forty thousand (40,000) feet at a slope of forty (40) to one (1) for all precision instrument runways.
- (5) Transitional surfaces: these surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of five thousand (5,000) feet measured horizontally from the edge of

the approach surface and at right angles to the runway centerline.

(b) As used in subsection (a) in establishing airport imaginary surfaces:

"Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved, or planned, and for which no precision approach facilities are planned, or indicated on a Federal Aviation Administration planning document.

"Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an instrument landing system (ILS), microwave landing system (MLS), or a precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by a Federal Aviation Administration approved airport layout plan or other planning document.

"Utility runway" means a runway that is constructed for and intended to be used by propeller driven aircraft of twelve thousand five hundred (12,500) pounds maximum gross weight or less.

"Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on a Federal Aviation Administration approved airport layout plan or any other planning document.

(c) The following heliport imaginary surfaces are established with relation to any public-use heliport:

(1) Heliport primary surface: the area of the primary surface coincides in size and shape with the designated takeoff and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.

(2) Heliport approach surface: the approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of four thousand (4,000) feet where its width is five hundred (500) feet. The slope of the approach surface is eight (8) to one (1) for civil heliports.

(3) Heliport transitional surfaces: these surfaces extend outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces at a slope of two (2) to one (1) for a distance of two hundred fifty (250) feet measured horizontally from the centerline of the primary and approach surfaces.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-9**

#### **Waiver of strict compliance with obstruction standards**

Sec. 9. The department may, in its discretion, waive strict compliance with the standards set forth in section 7 of this chapter based upon a clear and compelling showing by the applicant for a permit that:

- (1) the proposed structure would be between five hundred (500) and one thousand (1,000) feet above ground level at its site and would not be located within two (2) statute miles of an interstate or major arterial highway, a major waterway, or a visual omni range (VOR) radial that supports a significant volume of visual flight rules (VFR) traffic;
- (2) the proposed structure would be between five hundred (500) and one thousand (1,000) feet above ground level at its site and would not be located within two (2) statute miles of the centerline of any regularly used visual flight rules (VFR) transition route between an airport and any radio navigation aid or any other airport;
- (3) the proposed structure would be located in an approved antenna farm or would be shielded by another structure; or
- (4) the proposed structure would not affect a planned or existing primary instrument approach to a runway at an existing or proposed public-use airport, and would not have a significant effect on visual flight rule (VFR) operations.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-10**

##### **Permits; specification of obstruction markings, lighting, and other identification**

Sec. 10. Every permit granted by the department shall specify what, if any, obstruction markers, markings, lighting, or other identification shall be installed on or in the vicinity of the structure as a condition to receiving the permit. Any visual identification characteristics or lighting required by the department shall conform as much as practicable with the federal obstruction marking and lighting guidelines and standards.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-11**

##### **Determination not to issue permit; notification of applicant; hearing**

Sec. 11. (a) If the department determines that a permit should not be issued under this chapter, the department shall notify the applicant in writing of its determination. The notification may be served by delivering it personally to the applicant or by sending it by certified mail to the applicant at the address specified in the application.

(b) The determination shall become final fifteen (15) days after notification is served unless the applicant, within such fifteen (15) day period, requests in writing that a hearing be held before the department with reference to the application. All such hearings shall

be open to the public and shall be conducted under IC 4-21.5-3. At the hearing, the applicant has the burden to show cause why the department should have granted the permit to erect the proposed structure. Any interested person may appear and be heard either in person or by counsel at such hearings and may present such evidence and testimony as may be pertinent.

*As added by P.L.117-1983, SEC.1. Amended by P.L.7-1987, SEC.14.*

#### **IC 8-21-10-12**

##### **Actions to prevent, restrain, correct, or abate violations**

Sec. 12. In addition to any other remedy provided by law, the department may institute in any court of general jurisdiction, an action to prevent, restrain, correct, or abate any violation of this chapter or of any rules or orders the department issued or ordered under this chapter. The court may grant such relief, by way of injunction, which may be mandatory, or otherwise, as may be necessary under this chapter and the applicable rules or orders of the department issued under this chapter.

*As added by P.L.117-1983, SEC.1.*

#### **IC 8-21-10-13**

##### **Application of chapter to existing structures**

Sec. 13. This chapter does not apply to any structure that existed on April 1, 1957. Any permit that was issued by the department under IC 8-21-7 (before its repeal on September 1, 1983) shall be treated after August 31, 1983, as though it had been issued under this chapter.

*As added by P.L.117-1983, SEC.1. Amended by P.L.3-1990, SEC.35.*

#### **IC 8-21-10-14**

##### **Application of chapter to existing structures**

Sec. 14. Except for the requirements of section 3.1 of this chapter, this chapter does not apply in respect to the location, relocation, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any existing structures, except radio and television towers.

*As added by P.L.117-1983, SEC.1. Amended by P.L.96-1998, SEC.3.*

#### **IC 8-21-10-15**

##### **Violations; offense**

Sec. 15. A person who violates or fails to comply with this chapter commits a Class A infraction. Each day that such a violation or failure continues constitutes a separate offense.

*As added by P.L.117-1983, SEC.1.*