Chapter 18.56
NORTH BEND AIRPORT OVERLAY ZONING

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18.56.010 Short title.

This chapter shall be known and cited and pleaded as the North Bend airport overlay zoning ordinance. (Ord. 1952 § 1(4), 2006)

18.56.020 Purpose.

The purpose of this overlay zone is to encourage and support the continued operation and vitality of the North Bend Airport by establishing compatibility and safety standards to promote air navigational safety at such airport and to reduce potential safety hazards for persons living, working or recreating near the airport. (Ord. 1952 § 1(4), 2006)

18.56.030 Definitions.

Except where the context indicates otherwise, the following words and phrases shall mean:

(1) “Airport” means the North Bend Municipal Airport.
(2) “Airport direct impact area” means the area located within 5,000 feet of an airport runway, excluding lands within the runway protection zone and approach surface.
(3) “Airport elevation.” The most current and approved North Bend Municipal Airport master plan, airport layout plan, defines the highest point of the airport’s usable landing area. The 2002 Airport Layout Plan has established the airport elevation as 17.1 feet above mean sea level (reference datum is NAVD 88).
(4) “Airport imaginary surfaces” means imaginary areas in space and on the ground that are established in relation to the airport and its runways. Imaginary areas are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface.
(5) “Airport noise impact boundary” means areas located within 1,500 feet of an airport runway or within the most current, established noise contour boundaries exceeding 55 Ldn.
(6) “Airport secondary impact area” means the area located between 5,000 and 10,000 feet from the airport’s runways.
(7) “Airport sponsor” means the owner, manager, or other person or entity designated to represent the interests of the airport.
(8) “Approach surface” means a surface longitudinally centered on the extended runway center line and extending outward and upward from each end of the primary 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:
(i) Two thousand feet for a utility runway having a nonprecision instrument approach.
(ii) Three thousand five hundred feet for a nonprecision instrument runway, other than utility, having visibility minimums at or below three-quarters statute mile.
(iii) Four thousand feet for a nonprecision instrument runway, other than utility, having visibility minimums at or below three-quarters statute mile.
(iv) Sixteen thousand feet for precision instrument runways.
(b) The approach surface extends for a horizontal distance of:
(i) Five thousand feet at a slope of 20 feet outward for each foot upward (20:1) for all utility runways;
(ii) Ten thousand feet at a slope of 34 feet outward for each foot upward (34:1) for all
nonprecision instrument runways, other than utility; and

(iii) Ten thousand feet at a slope of 50 feet outward for each foot upward (50:1), with an additional 40,000 feet at a slope of 40 feet outward for each foot upward (40:1), for precision instrument runways.

(c) The outer width of an approach surface will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(9) “Conical surface” means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet.

(10) “Department of Aviation” means the Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.

(11) “FAA” means the Federal Aviation Administration.

(12) “FAA’s technical representative” means, as used in this chapter, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDA-APHIS-Wildlife Services.

(13) “Height” means the highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level (reference datum is NAVD 88).

(14) “Horizontal surface” means a horizontal plane 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 radius of each arc is:

(a) Five thousand feet for utility runways having nonprecision instrument approaches;

(b) Five thousand feet for all other runways having nonprecision instrument approaches with visibility minimums at or below three-quarters statute mile; and

(c) One thousand feet for nonprecision instrument runways with visibility minimums greater than three-quarters statute mile; and

(15) “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 has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA-approved airport layout plan or FAA planning document.

(16) “Obstruction” means any structure or tree, plant or other object of natural growth that penetrates an airport imaginary surface.

(17) “Other than utility runway” means a runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.

(18) “Precision instrument runway” means a runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an instrument landing system (ILS) or precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.

(19) “Primary surface” means a surface longitudinally centered on a runway. When a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway center line. The width of the primary surface is:

(a) Five hundred feet for utility runways having nonprecision instrument approaches;

(b) Five hundred feet for other than utility runways having nonprecision instrument approaches with visibility minimums greater than three-quarters statute mile; and

(c) One thousand feet for nonprecision instrument runways with visibility minimums at or below three-quarters statute mile, and for precision instrument runways.

(20) “Public assembly facility” means a permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public assembly facilities include, but are not limited to, schools, churches, conference or convention facilities,
employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.

(21) “Runway” means a defined area on the airport prepared for landing and takeoff of aircraft.

(22) “Runway protection zone (RPZ)” means an area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway center line. The inner width of the RPZ is the same as the width of the primary surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

(a) One thousand feet for utility runways.

(b) One thousand seven hundred feet for other than utility runways having nonprecision instrument approaches.

(c) Two thousand five hundred feet for precision instrument runways.

(23) “Significant,” as it relates to bird strike hazards, means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.

(24) “Structure” means any constructed or erected object which requires location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.

(25) “Transitional surface” means those surfaces that extend upward and outward at 90-degree angles to the runway center line and the runway center line extended at a slope of seven feet horizontally for each foot vertically (7:1) from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces, for those portions of the precision approach surfaces which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway center line.

(26) “Utility runway” means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight or less.

(27) “Visual runway” means a runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.

(28) “Water impoundment” includes wastewater-treatment-related ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land use action approved prior to the effective date of the ordinance codified in this chapter.

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<th>Table: Runway Type</th>
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(Ord. 1952 § 1(4), 2006)

18.56.040 Imaginary surface and noise impact boundary delineation.

The airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface is delineated for the airport by the most current and approved North Bend Municipal Airport master plan and airport layout plan, and the airport master plan along with the associated maps and documents are made part of the official zoning map of the city of North Bend. All lands, waters and airspace, or portions thereof, that are located within these boundaries or
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surfaces shall be subject to the requirements of this
overlay zone. (Ord. 1952 § 1(4), 2006)

18.56.050 Notice of land use, permit
applications and overlay zone
boundary or surface changes within
overlay zone area.

Except as otherwise provided herein, written
notice of applications for land use or limited land
use decisions, including comprehensive plan or
zoning amendments, in an area within this overlay
zone, shall be provided to the airport sponsor and
the Department of Aviation in the same manner as
notice is provided to property owners entitled by
law to written notice of land use or limited land use
applications.

(1) Notice shall be provided to the airport spon-
sor and the Department of Aviation when the prop-
erty, or a portion thereof, that is subject to the land
use or limited land use application is located within
10,000 feet of the sides or ends of a runway.

(2) Notice of land use and limited land use
applications shall be provided within the following
timelines:

(a) Notice of land use or limited land use
applications involving public hearings shall be pro-
vided prior to the public hearing at the same time
that written notice of such applications is provided
to property owners entitled to such notice.

(b) Notice of land use or limited land use
applications not involving public hearings shall be
provided at least 20 days prior to entry of the initial
decision on the land use or limited land use appli-
cation.

(3) Notice of the decision on a land use or lim-
ited land use application shall be provided to the
airport sponsor and the Department of Aviation
within the same timelines that such notice is pro-
vided to parties to land use or limited land use pro-
ceeding.

(4) Notices required under subsections (1)
through (3) of this section need not be provided to
the airport sponsor or the Department of Aviation
where the land use or limited land use application
meets all of the following criteria:

(a) Would only allow structures of less than
35 feet in height;

(b) Involves property located entirely out-
side the approach surface;

(c) Does not involve industrial, mining or
similar uses that emit smoke, dust or steam; san-
tary landfills or water impoundments; or radio,
radiotelephone, television or similar transmission
facilities or electrical transmission lines; and

(d) Does not involve wetland mitigation,
enhancement, restoration or creation.

(5) Changes that affect the overlay zone bound-
daries or surfaces defined by this rule, which are
proposed by the airport, shall be subject to city of
North Bend review, modification and approval as
part of the planning process outlined in this rule.
Written notice of proposed changes that affect the
overlay zone boundaries or surfaces shall be pro-
vided to the city of North Bend by the airport in the
same manner as notice is provided to property
owners entitled by law to written notice of land use
or limited land use applications. (Ord. 1952 § 1(4),
2006)

18.56.060 Height limitations on allowed uses
in underlying zones.

All uses permitted by the underlying zone shall
comply with the height limitations in this section.
When height limitations of the underlying zone are
more restrictive than those of this overlay zone, the
underlying zone height limitations shall control.

(1) Except as provided in subsections (2) and
(3) of this section, no structure or tree, plant or
other object of natural growth shall penetrate an
airport imaginary surface.

(2) For areas within airport imaginary surfaces
but outside the approach and transition surfaces,
where the terrain is at higher elevations than the
airport runway surfaces such that existing struc-
tures and permitted development penetrate or
would penetrate the airport imaginary surfaces, a
local government may authorize structures up to 35
feet in height.

(3) Other height exceptions or variances may
be permitted when supported in writing by the air-
port sponsor, the Department of Aviation and the
FAA. Applications for height variances shall fol-
low the procedures for other variances and shall be
subject to such conditions and terms as recom-
ended by the Department of Aviation and the
FAA. (Ord. 1952 § 1(4), 2006)

18.56.070 Procedures.

An applicant seeking a land use or limited land
use approval in an area within this overlay zone
shall provide the following information in addition
to any other information required in the permit
application:

(1) A map or drawing showing the location of
the property in relation to the airport imaginary
surfaces. The airport authority shall provide the applicant with appropriate base maps upon which to locate the property.

(2) Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level (reference datum NAVD 88).

(3) If a height variance is requested, letters of support from the airport sponsor, the Department of Aviation and the FAA. (Ord. 1952 § 1(4), 2006)

18.56.080 Land use compatibility requirements.

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of this section as provided herein:

(1) Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5. A declaration of anticipated noise levels shall be attached to any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise-sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn.

(2) Outdoor Lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

(3) Glare. No glare-producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot’s vision.

(4) Industrial Emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.

(5) Landfills. No new sanitary landfills shall be permitted within 10,000 feet of any airport runway. Expansions of existing landfill facilities within these distances shall be permitted only upon demonstration that the landfills are designed and will operate so as not to increase the likelihood of bird/aircraft collisions. Timely notice of any proposed expansion shall be provided to the airport sponsor, the Department of Aviation and the FAA, and any approval shall be accompanied by such conditions as are necessary to ensure that an increase in bird/aircraft collisions is not likely to result.

(6) Communications Facilities and Electrical Interference. Proposals for the location of new or expanded radio, radiotelephone, television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval.

(7) Use Prohibitions in RPZ. Notwithstanding the underlying zoning, the following uses are prohibited in the RPZ:

(a) New residential development.

(b) Public assembly facilities. (Ord. 1952 § 1(4), 2006)

18.56.090 Water impoundments within approach surfaces and airport direct and secondary impact boundaries.

(1) Any use or activity that would result in the establishment or expansion of a water impoundment shall comply with the requirements of this section.

(2) No new or expanded water impoundments of one-quarter acre in size or larger are permitted:

(a) Within an approach surface and within 5,000 feet from the end of a runway; or

(b) On land owned by the airport sponsor that is necessary for airport operations. (Ord. 1952 § 1(4), 2006)
18.56.100 Wetland mitigation, creation, enhancement and restoration within approach surfaces and airport direct and secondary impact boundaries.

(1) Notwithstanding the requirements of NBCC 18.56.090, wetland mitigation, creation, enhancement or restoration projects located within areas regulated under NBCC 18.56.090 shall be allowed upon demonstration of compliance with the requirements of this section.

(2) Wetland mitigation, creation, enhancement or restoration projects existing or approved on the effective date of the ordinance codified in this chapter and located within areas regulated under NBCC 18.56.090 are recognized as lawfully existing uses.

(3) To help avoid increasing safety hazards to air navigation near public use airports, the establishment of wetland mitigation banks in the vicinity of such airports but outside approach surfaces and areas regulated under NBCC 18.56.090 is encouraged.

(4) Applications to expand wetland mitigation projects in existence as of the effective date of the ordinance codified in this chapter, and new wetland mitigation projects, that are proposed within areas regulated under NBCC 18.56.090 shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:

(a) It is not practicable to provide off-site mitigation; or

(b) The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge, and the area proposed for mitigation is located outside an approach surface.

(5) Wetland mitigation permitted under subsection (4) of this section shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runways or approach surfaces.

(6) Applications to create, enhance or restore wetlands that are proposed to be located within approach surfaces or within areas regulated under NBCC 18.56.090, and that would result in the creation of a new water impoundment or the expansion of an existing water impoundment, shall be considered utilizing the review process applied to applications for conditional use permits and shall be permitted upon demonstration that:

(a) The affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water discharge; and

(b) The wetland creation, enhancement or restoration is designed and will be maintained in perpetuity in a manner that will not increase in hazardous movements of birds feeding, watering or roosting in areas across runways or approach surfaces.

(7) Proposals for new or expanded wetland mitigation, creation, enhancement or restoration projects regulated under this section shall be coordinated with the airport sponsor, the Department of Aviation, the FAA and FAA’s technical representative, the Oregon Department of Fish and Wildlife (ODFW), the Oregon Division of State Lands (DSL), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Army Corps of Engineers (Corps) as part of the permit application.

(8) A decision approving an application under this section shall require, as conditions of approval, measures and conditions deemed appropriate and necessary to prevent in perpetuity an increase in hazardous bird movements across runways and approach surfaces. (Ord. 1952 § 1(4), 2006)

18.56.110 Nonconforming uses.

(1) These regulations shall not be construed to require the removal, lowering or alteration of any structure existing at the time the ordinance codified in this chapter is adopted and not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of the ordinance codified in this chapter.

(2) Notwithstanding subsection (1) of this section, the owner of any existing structure that has an adverse effect on air navigational safety as determined by the Department of Aviation shall install or allow the installation of obstruction markers as deemed necessary by the Department of Aviation, so that the structures become more visible to pilots.

(3) No land use or limited land use approval or other permit shall be granted that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this overlay zone.

(4) If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause to an extent exceeding 80 percent of the fair market value as indicated by the records of the

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county assessor, a future structure or use shall conform to this chapter. (Ord. 1952 § 1(4), 2006)

18.56.120 Appeals.

(1) Administrative decisions are appealable to the planning commission. Decisions of the commission are appealable to the city council. Decisions of the city council are appealable to the Oregon Land Use Board of Appeals.

(a) All appeals shall be filed with the city planning commission within 10 days of the date that notice of the decision is mailed to the parties of record.

(b) Appeals must be submitted on appeal forms provided by the city and clearly identify the issues of appeal, the party status of the appellant, the applicable review criteria and include the appropriate appeal fee.

(c) Failure to raise an issue either orally or in writing at a public hearing concerning the matter precludes appeal based on that issue.

(2) Procedures for appeals to the city council shall be the same as those for appeals of planning commission decisions. (Ord. 1952 § 1(4), 2006)

18.56.130 Penalties.

Violation of, or failure to comply with, any provision of this chapter is punishable upon conviction by a fine not to exceed $300.00, and each day that such violation shall continue and persist after due notice thereof shall constitute a separate and distinct violation of this chapter. (Ord. 1952 § 1(4), 2006)

18.56.140 Severability.

If any clause, sentence, paragraph, section or portion of this chapter, for any reason, shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remaining provisions of this chapter. (Ord. 1952 § 1(4), 2006)

18.56.150 Conflicting regulations.

Where there exists a conflict between any of the regulations or limitations prescribed in this chapter, and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, the more stringent limitation or requirement shall govern and prevail. (Ord. 1952 § 1(4), 2006)