**CHAPTER 10: Ohio Airport Protection Act**

**5501:1-~~10~~ 7-01 Purpose.**

In accordance with sections [4561.30](http://codes.ohio.gov/orc/4561.30) to [4561.39](http://codes.ohio.gov/orc/4561.39) and [4561.99](http://codes.ohio.gov/orc/4561.99) of the Ohio Revised Code, to be known as "The Ohio Airport Protection Act," no person shall commence to install any structure or object of natural growth in this state, any part of which will penetrate or is reasonably expected to penetrate into navigable airspace, without first obtaining a permit from the department of transportation.

This chapter outlines the procedures that a person must follow in order to apply for and obtain a permit to erect or alter a structure, and define the authority of the office of aviation to reject, approve, or deny applications for permits and provide for the rules of practice for the processing of an application for permit. In accordance with the office's responsibility to promote safety of air commerce, this chapter further describes the standards for marking and lighting of obstructions as official policy of the Ohio department of transportation office of aviation in order to provide the most effective means of indicating the presence of obstructions to pilots.

The Ohio department of transportation office of aviation finds it necessary to establish administrative enforcement procedures. A person in violation of the statutes, rules, orders or permits of the office may be given notice of the violation or show cause to the office why they are not in violation as a means to minimize litigation.

**5501:1-~~10~~ 7-02 Definitions.**

As used in rules regarding airports and the structures in their surrounding area and navigable airspace.

(A) "Airport" as used in this chapter, means any area of land or water used in maneuvering for landing and taking off of aircraft owned, operated, or constructed by any person, an airport board or other governmental agency located within the state which is approved and certified by the Ohio department of transportation office of aviation for commercial purposes and is designed for the landing and taking off of an aircraft.

(B) "Runway" means the surface of the airport used for landing and taking off of aircraft as depicted on the appropriate map and airport master plan, and federal aviation administration (FAA), form 7480-1 notice of landing area proposal.

(C) "Navigable airspace" means the imaginary surfaces around an airport, including clear zones surface, horizontal surface, conical surface, primary surface, approach surface, and transitional surfaces, as defined by the federal aviation administration (FAA) regulations, as amended.

(D) "Structure" means any object, whether permanent or temporary, including, but not limited to, a building, tower, crane, smokestack, earth formation, transmission line, flagpole, ship mast, and includes a mobile object.

(E) "Obstruction" means any structure, natural or man made, penetrating the navigable airspace as defined in this chapter.

(F) "Applicant" means the person who will own or have control over the completed structure, or as defined by Chapter 4561. of the Revised Code.

(G) "Permit" means a written authorization issued by the administrator of the office of aviation pursuant to the office rules and in accordance with the findings and directions of the Ohio department of transportation to alter or construct a structure.

(H) "Certification by the applicant" means that the certification shall be made by the individual who will own or control the structure when completed; or a partner in a partnership; or the president or authorized officer of a corporation, company or association, or his appointed designee, or authorized official of a body politic; or legally designated representative of a trustee, receiver, or assignee.

(I) "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace at an airport, as set out in FAA technical manuals, as amended, including, advisory circular 150/5300-13 "Airport Design Standards", 7400.2 c "Airspace Procedures Handbook", and the U.S. terminal procedures handbook.

(J) "Department" means Ohio department of transportation (ODOT).

(K) "Director" means the director of the Ohio department of transportation, or designee.

(L) "Legal holiday" means New Year's day, Martin Luther King Day, Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veterans day. Thanksgiving day and Christmas day as observed by the state of Ohio.

(M) "Office" means the Ohio department of transportation office of aviation.

**5501:1-~~10~~ 7-03 Jurisdiction of the office.**

(A) The director of transportation delegates the authority to implement the rules contained in 5501:1-10-01 to 5501:1-10-14 of the Administrative Code to the administrator of the office of aviation.

(B) The administrator shall have the authority and power, to:

(1) Reject, approve or disapprove applications for permits, as set forth in this chapter.

(2) Order an aeronautical study of applications for permits;

(3) Direct the preparation of all documents, papers, and evidence necessary to enforce the statutes and rules of the office pursuant to section [4561.32](http://codes.ohio.gov/orc/4561.32) of the Revised Code.

**5501:1-~~10~~ 7-04 Construction within jurisdictional airspace.**

Except as provided in divisions (D), (E), and (F) of section [4561.31](http://codes.ohio.gov/orc/4561.31) of the Revised Code, no person shall construct or alter any structure which constitutes an obstruction as defined by the "Standards for Determining Obstructions" unless the person who intends to construct or alter such a structure obtains a permit from the office in accordance with the procedures set forth in this chapter.

**5501:1-~~10~~ 7-05 Standards for determining obstructions and navigable airspace.**

The Ohio department of transportation office of aviation adopts the obstruction standards set forth in [14 CFR 77.21](http://codes.ohio.gov/NLLXML/ohiocodesGetcode.aspx?userid=PRODSG&interface=OHCODES&statecd=US&codesec=77.21&sessionyr=2017&Title=14&datatype=D&noheader=0&nojumpmsg=0) to [14 CFR 77.29](http://codes.ohio.gov/NLLXML/ohiocodesGetcode.aspx?userid=PRODSG&interface=OHCODES&statecd=US&codesec=77.29&sessionyr=2017&Title=14&datatype=D&noheader=0&nojumpmsg=0), as amended.

At its sole discretion, the office of aviation may grant a permit which includes a waiver from full compliance with the obstruction standards. Any decision to grant a waiver shall be based on sound aeronautical principles as set forth in the following technical manuals, as amended: "Federal Aviation Regulations part 77, Objects Affecting Navigable Airspace, Title 14, CFR, TERPS, advisory circular 150/5300-13, Airport Design Guide, FAA Heliport and Vertiport Design Guides, and FAA 7400.2 c, Procedures for Handling Airspace Matters," as amended.

A permit issued with a waiver of the obstruction standards shall include the reasons for the waiver, conditions imposed by the office of aviation associated with the waiver, and any additional restrictions or conditions deemed appropriate by the office of aviation. The decision to grant a waiver and the terms and conditions imposed thereunder shall be final. Failure to meet the conditions and restrictions of any waiver shall render the permit void and subject to enforcement action.

The office of aviation will also consider airport zoning in accordance with section [4563.10](http://codes.ohio.gov/orc/4563.10) of the Revised Code.

**5501:1-~~10~~ 7-06 Permit application content.**

(A) An application must be submitted on forms prescribed by the office of aviation. The application must also be accompanied by:

(1) A copy of the federal aviation administration application (FAA Form 7460-1),

and/or any orders issued by and received from the chief air traffic division, FAA regional office, and;

(2) A copy of a 7.5 minute quadrangle topographical map prepared by the United States geological survey and Ohio geological survey or equivalent with the application indicated thereon. (The 7.5 minute quadrangle may be obtained from the "Ohio Geological Survey Division Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio, 43224.")

(B) The application may be presented by regular mail, electronically, or in person at least thirty days prior to the date of the proposed construction or alteration to:

"The Ohio Department of Transportation

Office of Aviation

2829 W. Dublin-Granville Rd.

Columbus, Ohio 43235"

Monday through Friday, 7:30 a.m. to 4:30 p.m., excepting legal holidays.

(C) This thirty day period may be waived at the discretion of the administrator of the office of aviation for unforseen emergencies.

**5501:1-~~10~~ 7-07 Review of submitted application.**

(A) Upon receipt of an application, the office shall review the application to determine whether all required information has been submitted.

(B) If the application is incomplete, the administrator shall notify the person submitting the application of any deficiencies and give a reasonable amount of time to the applicant to complete the application.

(C) In making a determination on an application, the administrator may consider findings and recommendations of other governmental entities and interested persons concerning the proposed structure or object if the administrator deems it in the best interest of the public to do so. The administrator may, at their discretion, request that such findings and recommendations be submitted in writing or the administrator may order a public hearing be conducted prior to taking any action on the application.

(D) When ordered by the administrator, notice of a public hearing shall be provided to the applicant and each party as provided in division (C) of section [4561.33](http://codes.ohio.gov/orc/4561.33) of the Revised Code. Notice shall also be published in a newspaper of general circulation in the county, where such proposed structure or object is to be located, at least two weeks prior to the date of the public hearing. At the date and at the time and place designated in the notice, the administrator shall conduct a public hearing at which the applicant and any person affected by the proposed structure or object may present their position, arguments, or contentions, orally or in writing, offer witnesses, and present evidence tending to show that the proposed application should or should not be granted.

(E) Any findings, recommendations, opinions, or testimony shall not be binding on the administrator or department.

**5501:1-~~10~~ 7-08 Aeronautical study.**

(A) When the application is complete, the office shall conduct an aeronautical study for the purpose of determining if a permit be issued.

(B) The office may approve an application for a temporary structure that will be in existence for such a short duration that it will no longer occupy the same airspace at the time a formal application can be considered by the office. Such approval may be granted only if it is evident that the proposed temporary structure will not adversely affect the safety of air navigation.

(C) The office reserves the right to reject any recommendation of the FAA or other government body after final consideration of the application. However, the office shall state the reasons for rejection in each case.

(D) The office shall make available a copy of the application and the conclusions of the aeronautical study to any interested parties, including, but not limited to, airport boards, municipal and county governments' officials, airport owners and operators.

(E) In cases where the FAA has determined that an aeronautical study is needed, the office will withhold final approval until the FAA has completed its study.

(F) An FAA objection or determination of a hazard can be used as sufficient evidence for denial of a permit.

**5501:1-~~10~~ 7-09 Approval and denial of applications; Application amendments.**

(A) Upon making a determination on an application, the administrator shall, in writing, notify the applicant and each party, as provided in division (C) of section [4561.33](http://codes.ohio.gov/orc/4561.33) of the Revised Code and shall include the reasons for the determination.

(B) If a permit is denied, the notice shall be sent by certified mail, return receipt requested and shall inform the applicant of their right to request a hearing pursuant to section [119.06](http://codes.ohio.gov/orc/119.06) of the Revised Code. Any request for a hearing must be filed with the administrator within thirty days of the receipt of the written notice. If a hearing is requested, it shall be conducted in accordance with sections [119.01](http://codes.ohio.gov/orc/119.01) to [119.13](http://codes.ohio.gov/orc/119.13) of the Revised Code.

(C) If a permit is approved, it shall be valid for a period of two years, unless otherwise noted on the permit. If there are no changes to the original application and/or approved permit, a permit may be renewed, either verbally or in writing, for an additional period of time at the discretion of the administrator. If there are changes or any amendments to the original application and/or approved permit, a new application shall be submitted.

**5501:1-~~10~~ 7-10 Marking and lighting obstruction standards.**

Any holder of a permit that requires obstruction marking and lighting, as a condition for the approval of the application, may request a change in the obstruction marking and lighting requirements in order to maintain or improve the existing obstruction marking and lighting system based upon technological advances. Said request shall be in writing and approved by the office prior to any changes or alterations being made to the previously approved obstruction marking and lighting system.

**5501:1-~~10~~ 7-11 Abandonment of a permitted structure.**

In the event that a permitted structure is abandoned, the permit holder shall continue to maintain obstruction marking and lighting unless the facility is otherwise physically removed.

**5501:1-~~10~~ 7-12 Objects of natural growth.**

In the event that an object of natural growth is permitted, the permit holder shall continue to maintain the object according to its approved standards, unless the object is otherwise physically removed.

**5501:1-~~10~~ 7-13 Enforcement procedures; violations.**

(A) The director of the department of transportation delegates responsibility to the administrator of the office of aviation to determine whether violations of the applicable statutes, rules, orders and permits have occurred or are threatened. The office shall investigate violations or threat of violation of the statutes, rules, orders and permits.

(B) If the administrator has reason to believe that any person is commencing to install a structure or object of natural growth for which a permit appears to be required but for which no application has been filed, the administrator may:

(1) Notify such person to appear at a hearing and show cause why a permit is not needed or why an order should not be issued by the administrator to cease and desist from such violation, or;

(2) When immediate action is needed, institute an action in a court of competent jurisdiction to prevent, restrain, correct, or abate any violation or threatened violation of sections [4561.30](http://codes.ohio.gov/orc/4561.30) to [4561.39](http://codes.ohio.gov/orc/4561.39) of the Revised Code or any rule adopted or order issued thereunder.

(C) Notices to show cause shall be sent by certified mail, return receipt requested, to the person who owns or controls the structure or land. The notice shall state the location, type of structure and the reasons the structure should have a permit, or is in violation of the statutes, rules, orders or permits of the office and may request that the structure be removed or the violation be corrected voluntarily within a reasonable amount of time. The notice shall also state a date and time for the show cause hearing. All such hearings shall be conducted in accordance with sections [119.01](http://codes.ohio.gov/orc/119.01) to [119.13](http://codes.ohio.gov/orc/119.13) of the revised code.

(D) If, upon such hearing, the administrator finds that the structure or object of natural growth is subject to permit under the applicable statutes and rules, the administrator shall issue and cause to be served upon the person to whom the notice was directed an order setting forth findings and conclusions. The administrator may direct that the person cease and desist from installing such structures or objects of natural growth. A cease and desist order issued under this rule shall be enforceable and may be appealed pursuant to section [119.12](http://codes.ohio.gov/orc/119.12) of the Revised Code.