



STAFF REPORT

Date: August 8, 2017
To: Bryan H. Montgomery, City Manager
From: Libby Vreonis, City Clerk / Paralegal
SUBJECT: Waive the First Reading and Introduce an Ordinance Adding Chapter 36 to Title 4 of the Oakley Municipal Code Regarding the Use of Unmanned Aircraft Systems (UAS) also known as Drones

Approved and Forwarded to City Council:


Bryan Montgomery, City Manager

Background and Analysis

I. Jurisdiction

In recent years, unmanned aircraft systems (UAS), also known as drones, have become more wide-used and accessible for recreational and other purposes. With the increase of drones, regulation has become a topic of discussion to address safety and privacy. There is some debate which jurisdiction, the cities, the states, or federal government, may best regulate drones.

Proponents of federal regulation believe only the Federal Aviation Administration (FAA) can regulate navigable air space (not cities); however, the FAA has pointed out some areas (i.e., privacy and trespassing) in which state or local regulation may be more appropriate.

Proponents of federal and state regulation argue that federal or state regulation would prevent a patchwork of laws across cities and be less confusing to drone users; however, cities currently exercise local control and regulate many things in relation to land use, zoning laws and police powers for the protection of its residents which may be different from city to city. Drones may be regulated similarly.

The League of California Cities has taken the position that cities would like to be able to compliment federal and state regulation and regulate drones through ordinances much like they would with other items. It appears there is room for amicable regulation at all levels, but perhaps cities can best regulate reasonable time, place and manner restrictions for drones and provide specific guidance to drone operators based on knowledge and context of the local area.

II. Current Regulation of Drones

A. Federal Legislation

1. (H.R. 4441, H.R. 636)

In 2016, the House and Senate both took action to regulate the use of drones (House's Aviation Innovation, Reform, and Reauthorization Act, H.R. 4441 and Senate's Federal Aviation Administration (FAA) Reauthorization Act (H.R. 636). Section 2152 of the Senate bill preempts cities from enacting laws related to the design, manufacture, testing, licensing, registration, certification, operation, or maintenance of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements, purpose of operations, and pilot, operator, and observer qualifications, training and certification. Cities would also be prohibited from addressing nuisance, voyeurism, privacy, data security, harassment, reckless endangerment, wrongful death, personal injury, or property damage in relation to drones.

After the enactment of both bills, Congress approved an extension to continue funding for the FAA through September 30, 2017; however, the preemption language in Section 2152 was not included in the approval. The interpretation of this omission is that cities may continue with existing ordinances or enact ordinances; however, it is unclear whether or not preemption will occur upon the expiration of the funding extension in September 2017. The League of California Cities has indicated that there is currently a move by the drone industry in Sacramento and Washington to completely preempt local government regulation of drones.

B. Proposed Federal Legislation

In May 2017, S. 1272, the "Drone Federalism Act of 2017" was introduced. The proposed bill confirms FAA regulation of drones in navigable airspace and recommends state and local regulation of drones near ground level and near structures. It also proposes state and local governments can create limitations on speed, designate no-drone areas, and can place other reasonable time, place and manner restrictions that protect public safety, personal privacy and property rights, or that manage land use or restrict noise pollution.

In June 2017, The Thune-Nelson bill, also known as "The Federal Aviation Administration (FAA) Reauthorization Act of 2017" (S. 1405), was introduced addressing the FAA and related programs through the end of fiscal year 2021. In relation to drones, the bill proposes the following, including, but not limited to, drone safety features, affirm privacy protections consistent with federal, state and local law, advance identification standards to create operator accountability, require registration of small drones, make it a federal crime to operate a drone near a manned aircraft or runway, require drone users to pass an online test before flying, direct the U.S. Government Accountability Office to study the responsibilities of federal, state, and local governments in regulating drones, require the Department of Transportation to establish a delivery air carrier certificate that would allow for package deliveries by drones, and would direct the FAA to establish operating rules specific to "micro" drones, weighing 4.4 lbs. or less.

C. Federal Aviation Administration (FAA)

1. FAA Registration of Drones

In response to the increase in drones, in December 2015, the FAA announced a new federal regulation requiring registration of drones (between .55 and 55 pounds) by persons 13 years and older on its website. The regulation provides that drones operated prior to December 21, 2015 are required to be registered by February 19, 2016 and drones purchased after December 21, 2015 must be registered before their first flight. The registration fee is \$5.00 and the FAA issues a registration number which must be displayed on the drone. Failure to register a drone can result in civil penalties up to \$27,500, criminal penalties up to \$250,000 under 18 U.S.C. 3571 and/or up to 3 years imprisonment. The registration process is voluntary as it is the responsibility of the purchaser to register; no registration occurs at the store or online at the time of purchase. There is no system to alert authorities to identify drones not registered.

On May 19, 2017, the United States Court of Appeals for the District of Columbia, ruled that the FAA does not have statutory authority to issue the registration requirements (supra). The Court based its decision on Section 336(a) of the FAA Modernization and Reform Act of 2012 which states that the FAA "may not promulgate any rule or regulation regarding a model aircraft." (49 U.S.C. § 40101). The Court indicated that the FAA's registration requirements directly violates that clear statutory prohibition. Therefore, the registration requirements are unenforceable. Thereafter, the FAA issued a comment on its website in response to the Court's decision, indicating although the registration requirements have been invalidated, it continues to encourage voluntary registration for small unmanned aircraft (drones).

2. FAA "State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet"

In December 2015, the FAA issued a "State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet" which provides guidance that cities should not regulate navigable airspace as Federal courts strictly scrutinize such local regulation, including restrictions on flight altitude, flight paths and operational bans, and cities should not mandate equipment or training for drones related to aviation safety. However, the FAA recognized that laws involving land use, zoning, privacy, trespass and law enforcement operations are generally not subject to federal regulation and it provided examples of laws within cities' police power such as requiring police to obtain a warrant prior to using a drone for surveillance, specifying that a drone may not be used for voyeurism, prohibit use of drones for fishing or hunting or to harass someone who is fishing or hunting, and prohibit attaching firearms or weapons to drones.

3. FAA (14 CFR Part 107)

14 CFR Part 107, effective June 2016, provides small unmanned aircraft rules, many of which cities have incorporated into their ordinances to provide guidance to drone operators. The rules include, but are not limited to, unmanned aircraft must weigh less than 55 pounds, be within the visual line-of-sight, may not be operated over persons not participating in its operation, operated only during daylight hours, must yield to manned aircraft, fly at a maximum speed of 100mph and a maximum altitude of 400 feet, not be operated carelessly or recklessly, and cannot carry hazardous materials.

D. California Law

1. Existing Legislation

California has experienced several instances of drone interference with emergency operations. Aircrafts attempting to battle wildfires, provide ambulatory services and police services have either been grounded due to drones or have escaped near collision with drones. These experiences have prompted changes in legislation.

Effective January 1, 2017, SB 807 amended Civil Code Section 43.101 to limit civil liability exposure of *any emergency responder* who damages a drone interfering with an emergency responder providing emergency services. This expanded the scope of California Government Code Section 853 which provides that a local public entity or public employee engaging in medical services, ambulance transport services, firefighting or search and rescue services cannot be held liable for any damage caused to an interfering drone while providing emergency services.

Also effective January 1, 2017, AB 1680 amended Penal Code Section 402 to include drone operators to the list of persons who may not stop at a scene of emergency (regardless of the operator's location) and interfere with emergency personnel performing their duties, unless it is part of the duties of that person's employment to view the scene or activities. It is a misdemeanor to interfere.

Prior to October 2015, under Civil Code Section 1708.8, a person was liable for physical invasion of privacy when the person knowingly entered into the land of another without permission to capture any type of visual image, sounds recording, or other physical impression of the person engaging in a private, personal, or familial activity of which invasion of privacy would be offensive to a reasonable person. In October 2015, AB 856 amended Civil Code Section 1708.8, to expand privacy protections to include a person knowingly entering into the "airspace above the land of another person without permission". Violation may result in treble general or special damages, punitive damages, disgorgement of proceeds or other consideration if violation was committed for commercial purposes, and civil fines not less than \$5,000 up to \$50,000.

2. Pending Legislation

SB 347 was introduced by California Senator Hannah-Beth Jackson in February 2017. The bill would enact the State Remote Piloted Aircraft Act. It would prohibit a person from operating a drone in a manner that interferes with manned aircraft, that is prohibited by any federal statute or regulation governing aeronautics, in a careless or reckless manner as to endanger the life or property of another, in a manner that constitutes a nuisance, in a manner that violates an individual's right to privacy, and in a manner that constitutes trespass under California law. The bill would also prohibit weapons on drones, would require drones to yield to manned aircraft, and would require drone operators to maintain adequate liability insurance or proof of financial responsibility. Violation of the Act would be punishable as an infraction with a fine not exceeding \$250, or as a misdemeanor punishable by imprisonment in a county jail up to 6 months, or by fine up to \$1000, or by both fine and imprisonment. If passed, the legislation would not preempt local ordinances if consistent with the legislation.

Opponents of the legislation argue that existing FAA laws already address most of the bill's list of proposed prohibitions and the bill fails to specify size or weight of the drone (an example was provided that a child's 4 oz. toy drone could be subject to regulation). Governor Brown vetoed a similar bill (SB 868) proposed by Jackson in 2016.

AB 527 was introduced in February 2017. The bill would make it unlawful for a person to operate a drone for pest control unless the operator holds a valid pest control aircraft pilot's certificate issued by the Director of Pesticide Regulation and is certified by the FAA to operate a drone to conduct pest control operations. Violation of the law would be a misdemeanor.

E. Local Law

Many California cities have enacted drone ordinances or are in the process of enacting drone ordinances. After reviewing many ordinances, staff recommends modeling the City of Oakley's ordinance based upon the ordinance adopted by the City of Richmond in April 2017, a copy of which is attached. The ordinance serves as a good model ordinance in that it addresses FAA regulations and it was reviewed and approved by the FAA prior to adoption; however, some changes have been made to omit reference to FAA registration requirements, address health and safety concerns of drones operating over public facilities and power and data lines or equipment, and to allow the City or its contracted agents to operate a drone in the course of City business (i.e., surveying and mapping property, inspecting infrastructure, monitoring traffic and recording local public events).

III. Conclusion

The City of Oakley may wish to enact an ordinance regulating drones within the scope recommended in the FAA Fact Sheet until further determination is made in legislation.

Fiscal Impact

There is no fiscal impact.

Recommendation

Waive the First Reading and Introduce an Ordinance Adding Chapter 36 to Title 4 of the Oakley Municipal Code Regarding the Use of Unmanned Aircraft Systems (UAS) also known as Drones.

Attachments

- (1) City of Richmond, Ordinance No. 7-17 N.S.
- (2) Proposed Ordinance

ORDINANCE NO. 7-17 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND TO ESTABLISH REGULATIONS CONCERNING THE USE OF UNMANNED AIRCRAFT SYSTEMS (DRONES)

WHEREAS, drones, which are unmanned aircraft that can fly under the control or a remote pilot or via a geographic positions system (GPS) guided autopilot mode, have become increasingly available to private citizens for personal and recreation uses due to their declining costs; and

WHEREAS, some drones are equipped with high definition cameras, night vision cameras and infrared-see-through scopes; and

WHEREAS, some drones can be used to fly above private residences and to hover outside somebody's window or in their backyards without the knowledge of the resident who has a reasonable expectation of privacy in his or her home and in his or her backyards; and

WHEREAS, there are no existing regulations regarding who may purchase a drone which presents a safety risk to residents in that drones may be purchased and operated by persons intending to use such drone to engage in illegal activity; and

WHEREAS, the City Council desires to minimize the risk of drones being used in connection with illegal activity by requiring registration and regulating the operation of drones in accordance with Federal and State law.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND DOES ORDAIN AS FOLLOWS:

SECTION 1.

Section Chapter 11.46 of Article XI of the City of Richmond Municipal Code is hereby added and shall read as follows:

Chapter 11.46 - Unmanned Aircraft Systems (Drones)

11.46.010 - Operating an unmanned aircraft system

For the purpose of this section:

1. **"Unmanned Aircraft"** is an aircraft, including but not limited to, an aircraft commonly known as a drone that is operated without possibility of direct human intervention from within or on the aircraft.
2. **"Unmanned Aircraft System" (UAS)** is an Unmanned Aircraft and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft that carries an apparatus that captures still (photographs) or moving images (videos) or any other payload.
 - a) Every UAS weighing between .55lbs and 55 lbs, and operating in the City shall be registered in accordance with the FAA Part 107 Registration requirements. UAS operators who do not register their UAS in accordance with the FAA Part 107 Registration requirements are in violation of this section, and are subject to all applicable legal penalties enforced by the FAA.
 - b) Every UAS that weighs over .55lbs, and operates in the City shall have the assigned FAA registration numbers affixed to the UAS as required by the FAA.

- c) No person shall operate a UAS to record or transmit any visual image or audio record of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy or without their permission (including but not limited to, inside a private residence or office, inside an enclosed yard, rooftops, backyards and exterior decks),.
- d) No person shall operate a UAS within the City outside of daylight hours (between official local times from sunrise and sunset), no more than 400 feet above ground level and no faster than 20 mph.
- e) No person shall operate any UAS in the City beyond the visual line of sight of the person operating the UAS. The operator must use his or her own natural vision to observe the UAS. Visual line of sight means that the operator has an unobstructed view of the UAS. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the UAS, do not constitute the visual line of sight of the person operating the UAS.
- f) No person shall operate the UAS within the City closer than 25 feet to any human being, except the operator and except during takeoff and landing.
- g) No person shall operate a UAS while under the influence of alcohol or any other drugs, intoxicating compound or any combination thereof.
- h) No person shall operate a UAS in a careless or reckless manner that would jeopardize the public.
- i) No person shall operate a UAS that is equipped with hazardous materials or any weapons or items that may be considered to be weapons.
- j) No person shall operate a UAS in violation of any temporary flight restriction or "Notice to Airmen" (NOTAM) issued by the Federal Aviation Administration (FAA).
- k) No person shall operate a UAS in the path of any manned aircraft.
- l) Operators may use a UAS to exercise their First Amendment right to observe and record governmental activities; however, no person shall operate a UAS in a manner that directly interferes with police activities, firefighting or emergency response activities that would jeopardize the integrity of such public safety activities.
- m) This section shall not prohibit the use of any model aircraft as described in Section 336 of the FAA Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the City.
- n) This section shall not prohibit the use of any UAS by law enforcement or public safety agencies, provided that the law enforcement or public safety agency has a current Certificate of Authorization (COA) from the FAA to operate within the airspace of the City.
- o) Any operator of a UAS who violates this section is subject to fines and confiscation of the UAS by the Richmond Police Department.

SECTION 2. The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 3. This ordinance shall take effect thirty (30) days after the date of its adoption.

First read at a regular meeting of the Council of the City of Richmond held April 4, 2017, and finally passed and adopted at a regular meeting thereof held April 18, 2017, by the following vote:

AYES: Councilmembers Choi, Martinez, McLaughlin, Myrick, Willis,
Vice Mayor Beckles, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

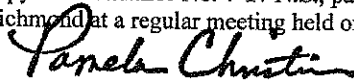
PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 7-17 N.S., passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 18, 2017.



Pamela Christian, City Clerk of the City of Richmond

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY ADDING
CHAPTER 36 TO TITLE 4 OF THE OAKLEY MUNICIPAL CODE REGARDING
THE USE OF UNMANNED AIRCRAFT SYSTEMS (UAS) ALSO KNOWN AS
DRONES**

The City Council of the City of Oakley does ordain as follows:

Section 1. Chapter 36 of Title is hereby added to the Oakley Municipal Code to read as follows:

“4.36.102 Purpose.

The purpose of this chapter is to provide local safety requirements on the operation of unmanned aircraft systems (UAS) consistent with Federal Aviation Administration rules and State law to mitigate risks to the public associated with the operation of UAS.

4.36.104 Definitions.

For purposes of this chapter, the following definitions shall apply:

“Unmanned Aircraft” is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft. This definition includes, but is not limited to, “drones”, “remote controlled aircraft”, and “model aircraft”.

“Unmanned aircraft system” (also referred to as “UAS”) is an Unmanned Aircraft and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft that carries an apparatus or any other recording device that captures still (photographs) or moving images (videos).

“Person” shall mean any individual, partnership, corporation, or joint-venture.

4.36.106 Operating Requirements and Restrictions.

No person shall operate any UAS in a manner that is prohibited by any federal, state or local regulations. The following shall apply to the operation of any UAS within the City of Oakley:

- a. No person shall operate any UAS in the City beyond the visual line of sight of the person operating the UAS. The person operating the UAS must use his or her own natural vision to observe the UAS. Visual line of sight means that the person operating the UAS has an unobstructed view of the

UAS. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, goggles or other devices designed to provide a "first-person view" from the UAS, do not constitute the visual line of sight of the person operating the UAS.

- b. No person shall operate any UAS other than daylight hours, defined as between official sunrise and official sunset for local time.
- c. No person shall operate any UAS more than four hundred (400) feet above the earth's surface and no faster than 20 mph unless written proof of authorization to do so by the Federal Aviation Administration is provided to the City and verified.
- d. Excluding takeoff and landing, no person shall operate any UAS closer than twenty-five (25) feet to any individual, except the operator or operator's helper(s).
- e. No person shall operate a UAS while under the influence of alcohol or any other drugs, intoxicating compound or any combination thereof.
- f. No person shall operate any UAS in a careless or reckless manner as to endanger, threaten injury or damage the safety and welfare of the life or property of another. The standard for what constitutes careless and reckless operation under this section shall be the same standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Public Utilities Code Section 21407 and Federal Aviation Rule 91.13.
- g. No Person shall operate any UAS in a manner that violates an individual's reasonable expectation of privacy, as set forth by all applicable state laws, including but not limited to, recording or transmitting any visual image, sound recording, or other physical impression of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy, including, but not limited to, inside a private residence, office or hotel room, inside an enclosed yard and exterior decks.
- h. No person shall operate a UAS in a manner that directly interferes with the lawful efforts of any emergency personnel, paid or volunteer, to respond to or provide emergency services.
- i. No Person shall operate any UAS which contains, or has affixed or attached to it, hazardous materials, a weapon, gun, firearm, handgun, rifle, bb device, assault weapon, bomb, grenade, rocket, rocket-propelled projectile, any device or container assembled for the purpose of causing

an explosion, or any other weapon or item that may be considered a weapon.

- j. No person shall operate any UAS in a way that interferes with manned aircraft and shall always yield to any manned aircraft.
- k. No Person shall operate any UAS within the City in violation of any temporary flight restriction or "Notice to Airmen" issued by the Federal Aviation Administration.

4.36.108 Law Enforcement, Public Safety Agency and City Use of UAS.

- a. This chapter shall not prohibit the use of any UAS by law enforcement or public safety agencies, provided that the law enforcement or public safety agency has a current Certificate of Authorization (COA) from the FAA to operate within the airspace of the City.
- b. This chapter shall not prohibit the use of any UAS lawfully owned or operated by City personnel or by City-contracted agents in the course of City business, including, but not limited to, surveying and mapping property, inspecting infrastructure, monitoring traffic and recording local public events.

4.36.110 Areas Where UAS Operation Requires Written Consent

- a. No Person shall operate a UAS within the airspace above any open air assembly area, school, school yard, place of worship, police station, sheriff's station, fire station, public building, public facility, water facility, sewage facility or electric generating facility, without the property owner's written consent, and subject to any restrictions that the property owner may place on such operation.
- b. No person shall operate a UAS within twenty-five feet of any cell tower, overhead wire, cable, conveyor or similar equipment for the transmission of sounds or signal, or of heat, light or power, or data, upon or along any public way within the City, without the facility or equipment owner's written consent, and subject to any restrictions that the facility or equipment owner may place on such operation.
- c. This chapter shall not prohibit the use of any UAS which is flown in compliance with Section 336 of the Federal Aviation Administration Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the City without the person or property owners' written consent.

4.36.112 Violation.

Violation of any provision of this chapter is a misdemeanor and shall be punishable as set forth in Section 1.5.002 of this code. Equipment flown in violation of this chapter may be confiscated.”

Section 2. Severability.

In the event that any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 3. California Environmental Quality Act (“CEQA”) finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that this ordinance will not have a significant effect on the environment; therefore it is not subject to CEQA.

Section 4. Effective Date and Publication.

This ordinance shall take effect and be in force and effect thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2017 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Sue Higgins, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date