



## Legislation Text

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**File #:** 15-283, **Version:** 1

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**TO:** Mayor Collins and Town Council Members

**FROM:** Kevin Burke, Town Manager  
Andrew M. Miller, Town Attorney

**DATE:** Meeting Date

**DEPARTMENT:** Town Attorney

Andrew M. Miller, Town Attorney, 480-348-3691

### **AGENDA TITLE:**

#### **Council Goals or Other Policies / Statutory Requirements:**

Manage growth responsibly, including code amendments where needed

#### **RECOMMENDATION:**

It is recommended that the Town Council review and provide final comments or changes on Ordinance Number 691; amending Chapter 10 by adding Article 10-12, regulations related to the operation of unmanned aerial vehicles.

#### **SUMMARY STATEMENT:**

The Town Council has expressed an interest in establishing regulations governing the appropriate use of unmanned aerial vehicles ("UAVs" or "Drones") within the Town. The staff has previously shared draft ordinances with the Council in order to receive comments and suggested changes to the draft ordinance, first at a work study session in May 28, 2015 and again on October 8, 2015. The Council requested that staff focus both on safety and privacy considerations in drafting the ordinance. Staff has also worked with the UAV user community to gain input on the current commercial and recreational uses of UAVs and the projected future uses for UAV technology. Staff has also reviewed what other cities and states are either doing or contemplating with regard to the regulation of Drones, as well as from local legal experts in the UAV community.

In general, it seems that many cities and states are waiting for final rules to be promulgated by the Federal Aviation Administration (FAA), which were supposed to be published in September 2015. However, the FAA has not published its proposed rules. The Town staff has thus attempted to balance the expected scope of the FAA regulations with the Council desire for promoting safe use of Drones and the assurance that Drones will not invade the privacy expectations of Town residents and guests. The most recent pronouncement from the FAA is that it will require the registration of Drones, likely similar to what the Town would require (as part of the draft ordinance presented on October 28, 2015). One of the final changes in the current draft ordinance is to add a section regarding harmonizing the ordinance with future FAA regulations and a one-year review of the ordinance to see how it is meshing with other regulations from the FAA and possibly the State of Arizona.

The draft ordinance attempts to balance the competing interests of residents who are concerned about the potential safety and privacy issues connected with safe and appropriate use of UAV technology, and the expected increase in use of UAVs for both personal recreational use and for certain commercial applications. In fact, the current draft benefitted from discussion with the UAV community and their suggested changes to the first draft of the ordinance. In particular, once the commercial UAV community was made aware of the desire of the Town staff and Police Department to be able to have knowledge in advance of a planned commercial UAV flight, the UAV commercial group suggested that an online notification system would be much simpler and less costly than the issuance of a single event limited use permit for each planned commercial UAV use. That suggestion was a key part of the revised draft reviewed by the Council on October 28<sup>th</sup>.

#### Details of the Agreement and Operating Terms

Draft Ordinance 691 regulates UAVs by distinguishing between commercial uses and personal and recreational uses. The draft does such by breaking down the types of uses allowed on private property as compared to public property. First, on public property (that is, property owned by the Town, such as Town rights-of-way), the Drone user must first obtain a special event permit through the Town's existing special event permit process. This process would entail providing a description of the planned use, methods for safely carrying out the planned use (such as the temporary blockage of traffic under the area where the Drone would be flying over public property) and the requirement for having insurance and indemnifying the Town for any accidents or damages. If the planned use over public property entails too great a risk of potential injury or disruption of Town right-of-way, the permit can be denied.

If the planned use is over private property, the permission of the owner of the property must first be obtained. Flying a UAV over the property of another person without their permission would be considered a form of trespass and could be charged as a civil offense or a misdemeanor, depending on the severity of the offense. If the planned use over private property is a commercial UAV use, then the commercial user must first register their UAV with the Town Police Department and provide notification to the PVPD of each planned use of a UAV in the Town through an online notification system. The notification system is planned to have certain information provided in a shared publicly accessible format by a link on the Town's website, so that neighboring property owners who may see an UAV near their property and have concerns or questions about the intent of the UAV user can either quickly check on the proposed use; or if unaware of the registry, the PD Dispatch can check the registry and notification system. The online notification system will contain information on the commercial UAV user, the general purpose of the commercial use, the time of such use, and possibly who to contact if they have any questions. This would be an open and easy system to use for tracking and monitoring UAV use within the Town and hopefully avoid situations where citizens may be tempted to take the law into their own hands and shoot down a UAV that is flying over or near their property (which has occurred in some locales).

Finally, because the commercial UAV users have indicated that they do not need to fly over public property or neighboring properties to do their commercial aerial photography, mapping, etc., the draft ordinance limits the UAV use to the specific property where a commercial use is occurring (with the consent of the owner of that property). However, should the commercial UAV user need to fly over public property, the draft ordinance makes an allowance for those times when a commercial UAV user would need to fly out over the public right-of-way through the special event permit process.

The attached draft ordinance contains the following basic provisions:

- An UAV shall not be used within the Town on private property at a level between zero feet and five

hundred feet above ground level without the express permission of the property owner.

- An UAV shall not be used within the Town over public property without first obtaining a Special Event Permit pursuant to Section 8-8-3 of the Town Code.
- Commercial use of UAV is not allowed unless the above-referenced criteria is met in addition to: (1) registering with PVPD; (2) providing identifying information for the particular UAVs to be used; and (3) proper advance notification to PVPD as to date, time, location, contact info of the commercial user, etc.
- Recreational UAV use on one's own property is allowed as long as such use is at a height of less than 500' and is not in violation of other criteria referenced below.
- UAV use is allowed by a "law enforcement agency" (broadly defined in the ordinance) in response to an emergency situation or after obtaining a warrant based upon probable cause that criminal activity is occurring.
- An UAV shall not be used in a careless or reckless manner that poses an apparent or actual threat of harm, or actual harm to persons or property.
- An UAV shall not be used to transmit any visual image or audio recordings of any person or property where there is a reasonable expectation of privacy.
- Penalties for violation shall be a Class 1 Misdemeanor or punishable under the provisions of Article 1-9 of the Town Code (which suggests that initial violations be charged as a civil violation with a progression to a criminal charge in the event of repeat offenses).

Based on the Council direction at the October 8, 2015 Council Study Session, the final draft of Ordinance Number 691 reflects three changes recommended by the Mayor and Council:

1. The "Purpose" statement has been expanded to clarify that the Town intends to harmonize its regulation of drones with other governmental regulations and mere compliance with the Town regulations "should not be interpreted as express, implied or tacit approval to operate an unmanned aerial vehicle in violation of any other governmental regulations or in a manner that jeopardizes the health, safety, or welfare of the general public."
2. A one year "look back" provision has been added so that the ordinance will be reviewed soon to make any adjustment or changes needed to deal with new technology or other governmental regulations.
3. An emergency clause has been added to have the ordinance take effect prior to December 25<sup>th</sup>.

Council's feedback on the draft is requested, particularly after public comment is received at the November 19<sup>th</sup> open session discussion of the draft ordinance. It is anticipated that if the Council feedback is favorable, Ordinance No. 691 will be placed on the Council's December 3<sup>rd</sup> agenda for adoption.

#### **BUDGETARY IMPACT:**

None.

#### **ATTACHMENT(S):**

Ordinance No. 691