



Legislation Text

File #: 15-310, **Version:** 1

TO: Mayor Collins and Town Council Members

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

DATE: December 3, 2015

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 approve 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 received comments and suggested changes to the draft ordinance, first at a work study session in May 28, 2015 and again on October 8, 2015. On November 19, the draft ordinance was brought before Council and the public for final suggestions and comments. Based on the comments from Council, the public and the UAV user community, a final ordinance has been prepared for review and approval. The final ordinance focuses on the Council's request that staff focus both on safety and privacy considerations.

With the help of the UAV user community, the final 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.

Details of the Agreement and Operating Terms

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.

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.

On private property (including homes, schools, resorts, golf courses, etc.), the permission of the owner of the private 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.

For commercial use over private property, then the commercial UAV user must first register their UAV with the Town Police Department (PVPD) and provide advance notice 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, contact the PVPD dispatch to 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 general time frame of the planned commercial 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 commercial 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 final 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 a first violation (except for those violations which are accompanied by intentional or reckless acts) shall be a civil violation.

A review of Ordinance 691 shall occur in one year.

Based on the Council direction at the November 19, 2015 Public Hearing and a comparison to the recently enacted ordinance for the City of Chicago a few changes have been made to the final draft ordinance, including a civil violation only for first offenses, a provision for temporary seizure of drones believed to be used in violation of the Town ordinance, and greater detail on the drone registration requirements, including providing the FAA's assigned license or registration number for each drone.

It is respectfully recommended that the Council adopt Ordinance No. 691, including declaring an emergency so that Ordinance No. 691 goes into effect immediately upon adoption.

BUDGETARY IMPACT:

None.

ATTACHMENT(S):

Ordinance No. 691