



# City of Del Mar Staff Report

TO: Honorable Mayor and City Council Members

FROM: Clem Brown, Environmental Sustainability/Special Projects Manager  
Via CJ Johnson, City Manager

DATE: May 4, 2020

SUBJECT: Introduction of an Ordinance Regulating the Use of Unmanned Aircraft Systems in the City of Del Mar

## REQUESTED ACTION/RECOMMENDATION:

Staff recommends that City Council introduce an ordinance regulating the use of Unmanned Aircraft Systems (UAS) in the City of Del Mar (Attachment A).

## BACKGROUND:

Unmanned Aircraft Systems (UAS), commonly known as drones, are aircraft without a human pilot onboard that are controlled by an operator on the ground, and are operated without the possibility of direct human intervention from within or on the aircraft. Drones can be operated for a variety of reasons including for commercial purposes, recreational use or in support of public agency services.

In the City of Del Mar, drones are often used by the public for commercial film and photography and are flown by hobbyists for recreation. The City of Del Mar uses drones to support a number of public services, including:

- Assessing environmental conditions and public infrastructure;
- Documenting the progress of Capital Improvement Program (CIP) projects;
- Monitoring traffic flows and special events;
- Aiding lifeguard activities such as cliff rescues and monitoring for sharks and rip currents; and
- Supporting emergency response, law enforcement and training activities.

The Federal Aviation Authority (FAA) regulates and sets guidelines for the safe operation of drones in the United States. Further, the FAA has a mandate from Congress to develop a comprehensive plan to accelerate the integration of civic UAS into the national airspace system. In this regard, the FAA requires recreational operators to register and mark their drones and to operate them under a number of best practice guidelines. Commercial

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City Council Action:

drone operators are also required to learn specific drone rules (Title 14 Code of Federal Regulations Part 107), obtain a Remote Pilot Certificate, and get a FAA tracking number.

In addition to FAA requirements, the City's Community Services Department requires a permit for commercial filming by drone on City property. The City's commercial film permit requires the applicant to submit a copy of their FAA UAS registration, a copy of their Remote Pilot Certificate, a letter of intent, and proof of insurance if drones are to be used for filming. No other local regulations pertaining to drones exist in Del Mar, and the operation of drones is not covered in the City's Municipal Code.

#### DISCUSSION/ANALYSIS:

The City plans to regulate drones within its jurisdiction to protect the health, safety and welfare of the community. The FAA is clear that States and local governments can regulate some aspects of drone operations under their local enforcement powers. However, it also is worth noting that existing case law shows that the areas within the FAA's authority over drones available for local government regulation are limited in scope.

The City's Parks and Recreation Committee (Committee) also has it in their work plan to address drones. Therefore, staff collaborated with the Committee to draft an ordinance that amends Del Mar Municipal Code (DMMC) Title 8 (Beaches, Waterways and Parks) and Title 9 (Public Safety, Peace and Welfare) to regulate the operation of drones in Del Mar. In addition to the Committee, staff also vetted the draft ordinance with multiple city departments (e.g., Public Works, Community Services), the City Attorney's Office, Fire Department, and the San Diego County Sheriff's Department to ensure the proposed regulations would not negatively affect their drone operations or infringe on either FAA regulations or federal law.

#### **Summary of Proposed Regulations**

As shown in Attachment A, the ordinance would establish the following regulations pertaining to drone operations in Del Mar:

- 400-foot height limit for operations
- Commercial drone operation requires prior City approval and a permit, which requires a FAA license
- Prohibits the recreational operation of drones in restricted City parks and open space (e.g., Seagrove Park, Powerhouse Park, Crest Ridge Park, and the Scripps Bluff Preserve), City beaches (with the exception of over the ocean), or at City-owned facilities (e.g., Public Works, Del Mar Civic Center, Powerhouse Community Center, Beach Safety Center, etc.)
  - Commercial operation in these areas requires prior City approval and a permit
- Prohibits reckless flying:
  - No flying under the influence
  - No flying within 25 feet of non-operators

- No drone racing
- No stalking/intimidation/imaging of others or their animals that have reasonable expectation of privacy
- No flying/capturing images above schools without school permission
- Adherence to the Del Mar Fairgrounds' policy on drone use (requires permission from the Del Mar Fairgrounds)
- No attached weapons
- No takeoff, operation or landing within 400 feet of:
  - Publicly permitted events without prior approval/City permit
  - Active fire/law enforcement responses (e.g., disaster relief, accident response, law enforcement activities, firefighting, etc.)
- No launch or operation in the San Dieguito Lagoon or River Park:
  - Only covers the area within the City's jurisdiction as defined in the Title 8.12.020 of the DMMC
- Exemptions:
  - City drone operation to provide public services (e.g., traffic monitoring, event management, damage assessments, CIP project status, etc.)
  - Law enforcement/emergency services (e.g., Fire, Lifeguards, Sheriff's Department)

### **Enforcement**

Adoption of the proposed ordinance will allow the City to enforce FAA drone regulations. Violations of the ordinance's provisions will be done in accordance with the enforcement procedures contained in Title 1 (General Provisions) of the DMMC, and may include a general penalty, misdemeanor or administration citation. Any person in Del Mar may file a written complaint about noncompliant drone operations to an enforcement officer for investigation and potential enforcement action. This section is consistent with other jurisdictions regarding enforcement.

### **Consistency with Other Local Regulations**

The proposed ordinance is consistent with FAA regulations and federal law pertaining to drones. In addition, the proposed ordinance is modeled after drone regulations adopted by other local jurisdictions in Southern California. Specifically, the City of Chula Vista currently limits the scope of drone usage regarding reasonable privacy or harassment. Similarly, the City of Poway restricts drone usage during any period of emergency response. The City of San Diego also does not allow for the careless or reckless operation of drones within the city. The neighboring cities of Oceanside and Carlsbad utilize FAA standards on drone usage.

### **FISCAL IMPACT:**

There is no anticipated fiscal impact associated with the ordinance.

ENVIRONMENTAL IMPACT:

The proposed City Council action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This project is an operational item and does not pertain to the City Council’s Goals and Priorities.

ATTACHMENTS:

Attachment A – Unmanned Aircraft Systems Ordinance No.-XX

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DEL MAR, CALIFORNIA, ADDING CHAPTER 9.40 AND AMENDING CHAPTER 8.12.030 OF THE CITY OF DEL MAR MUNICIPAL CODE REGULATING THE USE OF UNMANNED AIRCRAFT SYSTEMS IN CITY PARKS, OPEN SPACES, AND DURING EMERGENCY SITUATIONS

WHEREAS, Title 9 of the Del Mar Municipal Code is the Del Mar Public Safety, Peace and Welfare Code; and

WHEREAS, commercially and privately owned unmanned aircrafts, also known as “drones,” can have adverse impacts on the community and its safety when improperly used; and

WHEREAS, by FAA regulation (49 U.S.C. § 44809) unmanned aircrafts must be registered and follow safety federal safety guidelines in order to be flown recreationally; and

WHEREAS, unmanned aircraft have been known to interfere in the airspace of emergency operations, such as wildfires; and

WHEREAS, the ordinance is necessary to protect the safety and privacy of Del Mar residents and emergency responders from unwelcome, dangerous or unlawful use of unmanned aircraft; and

WHEREAS, this ordinance is crafted as not to conflict with existing state and federal law P.L. 115-254 section 349.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Del Mar, California, does hereby ordain as follows:

SECTION ONE:

That a new Chapter 9.40 be added to Title 9 as follows:

**Chapter 9.40 – Regulation of Unmanned Aircraft Systems (UAS)**

SECTION TWO:

That the new Sections 9.40.010, 9.40.020, 9.40.030, and 9.40.040 be added as follows:

**9.40.010 Definitions**

For the purposes of this chapter:

- A. "Unmanned Aircraft" shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.
- B. "Unmanned Aircraft System (UAS)" refers to any Unmanned Aircraft or drone and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft.
- C. "Civil UAS" refers to an Unmanned Aircraft or Unmanned Aircraft System operated for any purposes other than strictly hobby or recreational purpose, including, but not limited to, commercial purposes or in the furtherance of or incidental to, any business or media service or agency.
- D. "Model UAS" refers to any Unmanned Aircraft or Unmanned Aircraft System operated by any person for hobby or recreational purposes.
- E. "Public UAS" shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any public agency for government related purposes.
- F. "Operator" means the individual piloting the Unmanned Aircraft.
- G. "Operator's Assistants" means any individuals assisting with or piloting the Unmanned Aircraft with the Operator.
- H. "FAA" means the Federal Aviation Administration.
- I. "Emergency responder" means any first emergency responder including but not limited to law enforcement, firefighters, paramedics, or any emergency rescue service.
- J. "Animal" means any pet or wildlife.

#### **9.40.020 Operating Requirements**

The following shall apply to any Model UAS or Civil UAS operating in the City at a point lower than within 400 feet from ground level or 400 feet from the top of a structure:

No person shall operate (fly or launch) any UAS or Model Aircraft:

- A. No person shall operate any Model UAS or Civil UAS within the City in a manner that is prohibited by federal or state statute or regulation.
- B. No person shall operate any Civil UAS for commercial use within the City without a City-issued Operations Permit for Commercial Filming.

- C. No person shall takeoff, land or operate any Model UAS or Civil UAS within the airspace overlaying Seagrove Park, Powerhouse Park, Crest Ridge Park, the Scripps Bluffs Preserve, or a City beach (with the exception of over the ocean), without a City-issued Operations Permit.
- D. No person shall takeoff, land or operate any Model UAS or Civil UAS while under the influence of alcohol or any other drugs, intoxicating compound or any combination thereof.
- E. No person shall takeoff, land or operate any Model UAS or Civil UAS within four hundred (400) feet of any active law enforcement or emergency response incident in a manner that interferes with firefighting, police activity or other emergency response activity per California Penal Code Sections 148.2 and 402.
- F. Excluding takeoff and landing, no person shall operate any Model UAS or Civil UAS within 25 feet of any individual except the Operator and any of the Operator's Assistants.
- G. No person shall operate any Model UAS or Civil UAS in a careless or reckless manner that endangers the life or property of another.
- H. No person shall operate any Model UAS or Civil UAS in a manner that serves to harass, stalk, disturb, frighten, intimidate, injure, threaten, victimize or otherwise cause mental or emotional distress to any person or animal on public or private property, including the capturing, recording, or transmission of any images, audio recordings, or any live or recorded videos of any person with a reasonable expectation of privacy.
- I. No person shall operate any Model UAS or Civil UAS in the airspace above a public school, during school hours or school events without prior written permission from school officials.
- J. Operation of any Model UAS or Civil UAS in the airspace of the Fairgrounds must adhere to the policies and regulations of the 22<sup>nd</sup> District Agricultural Association.
- K. No person shall operate any Model UAS or Civil UAS that contains, or has attached, any type of weapon or explosive device.
- L. No person shall operate any Model UAS or Civil UAS within the airspace of any City-owned facilities, including but not limited to, the Del Mar Civic Center, Public Works facilities and reservoirs, Powerhouse Community Center, Beach Safety Center, or any other public safety and/or law enforcement facility without prior written authorization from the City.
- M. No person shall takeoff, land, or operate any Model UAS or Civil UAS within four hundred (400) feet of any publicly permitted events without prior notification and

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authorization from the City.

#### **9.40.030 Exemptions**

- A. The provisions of section 9.40.020 do not apply to any UAS operated pursuant to and in compliance with the conditions of a valid film or special event permit issued by the City, or to any Public UAS.
- B. This chapter shall not apply to any Public UAS that is operated by the City in compliance with all federal laws, regulations and applicable City policies for purposes including, but not limited to:
  - 1. Search and rescue operations
  - 2. Damage assessments
  - 3. Law Enforcement purposes
  - 4. Managing special events
  - 5. Monitoring traffic
  - 6. Situational awareness of critical incidents
  - 7. Monitoring and managing wildfires
  - 8. Training and support for all previously mentioned scenarios
  - 9. Managing other City operations and Capital Investment Projects

#### **9.40.040 Violations**

Enforcement of the provisions of this Title shall be accomplished in accordance with the procedures contained in Title 1 of this Code.

#### **9.40.050 Complaints of Violation**

Whenever a violation of this Chapter occurs or is alleged to have occurred, any person may file a complaint in regard thereto. All such complaints shall be in writing and signed by the complainant and shall fully state the location of the alleged violation, the cause of the complaint, and basis thereof. Upon receipt of a complaint, the enforcement officer shall cause an investigation of the alleged violation and take action thereon as provided by this Chapter.

### **SECTION THREE**

That section 8.12.030 be amended to add the following:

#### **8.12.030 Prohibited Activities**

- A. The following activities are prohibited within the confines of the San Dieguito Lagoon and River Valley:

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5. No person shall takeoff, land, or operate any unmanned aircraft systems or drones.

**SECTION FOUR:**

This Ordinance was introduced by the City Council on May 4, 2020.

**SECTION FIVE:**

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

**SECTION SIX:**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION SEVEN:**

This Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council held on the 18th day of May, 2020.

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Ellie Haviland, Mayor  
City of Del Mar

**APPROVED AS TO FORM:**

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Leslie E. Devaney, City Attorney  
City of Del Mar

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ATTEST AND CERTIFICATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 18th day of May, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Ashley Jones, Administrative Services  
Director/City Clerk  
City of Del Mar