

**ORDINANCE NO. 15-12-04**

**AN ORDINANCE AMENDING CHAPTER 10 – AVIATION  
OF THE ABERDEEN CITY CODE REGARDING DRONES**

**WHEREAS**, responsible and safe drone use is an increasingly popular recreational activity, particularly among amateur photographers, and promotes technological innovation, economic growth, and job creation; and

**WHEREAS**, the use of drones for hobby and recreational purposes will enable Aberdeen residents of all ages to familiarize themselves with this exciting new technology and may inspire a whole new generation of entrepreneurs and innovators to pursue careers in this field and in related high-tech industries in Aberdeen;

**WHEREAS**, the use of drones within populated areas and airspaces has also resulted in injuries to persons and property and unsafe incidents through intentional, reckless, careless, or negligent operation, and drones going rogue and flying off from their operators; and

**WHEREAS**, drones can be equipped with highly sophisticated surveillance technology that threatens reasonable expectations of privacy and repose in populated areas; and

**WHEREAS**, new add-on and anti-drone technologies are being developed that have the ability to be abused by drone operators or that can increase the risk of accidents and unsafe incidents; and

**WHEREAS**, pilots have reported dozens of cases in which drones flew too close to their aircraft, and the FAA has stated that the United States air traffic system is not equipped to handle thousands of small devices flying at low altitudes; and

**WHEREAS**, Aberdeen Regional Airport (hereafter “Airport”) is an uncontrolled airport with an instrument approach procedure, is situated on the eastern edge of the city limits, and must comply with FAA regulations for the operational safety of commercial, business, and private manned aircraft; and

**WHEREAS**, drones operating within regulated airspace may cause a breach of security at the Airport; and

**WHEREAS**, the FAA permits the Airport operations director responsible for air traffic control (hereafter “airport manager”) to authorize drone use within three nautical miles of the Airport; and

**WHEREAS**, all recreational drone operators are required to contact the airport manager before flying drones within three nautical miles of the Airport; and

**WHEREAS**, the airport manager is willing to authorize drone operation within three nautical miles of the Airport subject to the restrictions set forth in this ordinance; and

**WHEREAS**, the FAA in 2014 launched a public awareness campaign urging novice operators to pay attention to safety and to avoid reckless and unsafe activities, such as flying too close to passenger planes, buzzing crowds, or operating drones or unmanned aircraft while under the influence of alcohol or drugs; and

**WHEREAS**, the FAA on December 14, 2015, issued a rule requiring that all drones weighing less than 55 pounds be registered with the FAA and display the operator's UAS certificate number, and noted that drones are aircraft and that operators are aviators who must be accountable to the public for flying responsibly; and

**WHEREAS**, the unregulated use of drones throughout the City of Aberdeen poses a threat to the public health, safety, and welfare, including, but not limited to, privacy, nuisance, and trespass concerns; and

**WHEREAS**, the City Council is charged with protecting the health, safety, and property, and the reasonable security and repose of the citizens of, and visitors to, the City of Aberdeen; and

**WHEREAS**, the City Council is also charged with protecting the air space above the lands and waters of the City for the purposes of airport operations and aviation safety; and

**WHEREAS**, the City of Aberdeen is a home rule unit of government pursuant to SDCL Ch. 6-12; and

**WHEREAS**, pursuant to its home rule power, the City of Aberdeen may exercise any power and perform any function relating to its government and affairs, including the power to regulate for the protection of the public health, safety, morals, and welfare; and

**WHEREAS**, the City Council has determined that the following ordinance will protect the health, safety, and property of Aberdeen citizens and visitors and further their reasonable privacy interests, and advance the interests of aviation safety; Now, therefore,

**BE IT ORDAINED BY THE CITY OF ABERDEEN THAT THE FOLLOWING CHANGES AND ADDITIONS SHALL BE MADE TO THE ABERDEEN CITY CODE:**

**Sec. 10-1. – Definitions.**

Under this article:

“Aircraft” means any contrivance invented, used, or designed to navigate or fly in the air.

“Altitude” means the height of an aircraft above the surface of the land or water below it.

“City airspace” means the space on a vertical plane perpendicular to and above the land, water, and waterways within the jurisdiction of the city of Aberdeen.

“Drone” means an aircraft that (1) is operated without the possibility of direct human intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of the operation, including the weight of any payload or fuel. The term “drone” does not include “toy aircraft” or “public aircraft” as defined herein.

“Firearm” has the meaning ascribed to the term in SDCL 22-1-2(16).

“Hobby or recreational purposes” means a pursuit engaged in for relaxation, and not for business purposes, and not for compensation or hire.

“Open air assembly unit” means any structure, enclosed area, or other demarcated space used for the assembly of persons in the open air, including, but not limited to, amusement parks, stadiums, athletic fields, automotive speedways, aviation fields, band stands, beach enclosures, grandstands, observation platforms, outdoor public swimming pools, outdoor theaters, race tracks, reviewing stands, street festivals, or parade routes.

“Operate” means to pilot, steer, direct, fly, or manage an aircraft through the air whether from within the aircraft or remotely. The term “operate” includes managing or initiating a computer system that pilots, steers, directs, flies, or manages an aircraft.

“Public aircraft” has the meaning ascribed to the term in 42 U.S.C. § 40102.

“Surveillance” means the gathering, without permission and in a manner that is offensive to a reasonable person, of visual images, physical impressions, sound recordings, data, or other information involving (1) an active crime, accident, or fire scene or investigation; or (2) the private, personal, business, or familial activities of another person, business, or entity, or that otherwise intrudes upon the privacy, solitude,

or seclusion of another person, business, or entity regardless of whether a physical trespass onto real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity, or into the airspace above real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity occurs in connection with such surveillance.

“Toy aircraft” means (1) a glider or hand-tossed aircraft that is not designed for and is incapable of sustained flight; or (2) an aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire.

“Weapon” means any instrument, article, or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing harm or damage to any person or property, including, but not limited to, firing a bullet, projectile, or laser.

State law references – Definition of aircraft, SDCL 50-1-1; definition of firearm, SDCL 22-1-2(16); ownership of air space, SDCL 50-13-3.

#### **Sec. 10-2. – Operating regulations.**

The airport manager authorizes limited drone operation in city airspace for hobby or recreational purposes only, except that it shall be unlawful to exceed such authorization by operating a drone:

- (1) within one (1) mile of the Aberdeen Regional Airport and within the 10,000 feet non-precision approach areas to its runways. The protected airspace hereafter shall be referred to as the “Airport Drone No Fly Zone.” A map of such Airport Drone No Fly Zone shall be displayed at the airport and filed with the finance office;
- (2) over any person who is not involved in the operation of the drone, without such person’s consent;
- (3) over vehicular traffic;
- (4) over property that the operator does not own, unless the property owner consents and subject to any restrictions that the property owner may place on such operation;
- (5) over property owned, leased, or operated by the city, including but not limited to airports, parks, lakes, public swimming pools, trails, parking lots, and buildings, except drones may be operated in conformity with this section:

- (a) to temporarily cross from one authorized property to another authorized property over streets, roads, and alleys outside the Airport Drone No Fly Zone via the most direct route; and
- (b) over the following city properties, subject to any restrictions thereon imposed by the city:
  - (i) Northwestern holding pond and nature area near 24<sup>th</sup> Avenue Northwest and 387<sup>th</sup> Avenue;
  - (ii) Baird Park;
  - (iii) Riverside Memorial Park holding pond area; and
  - (iv) Kuhnert Arboretum;
- (6) by a child under 13 years of age when not accompanied by the child's parent or guardian or an adult designated by the child's parent or guardian. The failure of a parent or designated adult to supervise an underage child's operation of a drone shall be a violation by the parent or designated adult;
- (7) at an altitude higher than 400 feet above ground level;
- (8) outside the visual line of sight of the operator. The operator shall use his or her own natural vision, which includes vision corrected by standard eyeglasses or contact lenses, to maintain at all times an unobstructed view of the drone, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles designed to provide a "first person view" from the model or similar devices;
- (9) in a manner that interferes with, or fails to give way to, any manned aircraft or moving vehicle;
- (10) during the period between sunset and sunrise;
- (11) whenever weather conditions impair the operator's ability to operate the drone safely;
- (12) over any open air assembly unit, school, school yard, hospital, swimming pool, place of worship, or law enforcement building, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;
- (13) within 500 feet of any electric generating facility, substation, or control

center, or within 100 feet of any electric transmission facility, or within 25 feet of any electric distribution facility or of any 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 consent, and subject to any restrictions that the facility or equipment owner may place on such operation;

- (14) for the purpose of conducting surveillance, unless expressly permitted by law;
- (15) with 0.08 percent or more by weight of alcohol in that person's blood or while under the influence of alcohol, any drug, any intoxicant, or any combination thereof, as set forth in SDCL 32-23-1, which renders that person incapable of safely operating such drone;
- (16) that is equipped with a firearm or other weapon;
- (17) with intent to use such drone or anything attached to it to cause harm to persons or property; or
- (18) in a reckless or careless manner.

State law references – Driving under the influence prohibited, SDCL 32-23-1; public nuisance, SDCL 21-10-3; ownership of air space, SDCL 50-13-3; overflight of lands and waters, SDCL 50-13-4.

**Sec. 10-3. – Construction.**

(1) Operations authorized by FAA and city. Nothing in this article shall be construed to prohibit any person who is permitted by the Federal Aviation Administration, the city council, the chief of police, the fire chief, the public works director, the airport manager, or the parks, recreation and forestry director to operate a drone in city airspace from conducting such operations in accordance with the terms of such authorization and, if applicable, in accordance with this article.

(2) Operations prohibited by federal or state regulation. Nothing in this article shall be construed to authorize the operation of any drone in city airspace in violation of any federal or state law or rule promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration. This article shall not be construed to permit interference by any drone operation with air traffic or airport operations or in a manner less restrictive than Federal Aviation Administration guidelines regarding unmanned aerial systems and regulations regarding air space obstructions.

(3) Governmental operations authorized. Nothing in this article shall be construed to prohibit the use of a drone by a law enforcement agency or to conduct governmental operations by or on behalf of the city, Brown County, the state of South Dakota, or the federal government.

(4) Negligence per se. Section 10-2 is enacted to protect the health and safety of all persons lawfully within the city or city airspace and to prevent damage to persons and property. A violation of section 10-2 without legal excuse is negligence as a matter of law.

**Sec. 10-4. – Penalty.**

(1) A violation of this article by an adult is a Class 2 misdemeanor. Any adult who violates this article shall be fined not less than \$120.00 nor more than \$500.00 for each offense, nor jailed for more than 30 days, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(2) A violation of this article by a minor is a petty offense.

(3) A law enforcement officer may seize a drone as evidence of a violation of this article. The drone thereafter shall be disposed of in accordance with state law for disposition of seized property.

**Secs. 10-110-5 – 10-18. - Reserved.**

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Mike Levsen, Mayor

ATTEST:

  
Karl Alberts, Finance Officer

# Airport Drone No Fly Zone



