

# COUNCIL COMMUNICATION

<b>Meeting Date:</b> April 9, 2019	<b>Agenda Item:</b>	<b>Agenda Location:</b> Consent Calendar	<b>Goal(s):</b>	<b>Legal Review:</b>	<input type="checkbox"/> 1 <sup>st</sup> Reading <input checked="" type="checkbox"/> 2 <sup>nd</sup> Reading
<b>Subject:</b> An ordinance enacting Section 38-358 of the Thornton City Code pertaining to regulations for Unmanned Aircraft Systems.					
<b>Recommended by:</b> Randy Nelson, Seve Ghose				<b>Approved by:</b> Kevin S. Woods	
<b>Presenter(s):</b> Joyce Hunt, Assistant City Manager				<b>Ordinance previously introduced by:</b> <hr style="width: 100%;"/> <b>Matkowsky</b>	

**SYNOPSIS:**

This proposed ordinance, which enacts Section 38-358 of the Thornton City Code (City Code) regarding regulations of Unmanned Aircraft Systems (UAS), will allow the City to enforce local regulations that address the illegal use of UAS or “drones” within the City consistent with Federal Regulations. Generally, the proposed ordinance makes it unlawful for any person to operate a UAS:

- a) Without the UAS being within the line-of-sight of either the operator or a Visual Observer during the operation of a UAS;
- b) In a careless or reckless manner taking into consideration Federal Aviation Administration (FAA) rules, regulations, and guidelines;
- c) To observe another person; to capture or transmit an image, sound, or other physical impression; or digital record of another person in a manner that invades the privacy of a person or entity by flying the UAS in areas where a person or entity has a reasonable expectation of privacy;
- d) In a manner that is intended to harass or annoy any person or group of persons by intentionally, knowingly, or recklessly buzzing or hovering within 15 feet of a non-consenting person or persons;
- e) In a manner that impedes or interferes with a Police Officer or Firefighter while in the performance of their duties; or
- f) Launching or landing the UAS within 25 feet of any person, pedestrians, bicyclists, motorists, livestock, companion animal, or wildlife not directly involved in the UAS operation.

The restrictions for operating a drone noted in (c) above do not apply to a Police Department for law enforcement purposes and a Fire Department for firefighting, investigatory, or public safety purposes.

Any person who pleads guilty or no contest to or who, after trial, is found guilty of violating this ordinance is subject to a fine in an amount not to exceed the current maximum fine of \$2,650.

**RECOMMENDATION:**

Staff recommends Alternative No. 1, approve the ordinance enacting Section 38-358 to add regulations of Unmanned Aircraft Systems.

**BUDGET/STAFF IMPLICATIONS:**

None.

**ALTERNATIVES:**

1. Approve the ordinance enacting Section 38-358 to add regulations of Unmanned Aircraft Systems.
2. Approve the ordinance with changes directed by City Council.
3. Do not approve the ordinance.

**BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY:** (includes previous City Council action)

This ordinance is different than the proposed ordinance that was discussed with Council at the Planning Session on October 30, 2018 and brought forward to the December 4, 2018 Council meeting and the proposed ordinance alternatives discussed at the December 18, 2018 Council meeting. The attached proposed ordinance does not include language that makes it unlawful for any person to launch, land, or control a drone from any public place and any publicly-owned property, including parks, open space, streets, rights-of-ways, public waterways, etc. The attached proposed ordinance also does not include language that makes it unlawful to launch, land, or control a drone from or on private property without the permission of the private property owner since this is already covered through ordinances dealing with trespassing. At the December 4, 2018 Council meeting, the Council had questions about the restrictions pertaining to launching, landing, or operating a drone on public land and the ordinance was tabled to the next meeting to evaluate the proposed use of drones on public land. At the December 18, 2018 Council meeting, staff presented three alternatives related to the use of UAS in City-owned parks and open space, but all three alternatives included the provision making it unlawful to launch (etc.) a UAS from any publicly-owned street, highway, right-of-way, trail, waterway, stream, or ditch. A number of people spoke in opposition to the proposed ordinances citing the negative impacts on professional drone industries as well as drone hobbyists. The Council tabled consideration of the ordinance to March 19, 2019 to allow an opportunity for City staff to meet with the people who spoke at the meeting and to make additional amendments, as appropriate.

The Community Services Department and City Manager staff met with six of the seven people who spoke at the December 18, 2018 meeting on February 13, 2019. The seventh person was unable to meet but sent email comments expressing that he would like to see a happy medium where hobbyists can enjoy flying, but understand what they can and cannot do while professionals can continue providing service to the City and the businesses within it. The primary concern of the attendees, most of whom had businesses that relied on the use of drones, was the provision that made it illegal to use City streets, sidewalks, highways, etc. to launch, land, or operate drones. They indicated this would severely impact their businesses because it was not always possible to launch, land, or operate drones from the private property (which they had permission to use) because of the FAA Regulations and good safety practices. In many instances, safe operation of a drone would require utilizing City sidewalks, streets, right-of-way, etc. Staff indicated the prohibitions making it illegal to use City streets, sidewalks highways, etc. to launch, land, or operate drones would be removed in the proposal being submitted to Council. As to drone hobbyists and use of public parks and open space, their recommendation was to designate areas within parks and open space where drone hobbyists could operate their drones. The suggestion was to have the rules posted and the designated area included with the rules. They indicated that the larger the area the better.

Since that meeting, the Community Services Department has been evaluating what parks and open space areas might be appropriate "designated" areas. At this point, the City is aware of two designated areas in the Denver-metro area: one in Broomfield and one in Arvada. Both of these are under the purview of constituent groups who oversee the use of the areas. Generally speaking, most

cities in the Denver-metro area are struggling with how to deal with drones in parks and open spaces. While quite a few have rules that prohibit drones in parks and/or open spaces, most recognize the difficulty of actually enforcing the prohibition. The reason the provisions related to prohibiting drones in parks and open space have been removed from the ordinance is so the Community Services Department can put together a recommendation that can be vetted by the Parks and Open Space Advisory Commission as well as parks and open space users before developing a final recommendation for Council consideration.

Chapter 38 of the City Code contains regulations to protect the public health, safety, and welfare of the citizens.

Use of recreational UAS, commonly referred to as drones, has drastically increased nationwide and incidents of drone use has increased within the City.

The City recognizes that the responsible use of drones is a recognized and valuable recreational activity; however, the increase in such use prompts the need for reasonable local regulations to address applicable public health and safety concerns.

The FAA regulates the use of drones, but recognizes that local law enforcement has a role in regulating such use. Adoption of a new City Code Section 38-358 is necessary to allow:

1. The City to enforce local regulations that address the illegal use of drones within the City that are consistent with Federal regulations.
2. The City to control the airspace over crime, accident, and fire scenes. Currently at every major event there have been two or more drones attempting to fly in the immediate area. This can cause safety issues depending on the status of the event, can cause evidentiary issues, and provide an unnecessary distraction for people controlling the scene.
3. The ability to educate the citizens on what is or is not harassment, as well as providing the ability to educate citizens on how they can protect their property from unwanted intrusions.
4. The ability to control unwanted flyovers of construction and worksites, which may endanger workers at these locations. The City has received numerous complaints of flying drones interfering with construction workers on the job, especially when the discovery of the dinosaur was found at the Fossil Ridge Public Safety Center. The construction managers had to stop work to prevent possible injury to employees when a flying drone interfered with the job.

INTRODUCED BY: Matkowsky

AN ORDINANCE ENACTING SECTION 38-358 OF THE THORNTON CITY CODE PERTAINING TO REGULATIONS FOR UNMANNED AIRCRAFT SYSTEMS.

WHEREAS, Chapter 38 of the Thornton City Code (Code) contains regulations to protect the public health, safety, and welfare of the citizens; and

WHEREAS, use of unmanned types of recreational unmanned aircraft operating systems, commonly referred to as Drones, has drastically increased nationwide and incidents of Drone use has increased within the City; and

WHEREAS, while the City recognizes that the responsible use of Drones is a recognized and valuable recreational activity, the increase in such use prompts the need for reasonable local regulations to address applicable public health and safety concerns; and

WHEREAS, the Federal Aviation Administration regulates the use of Drones, but recognizes that local law enforcement has a role in regulating such use; and

WHEREAS, adoption of a new Section 38-358 of the City Code is necessary to allow the City to enforce local regulations that address the illegal use of Drones within the City that are consistent with Federal regulations; and

WHEREAS, these regulations are necessary to protect the public health, safety, and welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 38-358 is hereby enacted to read as follows:

**Sec. 38-358. Regulation of Unmanned Aircraft Systems.**

- (a) It is the purpose and intent of this Section to address the potential hazards associated with the use of Unmanned Aircraft Systems (as defined herein) in any manner that poses a threat to other aircraft in flight, to persons and property on the ground, and to critical infrastructure within the City.
- (b) For purposes of this Division, defined terms appear in italics. The following definition applies in this section:
  - (1) *FAA* means the Federal Aviation Administration.

- (2) *Unmanned Aircraft System (UAS)* shall mean a device used or intended to be used for flight in the air, operated without the possibility of direct human intervention from within or onboard the device, and includes associated types of equipment necessary to operate the device. This definition includes, but is not limited to, devices commonly known as drones.
- (c) **Unlawful Acts.** It is unlawful for any person to operate a UAS in the air, on the ground, or on the water as follows:
- (1) In a careless manner by operating without due regard of the inherent risks associated with such operation and thereby creating a potential for injury to persons or damage to property of another. In any proceeding charging operation of a UAS in violation of this Section, the court, in determining whether the operation was careless, shall consider the following:
- i. Promulgated standards for safe operation of any type of UAS, prescribed by Federal Statutes or Regulations.
  - ii. The current Advisory Circular 91-57(A), promulgated by the FAA for operation of UAS, as may be amended or replaced.
  - iii. Community based organizations establishing safety standards for the recreational use and operation of UAS such as, but not limited to, The Academy of Model Aeronautics (AMA).
  - iv. Whether the UAS is being operated without the UAS being within the line-of-sight of either the operator or a Visual Observer communicating with the operator during the operating of the UAS.
- (2) In a reckless manner by operating a UAS or Model Aircraft intentionally disregarding a substantial risk that such operation will cause injury to persons or damage to property. A factor which may be considered in determining recklessness is whether the UAS is being operated without the UAS being within the line-of-sight of either the operator or a Visual Observer communicating with the operator during the operating of the UAS.
- (3) It shall be unlawful to operate a UAS to observe another person, or to capture or transmit an image, sound, or other physical impression or digital record of another person in a manner that invades the privacy of a person or entity by flying the UAS in areas where a person or entity has a reasonable expectation of privacy.

- (4) It shall be unlawful to operate a UAS in a manner that is intended to harass or annoy any person or group of persons by intentionally, knowingly, or recklessly buzzing or hovering within 15 feet of a non-consenting person or persons.
  - (5) It shall be unlawful to operate a UAS in a manner that impedes or in any way interferes with a Police Officer or Firefighter, as defined by Section 38-1 of the Thornton City Code, while in the performance of their authorized duties and responsibilities or any type of governmental emergency operation.
  - (6) It shall be unlawful to launch or land a UAS within 25 feet of any person, pedestrians, bicyclists, motorists, livestock, companion animal, or wildlife not directly involved in the UAS operation.
- (d) **Exemptions.** The following use is exempt from the identified Sections of this Chapter: Operations of a UAS by a Police Department for law enforcement purposes, and a Fire Department for firefighting, investigatory, and public safety purposes are exempt from Section (c)(3)(if otherwise permitted by law).
- (e) **Violations and Penalty.** Violations of this Section are punishable pursuant to Section 1-8(a) of the Thornton City Code.
- 2. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
  - 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
  - 4. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
  - 5. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on March 19, 2019.

PASSED AND ADOPTED on second and final reading on \_\_\_\_\_, 2019.

CITY OF THORNTON, COLORADO

\_\_\_\_\_  
Heidi K. Williams, Mayor

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Luis A. Corchado, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on March 20, 2019, and after second and final reading on \_\_\_\_\_, 2019.