

## ORDINANCE NO. 1641

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE TITLE 8 "HEALTH AND SAFETY," ADDING CHAPTER 8.82 "UNMANNED AVIATION SYSTEMS" TO ESTABLISH REGULATIONS RELATED TO DRONES AND OTHER UNMANNED, REMOTELY-OPERATED VEHICLES**

**WHEREAS**, the 2015-2016 Orange County Grand Jury report entitled "Drones: Know Before You Fly" has found that recreational drones have greatly increased in number since December 2015 and their unregulated use will pose significant threats to public safety and privacy in Orange County cities and unincorporated areas; and

**WHEREAS**, numerous instances of drone interference with fire and emergency services have been documented; and

**WHEREAS**, on June 22, 2016, the Federal Aviation Administration (FAA) finalized notice of proposed rulemaking (NPRM) entitled *Operation and Certification of Small Unmanned Aircraft Systems* which impose operating and certification requirements to allow small unmanned aircraft systems in the National Airspace System for non-hobby purposes and non-recreational purposes; and

**WHEREAS**, although the FAA's NPRM wholly occupies the regulatory field governing operation of aircraft within the National Airspace System, the FAA declared that "laws traditionally related to State and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to Federal regulation"; and

**WHEREAS**, the City concurs with the FAA that the City Council has police powers and authority to issue regulations related to land use, zoning, privacy, trespass, and law enforcement operations and the exercise of such power and authority herein is not preempted by federal or state law; and

**WHEREAS**, the public necessity, convenience, and general welfare justify the proposed addition of Chapter 8.82 to the Health and Safety Code as provided for under Chapter 1.01, Code Adoption, of the San Clemente Municipal Code; and

**WHEREAS**, the subject Ordinance is not subject to the California Environmental Quality Act ("CEQA") under CEQA Guidelines (14 Cal. Code Regs.) sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change

in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

**NOW, THEREFORE**, the City Council of the City of San Clemente, California, hereby ordains as follows:

**Section 1:** Incorporation of Recitals.

The City Council hereby finds that all of the facts set forth in the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City of San Clemente as if fully set forth herein.

**Section 2:** CEQA.

This Ordinance is not a project within the meaning of CEQA Guidelines sections 15378, 15060(c)(2), and 15060(c)(3) because it has no potential for resulting in physical change in the environment, directly or indirectly, and does not meet CEQA's definition of a project. This Ordinance does not authorize or allow for the permitting of any new development or activity that has the potential to significantly impact or cause a change in the environment. In the alternative, the City Council finds that, under section 15061(b)(3), this Ordinance is exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Orange in accordance with CEQA Guidelines.

**Section 3:** Section 8.82, Unmanned Aircraft Systems, is hereby added to Title 8, Health and Safety, of the San Clemente Municipal Code, as follows:

Chapter 8.82

UNMANNED AIRCRAFT SYSTEMS

Sections:

8.82.010 – Purpose and Intent

The operation of unmanned aircraft (“UA”) systems, commonly known as drones, can at times pose significant hazards to full-scale aircraft in flight and to persons and property on the ground. Imposing community-based safety requirements and restrictions on the operation of UAs that does not preempt

federal aviation rules or authority, nor state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of UAs.

#### 8.82.020 – Definitions

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a differing meaning:

“Drone” refers to any unmanned aircraft (“UA”).

“FAA” means the Federal Aviation Administration.

“Operate” means the actions taken by an operator of the UA. Any use of the term refers only to the actions of an operator on the ground and is not intended to regulate an unmanned aircraft flying in navigable airspace.

“Person” means any individual, partnership, corporation, or joint venture.

“Public Drone” or “Public UA” means a UA that is used or operated on behalf of any government agency that meets the qualifications as defined in Section 40102 of Title 49 of the United States Code to operate a public aircraft.

“Unmanned Aircraft (UA)” means an aircraft without a human pilot onboard, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within, or on, the aircraft.

“Visual Line of Sight” means that the operator has an unobstructed view of the UA. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the UA. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a “first-person view” from the UA do not constitute visual line of sight of the operator.”

#### 8.82.030 – Prohibited Operations for UA

- A. No person shall takeoff, land, or operate a UA outside of their visual-line-of-sight.
- B. No person shall takeoff, land, or operate a UA within 25 feet of another individual, except the operator or the operator's designee.
- C. No person shall takeoff, land, or operate a UA on or over private property without the written or electronic consent of the property owner, if the

property owner is a person other than the UA operator. When consent to operate a UA is required to takeoff, land, or operate a UA on or over private property, UA operators must have on their possession a copy of the written or electronic consent from the owner of the property, or properties, over which they takeoff, land, or operate a UA.

- D. No person shall takeoff, land, or operate a UA over City-permitted events open to the public, unless granted written or electronic permission by the City. UA operators must have on their possession a copy of the written or electronic consent from the City while they takeoff, land, or operate a UA over City-permitted events open to the public.
- E. No person shall takeoff, land, or operate a UA within one thousand five hundred (1,500) horizontal feet of any aircraft, including any UA, operated by a public entity.
- F. No person shall takeoff, land, or operate a UA that has any type of weapon, or other device designed for inflicting bodily harm or physical damage, attached to it.
- G. No person shall takeoff, land, or operate a UA within a "no fly zone" that has been established by the City as outlined in Section 8.82.050, Reasonable Time, Place, Manner of this chapter.
- H. No person shall takeoff, land, or operate a UA between thirty minutes before the official sunset time and the official sunrise time.

#### 8.82.040 – No Reckless Operation

No person shall takeoff, land, or operate a UA so as to endanger or create substantial risk of serious injury for any person or property.

#### 8.82.050 – Reasonable Time, Place, Manner

- A. No person shall takeoff, land, or operate a UA within five hundred (500) feet of any emergency vehicle that is operating with lights and/or sirens.
- B. No person shall takeoff, land, or operate a UA within five hundred (500) feet of any active law enforcement or emergency response incident.
- C. No person shall takeoff, land, or operate a UA in violation of any Temporary Flight Restriction or Notice to Airmen issued by the FAA.
- D. No person shall takeoff, land, or operate a UA within five hundred (500) feet of a school facility without prior notification and authorization of school officials. When authorization to operate a UA is required to takeoff, land, or operate a UA on or over a school facility, UA operators must have on their possession a copy of the written or electronic authorization from the school's administration while they takeoff, land, or operate a UA within five hundred feet of the school.
- E. No person shall takeoff, land, or operate a UA within five hundred (500) feet of any county or city owned jails, holding facilities, law enforcement facility, or within five hundred (500) feet of any designated publicly owned building chosen by the city. The designation of publicly-owned buildings applicable

to this subsection shall be at the discretion of the City Manager. The addresses of all properties described in this subsection shall be available for viewing by the public at the City Clerk's Office and listed on the City of San Clemente website, on a page dedicated to information related to UA, or "drone," operations and requirements.

8.82.060 – Exemption

This Chapter shall not apply to any Public UA.

**Section 4:** Custodian of Records.

The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 100 Avenida Presidio, San Clemente, CA 92672-3100. The custodian of these records is the City Clerk.

**Section 5:** Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Clemente hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**Section 6:** Certification and Publication.

The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.  
CITY OF SAN CLEMENTE )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_ having been regularly introduced at the meeting of \_\_\_\_\_, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY