

1 **AN ORDINANCE OF THE CITY OF FLAGLER BEACH,**
2 **FLORIDA, RELATING TO THE OPERATION OF**
3 **UNMANNED AIRCRAFT SYSTEMS; PROVIDING FOR**
4 **DEFINITIONS, SEVERABILITY, CODIFICATION,**
5 **CORRECTION OF SCRIVENER'S ERRORS, AND AN**
6 **EFFECTIVE DATE.**

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8 **BE IT ORDAINED BY THE CITYCOMMISSION OF THE CITY OF FLAGLER**
9 **BEACH, FLORIDA:**

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11 **WHEREAS,** new innovations in unmanned aircraft, also known as drones, have
12 expanded a vibrant community of hobbyists and impacted commercial application in a profound
13 way that can positively stimulate growth and increase economic efficiency for a diverse and
14 expanding array of businesses; and

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16 **WHEREAS,** since technology surrounding and use of unmanned aircraft has rapidly
17 advanced, the City of Flagler Beach does not have a current code section applicable to unmanned
18 aircraft; and

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20 **WHEREAS,** the City desires to increase the ability of hobbyists and commercial users to
21 operate unmanned aircraft within the City of Flagler Beach, while protecting the safety and
22 privacy of the citizens and visitors to the City; and

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24 **WHEREAS,** technological developments now make it possible for unmanned aircraft to
25 travel at speeds over 100 miles per hour, carry payloads, and fly more than a mile away from the
26 operator at heights of over 3,000 feet, which has increased the potential for them to endanger the
27 safety and well-being of the citizens of Flagler Beach and their property; and

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29 **WHEREAS,** unmanned aircraft also have the ability to be equipped with video cameras
30 and other recording devices, and while the vast majority of those devices will undoubtedly be
31 used to further commercial activity, hobbyists' passions and the arts, it is important to recognize
32 that they can also be used to conduct unlawful or unwanted surveillance or voyeuristic activities
33 contrary to the privacy interests of the citizens of Flagler Beach; and

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35 **WHEREAS,** while the proliferation and continued reduction in size of unmanned aircraft
36 has made them more available and adaptable, it has also made them capable of being flown into
37 schools, residences, and over large gatherings, such as parades, potentially bypassing security
38 checkpoints and other public safety measures designed to protect the citizens of Flagler Beach;
39 and

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41 **WHEREAS,** the City Commission of the City of Flagler Beach, Florida desires to
42 promote hobbyist and commercial use of unmanned aircraft while balancing the paramount need
43 to protect the well-being, tranquility, and privacy of its citizens.

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45 SECTION ONE: CHAPTER 14, ARTICLE VI, SECTION 14-100, Code of
46 Ordinances of the City of Flagler Beach, Florida, is hereby created as follows:
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48 **ARTICLE VI. – REGULATION OF UNMANNED AIRCRAFT SYSTEMS.**
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50 **Sec. 14-100. Operation of Unmanned Aircraft Systems – Restrictions on Operation**
51

52 1) **Definitions:**

- 53 a) Aircraft: The term “aircraft” means any contrivance invented, used, or designed
54 to navigate, or fly in, the air.
- 55 b) Assist: The term “assist” means to substantially aid in the operation of an
56 unmanned aircraft, including acting as a visual observer as described in this
57 section.
- 58 c) Operate: The term “operate” means to use, cause to use, or authorize to use,
59 with or without the right of legal control.
- 60 d) Operator: The term “operator” means any person who manipulates the flight
61 controls of, or otherwise operates, an unmanned aircraft system.
- 62 e) Parade: The term “parade” means any procession, march or assembly wherein
63 the participants travel by foot, vehicle or otherwise in or upon any public street,
64 public sidewalk, public right-of-way, bicycle path, public property, or public
65 parking facility within the City; provided, however, that “parade” shall not
66 include a peaceful procession or peaceful picketing that is conducted off the
67 street or roadway in conformance with all traffic laws, city ordinances and state
68 statutes and not in a manner as to obstruct vehicular or pedestrian traffic.
- 69 f) Park: The term “park” means any area identified in the Code of Ordinances as a
70 park and any other area officially designated by the City Commission as a park
71 and posted as such.
- 72 g) Public Aircraft: The term “public aircraft” means any of the following:
73 i) an aircraft used only for the United States Government;
74 ii) an aircraft owned and operated by the government of a State, the District of
75 Columbia, or a territory or possession of the United States or a political
76 subdivision of one of these governments;
77 iii) an aircraft owned or operated by the armed forces or chartered to provide
78 transportation or other commercial air service to the armed forces.
- 79 h) Outdoor Public Assembly: The term “outdoor public assembly” means any
80 celebration, gathering, ceremony, show, exhibition, concert, pageant, rally,
81 demonstration, or assembly of any kind, which is, (a) calculated to attract at any
82 one time the physical attendance or attendance of over fifty (50) persons, and (b)
83 is held in or on any park, public street, sidewalk, or right-of-way to the extent
84 that closure is necessary in order to assure the safety of vehicular and/or
85 pedestrian movement in the area. In addition, any parade as defined herein shall
86 be considered an outdoor public assembly.

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- i) Unmanned Aircraft: The term “unmanned aircraft,” which for the purpose of this section of this Ordinance is synonymous with and shall include the terms “drone” and “model aircraft,” means a glider or powered, aerial vehicle that:
 - i) Does not carry a human operator;
 - ii) Uses aerodynamic forces to provide vehicle lift;
 - iii) Is capable of flying or gliding autonomously, or being piloted remotely;
 - iv) Is capable of being expendable or recoverable;
 - v) Is capable of carrying lethal or nonlethal payloads of any kind and/or imaging devices, as that term is defined in § 934.50(2)(c), Fla. Stat. (2016).
 - j) Unmanned Aircraft System (UAS): The term “unmanned aircraft system” means an unmanned aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the national airspace system.
 - k) Visual Observer: The term “visual observer” means a person who assists the unmanned aircraft operator to see and avoid other air traffic or objects aloft or on the ground.

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2) **Operation of Unmanned Aircraft and/or Unmanned Aircraft Systems; Prohibited Areas of Launch, Operation, and Landing**

- a) It is prohibited for any person(s), with control over the unmanned aircraft, to cause an unmanned aircraft to launch or land, or for any person to operate or assist in the operation of any unmanned aircraft system out of doors unless permitted to do so by the City of Flagler Beach, when that person is:
 - i) At or within 500 feet of any enclosed building owned or operated by the City of Flagler Beach;
 - ii) At or within 500 feet of any outdoor public assembly;
 - iii) At or within 500 feet of any event with more than 100 people in attendance;
- b) It is prohibited to cause an unmanned aircraft to launch or land, or for any person to operate or assist in the operation of any unmanned aircraft system at or within 500 feet of a park, as defined in this section.
- c) It is prohibited to cause an unmanned aircraft to launch or land, or for any person to operate or assist in the operation of an unmanned aircraft system when that person is at or within 500 feet of any day care facility, pre-school, elementary, middle or high school; whether public or private. The written permission of the school’s administration or member of the faculty constitutes an affirmative defense. Permission may be incorporated into a school policy and/or procedure, but so long as an administrator or member of the faculty has given written permission for the use of an unmanned aircraft at or within 500 feet of the school, it shall constitute an affirmative defense.

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- d) It is prohibited to cause an unmanned aircraft to launch or land, or for any person to operate or assist in the operation of any unmanned aircraft system when that person is at or within 500 feet of any public or private hospital, urgent care facility, or medical clinic.
- e) Penalty. Any person who is determined by a police officer or a code enforcement officer to have violated any of the provisions of this section may be subject to non-criminal or code enforcement prosecution.

3) **Affirmative Defenses**

- a) Proof of a permit, issued pursuant to paragraph 6, below, to operate an unmanned aircraft and/or an unmanned aircraft system in an area prohibited by paragraph 2, above, constitutes an affirmative defense to any non-criminal or code enforcement prosecution brought under the provisions of paragraph 2, above.
- b) Proof that the unmanned aircraft and/or unmanned aircraft system was operated at the direction of a governmental agency, such that it should be considered a public aircraft, constitutes an affirmative defense to any action brought under the provisions of paragraph 2, above.
- c) Proof of authorization by the Federal Aviation Administration (FAA) to operate unmanned aircraft and/or unmanned aircraft systems in City air space in accordance with federal law constitutes and affirmative defense to any action brought under the provisions of paragraph 2, above.
- d) Proof of permission from a public or private school, as set forth in paragraph 2(c), above, constitutes an affirmative defense to any action brought under the provisions of paragraph 2, above.
- e) Proof of permission from a public or private hospital, urgent care facility, or medical clinic, constitutes an affirmative defense to any action brought under the provisions of paragraph 2, above.

4) **Operation of Unmanned Aircraft and/or Unmanned Aircraft Systems in and Unsafe Manner; Duty to Give Information and Render Aid**

- a) It is unlawful for any person to operate or assist in the operation of any unmanned aircraft and/or unmanned aircraft system while under the influence of:
 - i) Alcoholic beverages;
 - ii) Any substance controlled under Chapter 893, Florida Statutes;
 - iii) Any chemical substance set forth in section 877.111, Florida Statutes; and
 - iv) The medical use of marijuana, as that term is defined in Article X, § 29(a)(6), Florida Constitution.
- b) It is unlawful to operate any unmanned aircraft and/or unmanned aircraft system that has been equipped with any firearm, tear gas gun or chemical weapon device, explosive, destructive device, firework, shotgun, slingshot, paintball gun, dirk, billie, knife, electronic weapon device, dart gun, stun gun, common pocket

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knife, hook, or any other item designed, redesigned, deployed, or intended to be used as a weapon.

- c) It is unlawful for any person to operate or assist in the operation of any unmanned aircraft and/or unmanned aircraft system in a careless or reckless manner so as to endanger the life or property of another.
- d) The operator and any assistant operator of an unmanned aircraft and/or unmanned aircraft system that is involved in a crash resulting in injury to, or the death of any person must remain at the scene of the crash until such person has provided his or her name, address, and contact information, unmanned aircraft and/or unmanned aircraft system registration number from the FAA, and permit number for unmanned aircraft flight, if such permit was previously obtained, and must render reasonable assistance to any person injured in the crash, including the carrying, or making arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.
- e) The operator and any assistant operator of an unmanned aircraft and/or unmanned aircraft system that is involved in a crash resulting in damage to the attended property of another must remain at the scene of the crash until such operator or any assistant operator has provided his or her name, address and contact information, unmanned aircraft and/or unmanned aircraft system registration number from the FAA, and permit number for unmanned aircraft flight, if such permit was previously obtained.
- f) The operator and any assistant operator of an unmanned aircraft and/or unmanned aircraft system that is involved in a crash resulting in damage to unattended property of another must remain at the scene of the crash until such operator or assistant operator has attached securely in a conspicuous place in or on the property a written notice giving his or her name, address, and contact information, unmanned aircraft and/or unmanned aircraft system registration number from the FAA, and permit number for unmanned aircraft flight, if such permit was previously obtained.
- g) Failure to comply with the requirements of subsections (d), (e), or (f) is unlawful and constitutes a violation of this Ordinance.
- h) Penalty. Any person who is determined by a police officer or a code enforcement officer to have violated any of the provisions of this section may be subject to non-criminal or code enforcement prosecution.

5) **Use of Unmanned Aircraft and/or Unmanned Aircraft Systems for Voyeurism or Harassment Prohibited**

- a) It is unlawful to operate or assist in the operation of an unmanned aircraft and/or unmanned aircraft system to secretly observe another person when the other

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- 209 person is located in a dwelling, structure, or conveyance where such location
210 provides a reasonable expectation of privacy.
- 211 b) It is unlawful to operate or assist in the operation of an unmanned aircraft and/or
212 unmanned aircraft system with the intent to offend, annoy, abuse, threaten, or
213 harass any person.
- 214 c) Penalty. Any person who is determined by a police officer or a code
215 enforcement officer to have violated any of the provisions of this section may be
216 subject to non-criminal or code enforcement prosecution.
- 217
- 218 6) **Permitting for Unmanned Aircraft Flights**
- 219 a) Standards for Issuing Permit. The City shall set standards for the issuance of
220 permits by written Policy and Procedure, and may amend such standards by
221 subsequent Policy and Procedure.
- 222 b) Fees. All application processing fees are non-refundable. The City will set an
223 application processing fee by Resolution, and may change such fee by
224 subsequent Resolution.
- 225
- 226 7) **Revocation and Denial of Permit**
- 227 a) Any permit issued pursuant to paragraph 6, above, may be revoked if the
228 operator or assistant violates any provision of this Ordinance.
- 229 b) A revocation or denial of a permit may be appealed to the City Commission.
- 230
- 231 8) **Indemnification:** All applicants for a UAS permit and any other persons,
232 organizations, firms or corporations on whose behalf the application is made must
233 agree to indemnify the City of Flagler Beach in the manner expressed on the permit
234 application.
- 235
- 236 9) **Insurance:** All applicants for a UAS permit shall furnish proof of insurance.
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- 238 10) **Contraband:** Any unmanned aircraft and/or unmanned aircraft system(s) operated
239 in violation of this ordinance constitute contraband and is subject to seizure by the
240 police or code enforcement officer.
- 241
- 242 11) **Notice:** Any person who operates or assists in the operation of an unmanned aircraft
243 and/or unmanned aircraft system is responsible to ensure they are in compliance with
244 all applicable federal, state, and local laws, including this section. Nothing in this
245 section shall be construed as granting any person permission to operate or assist in
246 the operation of an unmanned aircraft and/or an unmanned aircraft system in
247 violation of any other federal, state, or local law.
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249 **SECTION TWO: SEVERABILITY.** If any provision of this ordinance or tis
250 application to any person or circumstance is held invalid, the invalidity does not affect other
251 provisions or applications of this ordinance which can be given effect without the invalid
252 provision or application, and to this end the provisions of this ordinance are severable.

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254 **SECTION THREE: CODIFICATION.** It is the intent of the City Commission of the
255 City of Flagler Beach that the provisions of this Ordinance shall be codified. The codifier is
256 granted broad and liberal authority in codifying the provision of this Ordinance.

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258 **SECTION FOUR: EFFECTIVE DATE.** This ordinance shall take effect immediately
259 upon final passage.

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261 **PASSED AND ADOPTED** this _____ day of _____, 2017, by the City
262 Commission of the City of Flagler Beach, Florida.

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264 PASSED ON FIRST READING: _____

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266 PASSED ON SECOND READING: _____

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268 _____
269 Linda Provencher, Mayor

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271 *ATTEST:*
272
273 _____
274 Penny Overstreet, City Clerk

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