



To: Public Safety Committee

From: Dylan Mulfinger

Subject: Drones

Date: 10/10/2022

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Stephen Keal of 707 1<sup>st</sup> Ave SE came to council on August 22 and advised that he was having difficulty with his neighbor flying a drone around his house. After his public comments, Council member Payne requested a drone ordinance on the next agenda from the City Attorney and was support by Mayor DeVore.

City Attorney Pat Dillon provided an ordinance to the City Administrator and he prepared the Ordinance for Council. This ordinance was from another city that did not reside in Iowa.

City Administrator Dylan Mulfinger recommended at the September 12 Council meeting to push the ordinance to Public Safety Committee so that the ordinance could be properly vetted, and staff could express their concerns to council. Council sent the ordinance to Public Safety before approving a reading.

Several issues with this ordinance and this process are noted below from Mulfinger:

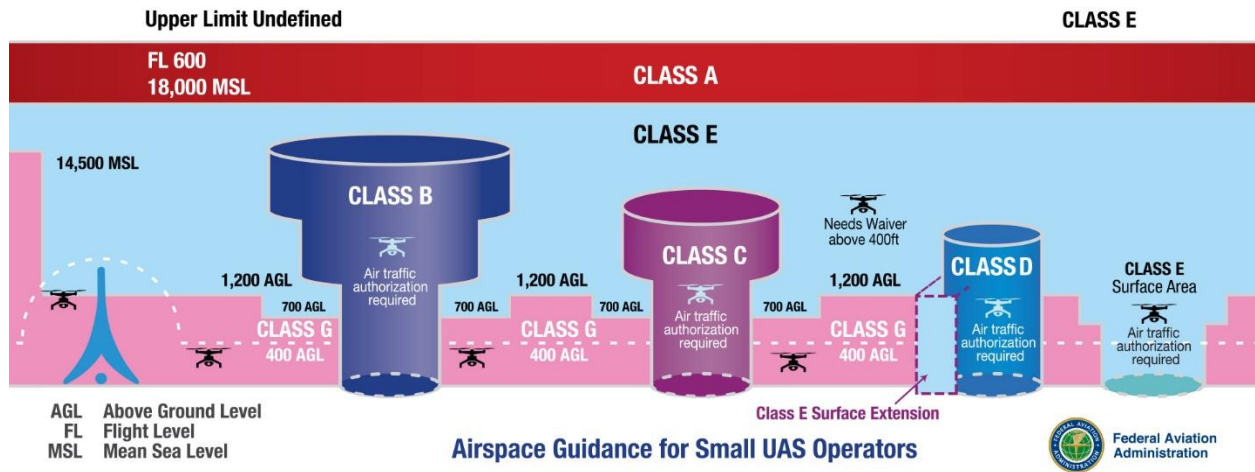
- Drones are just small planes and therefore are already regulated by the Federal Aviation Administration (FAA)
- Proving that someone is flying a drone over someone's property between 0 and 500 feet is not an easy task and will be hard to prove in a court setting
  - The limit is 400 feet from the FAA (Attachment A)
- Commercial drone flying already requires a license and is regulated
- Creating a drone police division will commit unnecessary time for the Police Department
- Talking with the drone owner will solve most of the issues that arise
- Creating an ordinance based on comments from one resident is a terrible practice
- Ordinances should follow a thorough vetting with staff having significant to ensure they can meet the goals and objectives of council
- This ordinance and issue should not have needed any council time and was being taken care of by staff

Attached is one letter from residents regarding the proposed ordinance.

The City Administrator advises Public Safety to provide a recommendation to council that this ordinance be dropped and that no further action be taken on this ordinance.



Attachment A



I see on Facebook that last week at the City Council meeting, a motion was brought forth to regulate or prohibit drone flying in Oelwein. Which as a drone pilot, I don't believe the city would have the right to interfere with the FAA rules/regulations. To fly a professional drone, one must take a FAA approved course/exam which covers the guidelines of what you can and can't do. So, there are already guidelines in place for drone flying. Furthermore, we have a remote that communicates with airports and other aircrafts if necessary. The drones I am referring to are DJI brand drones, which carry the most updated and accurate technologies and data to date.

Regarding the motion, it was also brought to my attention that my neighbor Stephen Kiel on 1<sup>st</sup> Ave SE is the one with the complaint. I was also told that he only stated his side of the story. With all due respect, I think it is important that my side be considered as well. This past April, I was flying my drone to my friend's house because he wanted to see how it worked (toward the old Bumper to Bumper). Typically, I do not fly my drone in that direction, but I was giving a demonstration for a friend who was considering purchasing a drone for himself. When not flying out of town, I fly over the railroad tracks and up to my mom's on 2<sup>nd</sup> Ave NW (she is elderly and lives alone, so I often fly over her house several times a day to check up on her). This means I also fly over the City Hall (and you would think, if there are complaints, it would come from that side of town).

Getting to the matter at hand. I assume my neighbor must have been outside when I was flying back from my friend's house (at 385 feet in the air, because you cannot fly higher than 400 unless you have FAA authorization and notify the local airport). When I was in the process of landing the drone in my backyard, some stranger at the time, was hopping through out yard trying to swat down my drone as I was landing it. Thankfully there are sensors in my drone that prevented it from contacting him because it would have been like sticking your hand in weed eater. I repositioned the drone to land elsewhere. He then came up on our deck, over the dog gate and tried to follow me in the house as I was putting the drone away. I stated to him several times to leave and that's when things got physical. This is all stated in the Oelwein Police log. The officers came to the house to understand what was going on because the drunk neighbor wanted to press charges against me! At that time, my wife showed the police the security camera footage. That's when they came to the conclusion the neighbor was in the wrong. They asked if I wanted to press charges. I said no but they could go back and tell the guy when he sobers up and is not high, if he wants to come down and talk about the drone, I would show it to him and assure him that my intentions are not to invade anyone's space. I was simply just flying by like airplanes and life flight does. Which brings me to the rule that if another aircraft is in the air, you must land your drone (just making that statement so you understand that I know the rules and I am following them or DJI themselves will shut me down because they monitor your flight log). All my flights have a documented flight log and our security cameras are time stamped, so if you would like to view first hand, supporting documentation, I will be more than happy to share. I would also be willing to bring one of my drones down to the City Hall and show you what it is all about. Cause realistically, drones are just the beginning of future technologies. Look at cell phones, no one thought 10 years ago we would be doing what we do with them today! Amazon is already looking at drone delivery and medicine is already being delivered to 3<sup>rd</sup> world remote countries via drones. Like all things, it's an advancement of technology.

Sincerely,

Gary & Elizabeth Cummings

101 7<sup>th</sup> Street SE Oelwein, Iowa 50662 (319-238-2378)

## **49 USC 44809: Exception for limited recreational operations of unmanned aircraft**

Text contains those laws in effect on October 4, 2022

### **From Title 49-TRANSPORTATION**

SUBTITLE VII-AVIATION PROGRAMS

PART A-AIR COMMERCE AND SAFETY

subpart iii-safety

CHAPTER 448-UNMANNED AIRCRAFT SYSTEMS

### **Jump To:**

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[Prior Provisions](#)

## **§44809. Exception for limited recreational operations of unmanned aircraft**

(a) IN GENERAL.-Except as provided in subsection (e), and notwithstanding chapter 447 of title 49, United States Code, a person may operate a small unmanned aircraft without specific certification or operating authority from the Federal Aviation Administration if the operation adheres to all of the following limitations:

- (1) The aircraft is flown strictly for recreational purposes.
- (2) The aircraft is operated in accordance with or within the programming of a community-based organization's set of safety guidelines that are developed in coordination with the Federal Aviation Administration.
- (3) The aircraft is flown within the visual line of sight of the person operating the aircraft or a visual observer co-located and in direct communication with the operator.
- (4) The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft.
- (5) In Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, the operator obtains prior authorization from the Administrator or designee before operating and complies with all airspace restrictions and prohibitions.
- (6) In Class G airspace, the aircraft is flown from the surface to not more than 400 feet above ground level and complies with all airspace restrictions and prohibitions.
- (7) The operator has passed an aeronautical knowledge and safety test described in subsection (g) and maintains proof of test passage to be made available to the Administrator or law enforcement upon request.
- (8) The aircraft is registered and marked in accordance with chapter 441 of this title and proof of registration is made available to the Administrator or a designee of the Administrator or law enforcement upon request.

(b) OTHER OPERATIONS.-Unmanned aircraft operations that do not conform to the limitations in subsection (a) must comply with all statutes and regulations generally applicable to unmanned aircraft and unmanned aircraft systems.

### **(c) OPERATIONS AT FIXED SITES.-**

(1) OPERATING PROCEDURE REQUIRED.-Persons operating unmanned aircraft under subsection (a) from a fixed site within Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, or a community-based organization conducting a sanctioned event within such airspace, shall make the location of the fixed site known to the Administrator and shall establish a mutually agreed upon operating procedure with the air traffic control facility.

(2) UNMANNED AIRCRAFT WEIGHING MORE THAN 55 POUNDS.-A person may operate an unmanned aircraft weighing more than 55 pounds, including the weight of anything attached to or carried by the aircraft, under subsection (a) if-

(A) the unmanned aircraft complies with standards and limitations developed by a community-based organization and approved by the Administrator; and

(B) the aircraft is operated from a fixed site as described in paragraph (1).

### **(d) UPDATES.-**

(1) IN GENERAL.-The Administrator, in consultation with government, stakeholders, and community-based organizations, shall initiate a process to periodically update the operational parameters under subsection (a), as appropriate.

(2) CONSIDERATIONS.-In updating an operational parameter under paragraph (1), the Administrator shall consider-

(A) appropriate operational limitations to mitigate risks to aviation safety and national security, including risk to the uninvolved public and critical infrastructure;

(B) operations outside the membership, guidelines, and programming of a community-based organization;

(C) physical characteristics, technical standards, and classes of aircraft operating under this section;

(D) trends in use, enforcement, or incidents involving unmanned aircraft systems;

(E) ensuring, to the greatest extent practicable, that updates to the operational parameters correspond to, and leverage, advances in technology; and

(F) equipment requirements that facilitate safe, efficient, and secure operations and further integrate all unmanned aircraft into the national airspace system.

(3) SAVINGS CLAUSE.-Nothing in this subsection shall be construed as expanding the authority of the Administrator to require a person operating an unmanned aircraft under this section to seek permissive authority of the Administrator, beyond that required

in subsection (a) of this section, prior to operation in the national airspace system.

(e) **STATUTORY CONSTRUCTION.**-Nothing in this section shall be construed to limit the authority of the Administrator to pursue an enforcement action against a person operating any unmanned aircraft who endangers the safety of the national airspace system.

(f) **EXCEPTIONS.**-Nothing in this section prohibits the Administrator from promulgating rules generally applicable to unmanned aircraft, including those unmanned aircraft eligible for the exception set forth in this section, relating to-

- (1) updates to the operational parameters for unmanned aircraft in subsection (a);
- (2) the registration and marking of unmanned aircraft;
- (3) the standards for remotely identifying owners and operators of unmanned aircraft systems and associated unmanned aircraft; and
- (4) other standards consistent with maintaining the safety and security of the national airspace system.

(g) **AERONAUTICAL KNOWLEDGE AND SAFETY TEST.**-

(1) **IN GENERAL.**-Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with manufacturers of unmanned aircraft systems, other industry stakeholders, and community-based organizations, shall develop an aeronautical knowledge and safety test, which can then be administered electronically by the Administrator, a community-based organization, or a person designated by the Administrator.

(2) **REQUIREMENTS.**-The Administrator shall ensure the aeronautical knowledge and safety test is designed to adequately demonstrate an operator's-

(A) understanding of aeronautical safety knowledge; and

(B) knowledge of Federal Aviation Administration regulations and requirements pertaining to the operation of an unmanned aircraft system in the national airspace system.

(h) **COMMUNITY-BASED ORGANIZATION DEFINED.**-In this section, the term "community-based organization" means a membership-based association entity that-

- (1) is described in section 501(c)(3) of the Internal Revenue Code of 1986;
- (2) is exempt from tax under section 501(a) of the Internal Revenue Code of 1986;
- (3) the mission of which is demonstrably the furtherance of model aviation;
- (4) provides a comprehensive set of safety guidelines for all aspects of model aviation addressing the assembly and operation of model aircraft and that emphasize safe aeromodelling operations within the national airspace system and the protection and safety of individuals and property on the ground, and may provide a comprehensive set of safety rules and programming for the operation of unmanned aircraft that have the advanced flight capabilities enabling active, sustained, and controlled navigation of the aircraft beyond visual line of sight of the operator;
- (5) provides programming and support for any local charter organizations, affiliates, or clubs; and
- (6) provides assistance and support in the development and operation of locally designated model aircraft flying sites.

(i) **RECOGNITION OF COMMUNITY-BASED ORGANIZATIONS.**-In collaboration with aeromodelling stakeholders, the Administrator shall publish an advisory circular within 180 days of the date of enactment of this section that identifies the criteria and process required for recognition of community-based organizations.

(Added Pub. L. 115–254, div. B, title III, §349(a), Oct. 5, 2018, 132 Stat. 3298 .)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The date of enactment of this section, referred to in subsecs. (g)(1) and (i), is the date of enactment of Pub. L. 115–254, which was approved Oct. 5, 2018.

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (h)(1), (2), is classified to section 501 of Title 26, Internal Revenue Code.

#### **PRIOR PROVISIONS**

Provisions similar to those in subsecs. (a) and (e) of this section were contained in section 336(a) and (b) of Pub. L. 112–95, which was set out in a note under section 40101 of this title, prior to repeal by Pub. L. 115–254, div. B, title III, §349(b)(2), Oct. 5, 2018, 132 Stat. 3300 . The remainder of the note comprised of subtitle B of title III of Pub. L. 112–95 was transferred and is set out under section 44802 of this title.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **USE OF UNMANNED AIRCRAFT SYSTEMS FOR EDUCATIONAL PURPOSES**

Pub. L. 115–254, div. B, title III, §350, Oct. 5, 2018, 132 Stat. 3300 , as amended by Pub. L. 116–283, div. H, title C, §10002, Jan. 1, 2021, 134 Stat. 4863 , provided that:

"(a) **EDUCATIONAL AND RESEARCH PURPOSES.**-For the purposes of section 44809 of title 49, United States Code, as added by this Act, a 'recreational purpose' as distinguished in subsection (a)(1) of such section shall include an unmanned aircraft system-

"(1) operated by an institution of higher education for educational or research purposes;

"(2) flown as part of an established Junior Reserve Officers' Training Corps (JROTC) program for education or research purposes; or

"(3) flown as part of an educational program that is chartered by a recognized community-based organization (as defined in subsection (h) of such section).

"(b) UPDATES.-In updating an operational parameter under subsection (d)(1) of such section for unmanned aircraft systems operated by an institution of higher education for educational or research purposes, the Administrator shall consider-

"(1) use of small unmanned aircraft systems and operations at an accredited institution of higher education, for educational or research purposes, as a component of the institution's curricula or research;

"(2) the development of streamlined, risk-based operational approval for unmanned aircraft systems operated by institutions of higher education; and

"(3) the airspace and aircraft operators that may be affected by such operations at the institution of higher education.

"(c) DEADLINE FOR ESTABLISHMENT OF PROCEDURES AND STANDARDS.-Not later than 270 days after the date of enactment of this Act [Oct. 5, 2018], the Administrator of the Federal Aviation Administration may establish regulations, procedures, and standards, as necessary, to facilitate the safe operation of unmanned aircraft systems operated by institutions of higher education for educational or research purposes.

"(d) DEFINITIONS.-In this section:

"(1) INSTITUTION OF HIGHER EDUCATION.-The term 'institution of higher education' has the meaning given to that term by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

"(2) EDUCATIONAL OR RESEARCH PURPOSES.-The term 'education or research purposes', with respect to the operation of an unmanned aircraft system by an institution of higher education, includes-

"(A) instruction of students at the institution;

"(B) academic or research related uses of unmanned aircraft systems that have been approved by the institution, including Federal research;

"(C) activities undertaken by the institution as part of research projects, including research projects sponsored by the Federal Government; and

"(D) other academic activities approved by the institution.

"(e) STATUTORY CONSTRUCTION.-

"(1) ENFORCEMENT.-Nothing in this section shall be construed to limit the authority of the Administrator to pursue an enforcement action against a person operating any unmanned aircraft who endangers the safety of the national airspace system.

"(2) REGULATIONS AND STANDARDS.-Nothing in this section prohibits the Administrator from promulgating any rules or standards consistent with maintaining the safety and security of the national airspace system."

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

AN ORDINANCE ADDING CHAPTER 23 ARTICLE IX DRONES OF THE CODE OF  
ORDINANCES OF THE CITY OF OELWEIN, IOWA

BE IT ORDAINED by the City Council of the City of Oelwein, Iowa, as follows:

Section 1. That the General Ordinances of the City of Oelwein adopted July 1, 2012, be amended by adding the following to Section CHAPTER 23 ARTICLE IX DRONES

REGULATIONS RELATED TO THE OPERATION OF UNMANNED AERIAL VEHICLES ORDINANCE; PROVIDING, RULES AND REQUIREMENTS FOR THE OPERATION OF UNMANNED AERIAL VEHICLES WITHIN THE CITY OF OELWEIN; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OELWEIN, IOWA:

ARTICLE I

Section 1.

Purpose: Harmony with Other Governmental Regulations

The City Council hereby recognizes that unmanned aerial vehicles (UAV), also known as drones, can pose unique safety, nuisance, and privacy invasion risks; thus regulating the operation of unmanned aerial vehicles within the city is needed to promote the public safety and welfare of the City and its residents. These regulations are to be read in harmony with all other regulations regarding the use of unmanned aerial vehicles, specifically including any rules promulgated by the Federal Aviation Administration. Further, compliance with these regulations should not be interpreted as express, implied or tacit approval to operate an unmanned aerial vehicle in violation of any other governmental regulations or in a manner, which jeopardizes the health, safety, or welfare of the public. Nothing in this article shall be construed to authorize the operation of any UAV in the City Limits airspace in violation of any Federal statute or rules promulgated thereunder. Operators of unmanned aerial vehicles should familiarize themselves with all applicable regulations relating to the use of an unmanned aerial vehicle, including the Federal Aviation Administration requirements regarding notification of an airport operator and control tower, where applicable, prior to operating an unmanned aerial vehicle within five miles of an airport, including but not limited to the Oelwein Municipal Airport.

Section 2 – Definitions

1. The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
  - a. "Commercial Use" means the use of an Unmanned Aerial Vehicle within the City
    - i. Limits for a commercial purpose, including aerial photography, aerial mapping, or geospatial Imaging.
  - b. "Commercial User" means any company, entity or person who is in the business of flying an Unmanned Aerial Vehicle for a Commercial Use and has a license to fly.
  - c. "OPD" means Oelwein Police Department
  - d. "FAA" means the Federal Aviation Administration

- e. "Law Enforcement Agency" means a lawfully established federal, state, or local public law enforcement agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.
- f. "Private Property" means all parcels of land within the City of Oelwein limits that are not Public Property, including, but not limited to, residences, schools, churches, resorts, utility substations, golf course, or lakes.
- g. "Public Property" means streets, rights of way, parks, lakes, and other parcels of land owned by the City of Oelwein, Iowa.
- h. "Unmanned Aerial Vehicle" or "UAV" (aka "Drone") means an aircraft that maybe flown without a pilot or operator in or touching the aircraft.

### Section 3 - Restrictions; Exceptions

1. Private Property. It is unlawful for a person to use a UAV over Private Property at a level between zero feet and five hundred feet above the ground level of the Private Property without the express written permission of the owner of the Private Property over which the UAV is flying.
2. Public Property. The use of a UAV/drone over Public Property within the City Limits is unlawful unless the use has been authorized by the issuance of a Special Event Permit approved by City Council.
3. Commercial Use on Private or Public Property. The Commercial Use of UAV within the City Limits is unlawful unless the Commercial User has met the requirements provided in subsection A and B above with respect to operation of a UAV on either Private Property or Public Property and the following additional requirements:
  - a. Registered as a Commercial User with the OPD, said registration to include proof of having obtained the appropriate certifications or registrations required from the FAA for the type of Commercial Use(s) to be conducted within the City Limits by the Commercial User; Provided a list of the types and number of UAVs that the Commercial User plans to use within the City Limits, as well as the brand and model of each UAV; any registration number, license number or other identifying information for each such UAV, specifically including registration numbers supplied by the FAA; and photos of each UAV, at least one such photo to show the particular registration or license number for each UAV; and
  - b. At least four hours prior to each Commercial Use of a UAV, the Commercial User shall provide notification to the OPD and the O-ACM or his/her designee of the planned date, time, location of the Commercial Use, contact information for the Commercial User, and other information required by the Police Department.
4. Exceptions. In addition to the uses allowed above, the use of a UAV is allowed Within the City Limits for:
  - a. Recreational use of an UAV within one's own property so long as such use is at a height of less than five hundred feet (500') and not in violation of the additional violations set forth in subsection E below; or
  - b. By a Law Enforcement Agency in response to an emergency situation or after obtaining a warrant based upon probable cause that criminal activity is occurring.
5. Additional Violations. In addition to those violations enumerated above, the following are violations of this Article, even under an otherwise authorized use or exception. No person or entity shall operate a UAV within the City Limits:
  - a. In a careless or reckless manner that poses an apparent or actual threat of harm, or actual harm to persons or property; or



- b. Without the express permission of a person, owner, or authorized representative, to capture, view, record or transmit any visual image or audio recording of such person or their private real property, located In the City Limits, under circumstances in which the subject person or owner of the private property has a reasonable expectation of privacy (including, but not limited to, inside a private residence, school room, resort room, office, or inside an enclosed yard); or
- c. In such a manner as to intentionally harass, annoy, or assault a person or persons or to cause a public nuisance.

Section 4 — Violations/Penalties:

- 1. Violation of any part of this ordinance shall be a simple misdemeanor.

Section 2. That all Ordinances or parts thereof in conflict herewith be and the same are hereby repealed. This Ordinance shall become effective upon the date specified above.

First reading –

Second reading –

Third reading –

Passed and adopted by the City Council of the City of Oelwein, Iowa, this \_\_\_\_\_ day of

\_\_\_\_\_.

\_\_\_\_\_  
Brett DeVore, Mayor

Attest:

\_\_\_\_\_  
Dylan Mulfinger, City Administrator

Recorded \_\_\_\_\_, 2022.

\_\_\_\_\_  
Dylan Mulfinger, City Administrator

First Reading on \_\_\_\_\_:  
It was moved by \_\_\_\_\_ and seconded by  
that the Ordinance as read be adopted, and upon roll  
call there were:

AYES    NAYS    ABSENT    ABSTAIN

Weber  
Garrigus  
Lenz  
Stewart  
Seeders  
Payne

Second Reading on \_\_\_\_\_ It was moved by  
and seconded by \_\_\_\_\_ that the Ordinance as read  
be adopted (or to suspend the rules), and upon roll  
call there were:

AYES    NAYS    ABSENT    ABSTAIN

Weber  
Garrigus  
Lenz  
Stewart  
Seeders  
Payne

Third Reading on \_\_\_\_\_ It was  
moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that  
the Ordinance as read be adopted (or to suspend the  
rules) and upon roll call there were:

AYES    NAYS    ABSENT    ABSTAIN

Weber  
Garrigus  
Lenz  
Stewart  
Seeders  
Payne