



## THE CITY OF KEY WEST

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# EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: Ron Ramsingh, Assistant City Attorney

Date: July 24, 2015

RE: A new ordinance to regulate the use of drones over the City of Key West consistent with federal regulations.

Sponsor: Commissioner Jimmy Weekley

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### **Action statement:**

This proposed ordinance prohibits the use of Unmanned Aerial Vehicles (drones) in, or over the City of Key West, unless otherwise permitted by the Federal Aviation Administration (FAA). This proposal is consistent with the current federal regulations concerning the use of drones.

### **Background:**

Currently, the FAA requires that an operator of a drone aircraft possess either a:

1. **Certificate of Authorization** that are issued for governmental, educational or research purposes;
2. **Letter of Exemption** that are issued for civil, commercial operations; or
3. Be a **recreational operator/hobbyist**.

In order to be considered a recreational operator/hobbyist pursuant to the FAA regulations, one must fly strictly for hobby or recreational use; operate according to a community-based set of

safety guidelines and within the programming of a nationwide community based organization (such as the Academy for Model Aeronautics); the aircraft cannot weigh more than 55 pounds (unless an exemption is secured); the aircraft must be operated in a manner that does not interfere with, and gives way to manned aircraft; and when flown within 5 miles of an airport, the operator of the aircraft must provide notice to the airport tower of his/her intent to operate. The recreational operator, as well as the other categories of use are further explained in the *Interpretation of the Special Rule for Model Aircraft*, which is attached as Exhibit A.

The F.A.A. is currently in the lengthy process of addressing the use of unmanned aerial vehicles, or drones in response to the meteoric rise in the use of drones as video and photographic platforms. This increase is largely due to the increasing availability of drones to the general public, tempered by increased affordability, along with better camera and battery technology. According to F.A.A. statistics so far in 2015, 750,000 DJI drones have been sold in the United States.<sup>1</sup> Congress has given the FAA until September 30, 2015 to propose new rules to integrate drones into the national airspace, but according to the F.A.A. representatives, that deadline has been extended well into 2016 and implementation of new regulations are not expected until well after that.

While the typical commercial drone is a multi-rotor rig (4 to 8 rotors) that is electric powered and carries a high resolution camera, there are also drones with highly sophisticated electronics including night vision and First Person View (FPV) that exponentially increases the range and capabilities of these aircraft beyond the typical backyard model flyers from years ago. The FAA's current regulations generally address such extended range aircraft, and offer limited exemptions for research, educational, military, and scientific purposes these are called Certificates of Authorization. Additionally, commercial or civil operators can apply for a Letter of Exemption, which are increasingly being issued to commercial operators with conditions, as well as movie studios. Additionally, The National Transportation Safety Board (NTSB) issued an opinion on March 6, 2014 in FAA & Michael Huerta vs. Pirker in favor of the FAA wherein the NTSB agreed with the FAA that a fixed wing drone did in fact meet the definition of a drone according to the FAA regulations.

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<sup>1</sup> DJI quadcopters are the most common type of drones in commercial video and photography businesses.

This ordinance proposes to enact a local regulation that is consistent with federal law which gives a layer of enforceability and *real* deterrence that is currently lacking in Key West, and frankly around the country. The city cannot implement an ordinance that prohibits what the federal or state governments permit, nor can the city prohibit activity that the federal or state governments allow. This ordinance does neither. This ordinance simply states that an operator must comply with the F.A.A. regulations concerning drone aircraft, or face a violation punishable as a 2<sup>nd</sup> degree misdemeanor.

During the 1<sup>st</sup> iteration of this ordinance in late 2014, there were several meetings attended by the various commercial stakeholders in Key West as well as representatives from the Monroe County Airport, the U.S. Navy, as well as the Mosquito Control District. What these meetings have served to accomplish is solely to veer further away from the very simple federal mandate that drones are *not* permitted to be operated in the national airspace *unless* one of the aforementioned authorizations are possessed by an operator, or if the operator is a pure recreational operator, as outlined above. Most recently, on July 23, 2015, the undersigned and Commissioner Weekley had a teleconference with the new airports director for Monroe County, Mr. DeGraw, the Assistant County Attorney assigned to the airports, Mr. Mercado, Mike Wilson of the F.A.A., and F.A.A. attorneys about this proposed ordinance and none of the aforementioned individuals had an objection the proposed ordinance. In fact, Mr. Wilson suggested that the city not have a sunset provision in the proposed ordinance in order to have some level of enforceability, even after the F.A.A.'s new rules are in effect in the future.

There has been at least three documented incidents in Key West where a drone was being operated over a crowd and either malfunctioned or was being operated carelessly that resulted in the drone striking a bystander. The first was at the East Martello Tower during the 4<sup>th</sup> of July fireworks show in 2014. The second was at the Westin Resort pier during a wedding ceremony, also in 2014. The third incident was during the Pride parade in 2015 when a local commercial drone operator was operating a camera equipped drone flying very low over the parade before colliding into a building on Duval Street. From a practical perspective, although the federal

government has regulations regarding drones, they have demonstrated no real *deterrence* effect<sup>2</sup>. The FAA does not have an enforcement branch that has the ability to immediately stop reckless or unauthorized drone operations the way a municipal police department would, and which this ordinance would allow for. Therefore, practically speaking, because there is no real perceived risk right now of penalty on behalf of the illegal operators, drone usage is so open and prevalent.

**Options:**

1. To approve the proposed ordinance which will outright disallow the operation of drones in or over Key West unless otherwise permitted by the FAA
2. To defeat the proposed ordinance.

**Recommendation:** To approve the proposed ordinance thereby creating a ban on the operation of drones in and over the City of Key West, unless otherwise permitted by the FAA, consistent with current and future federal regulations on the subject. This gives the KWPD the ability to directly and immediately address drone usage that is prohibited by the F.A.A.

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<sup>2</sup> The F.A.A. can only monetarily fine an individual for operating a drone aircraft without the proper federal approvals. There are no criminal penalties that can possibly create a deterrent effect in place.