



City of Greenwood Village

6060 South Quebec Street
Greenwood Village, CO
80111

Staff Report

Ordinance No. 03-18 on First Reading: An Ordinance Amending Chapter 9 of the Greenwood Village Municipal Code Regarding Small Unmanned Aircraft Systems

TO: Honorable Mayor and City Councilmembers

FROM: Tonya Haas Davidson, City Attorney

Executive Summary:

Ordinance No. 03-18 amends three sections of the Greenwood Village Municipal Code pertaining to General Offenses (criminal behavior) in order to address unlawful behavior involving the use of small unmanned aircraft systems (which for purposes of this memo will simply be referred to as “drones.”)

Recommendation:

Staff recommends that City Council approve Ordinance 03-18 on first reading and order it published in full.

Attachments:

Ordinance 03-18.

DISCUSSION

Background

Currently, there are no restrictions or safety requirements on unmanned aircrafts in the Greenwood Village Municipal Code. This is primarily because the Federal Aviation Administration has sole jurisdiction over all U.S. airspace and has not given individual states or local governments the authority to regulate airspace at low altitudes, even for hobbyist drone activities.

However, although the FAA has jurisdiction over airspace and operation of aircraft, its mission does not include developing or enforcing policies pertaining to privacy, civil liberties, interference with emergency service providers, or the safety of persons and property on the ground, leaving room for local governments to enact laws in these areas regarding drone operators.

Concerns and complaints that have been received regarding drones include trespass/invasion of privacy, filming concerts at Fiddler’s Green without permission, harassment of pets and horses, and interference with public safety operations.

Currently, there is legislation proposed at the state level (House Bill 18-1314) that addresses drone operation obstructing peace officers, firefighters, and other emergency personnel. The bill does not preempt local governments from passing their own such legislation.

Ordinance No. 03-18

Ordinance No.03-18 proposes to amend three current General Offenses found in Chapter 9 of the Greenwood Village Municipal Code as follows:

1. New Section 9-8-50 Invasion of privacy by small unmanned aircraft systems.

A new offense is proposed for the Greenwood Village Municipal Code, titled Invasion of Privacy by Small Unmanned Aircraft Systems. The title is intended to distinguish the crime from the state offense of Invasion of Privacy, which requires that the person observed be in a state of undress. The propose municipal violation, on the other hand, only pertains to observation by a small unmanned aircraft system and applies to observing or recording a person in a place where they have a reasonable expectation of privacy. Court cases have determined that a person has such an expectation at and below 200’.

2. Section 9-16-30 - Trespassing.

In addition to other behavior that subjects someone to a charge of Trespassing, a new subsection has been added to section 9-16-30 to make it “unlawful for anyone to operate, launch, or land an unmanned aircraft system on or over private property without the prior consent of the property owner.”

The purpose of this language is to allow the police to address complaints of private property owners, such as Fiddler’s Green Amphitheater, that someone is operating a drone on their property without their permission.

3. Section 9-8-40 - Harassment.

Ordinance No. 03-2018 adds language to Section 9-8-40 making it a crime of Harassment for anyone to fly, use, launch, land, employ or navigate a drone on or over the property of another with the intent to harass, annoy or alarm the animals or human occupants thereof or to photograph an individual or individuals for the purpose of publishing or otherwise publicly disseminating such photograph or video without permission or lawful authorization.

Unlike Trespass, this section is meant to address the use of drones to intentionally haze animals, intentionally annoy someone, or to fly over a venue for purposes of disseminating photographs or video. Intent is sometimes difficult to prove, however, which is why the Trespass and Invasion of Privacy violations are also recommended in order to address using another’s property or invading their privacy where intent regarding purpose is difficult to prove beyond a reasonable doubt.

4. Section 9-40-20 - Interference with a peace officer or firefighter.

Ordinance No. 03-2018 proposes to amend section 9-40-20, Interference with a police officer or firefighter, by adding language making it unlawful to operate an unmanned aircraft system in a manner that obstructs, impairs or hinders a peace officer or firefighter in the discharge or apparent discharge of their official duties. As mentioned previously, this is similar to current legislation being considered by the General Assembly in a bill that does not prohibit municipalities from regulating the same thing should they so choose. Nor does the proposed language conflict with the proposed state law. It is only

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when a local ordinance conflicts with a state law in a matter of mixed state and local concern that the ordinance is superseded by state statute. City of Aurora v. Scott, 2017 COA 24.

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