

ORDINANCE NO. 16XX(16)

An Ordinance of the City Council of the City of Lompoc, County of Santa Barbara, State of California, Amending the Lompoc Municipal Code by Adding Chapter 9.56 To Regulate Unmanned Aircraft Systems

WHEREAS, civil unmanned model aircraft or unmanned aircraft systems (UAS), commonly known as drones, can fly under the control of a remote pilot, first person view (FPV), or via a geographic positioning system (GPS) guided autopilot mode; and

WHEREAS, UAS have become increasingly popular and available to private citizens and hobbyists for recreational use due to the declining cost of new technology; and

WHEREAS, UAS can fly at altitudes above and below the navigable airspace, which is generally set at 400 feet; and

WHEREAS, the Federal Aviation Administration (FAA) has little or no ability to enforce FAA flight regulations against small UAS of 55 pounds or less that fly below navigable airspace and that are flown strictly for recreational use; and

WHEREAS, UAS are restricted within five miles of airport boundaries and Class C airspace, due to the threat UAS present to other aircraft and under the FAA Modernization and Reform Act of 2012, unless expressly permitted by air traffic control; and

WHEREAS, United States airspace is among the busiest in the world, with up to 87,000 flights per day, including commercial airliners, freight haulers, air taxis, private aircraft, and military aircraft; and

WHEREAS, UAS have limited "vision" compared to that of human pilots and do not have the same capability to avoid other aircraft as manned aircraft do; and

WHEREAS, UAS have, at times, gotten out of human control, and, in at least one instance, a UAS had to be shot down; and

WHEREAS, UAS are susceptible to electronic interference and electronic seizure of control by unauthorized operators; and

WHEREAS, there has been at least one instance outside the United States of a UAS collision with manned aircraft and another incident of a near miss, and these instances occurred in airspace much less crowded than that of the United States; and

WHEREAS, UAS have a higher incidence of accidents than manned aircraft in that U.S. Customs and Border Protection has reported 52.7 UAS accidents per 100,000 hours of flight time, which is seven times the civil aviation rate of 7.11 accidents per 100,000 hours; and

WHEREAS, UAS can be equipped with high definition cameras, night vision cameras, infrared scopes, audio surveillance equipment, and a variety of weapons, including guns, tear gas, projectiles, clubs, sharpened objects, and combusive or explosive composites and materials; and

WHEREAS, UAS have the capability to surveil individuals, groups, and populations on a 24-hour basis, following and recording their movements for days and weeks in an unprecedented way; and

WHEREAS, UAS have become a hazard to the safe operations of California stadiums in that several UAS have been observed in the past year flying under and above navigable airspace directly over stadiums, which creates an unnecessary risk of accident, terror attack, opportunity for counter surveillance, or the delivery of harmful substances in densely populated areas and at large venue special events; and

WHEREAS, the operation of UAS can pose an unreasonable and unacceptable hazard to full-scale aircraft in flight and to persons and property on the ground; and

WHEREAS, the operation of surveillance or armed UAS can present an unreasonable and unacceptable threat to the rights of individual privacy, freedom of association and assembly in the City of Lompoc; and

WHEREAS, in order to mitigate such risks, protect the public's safety, and promote the general welfare, the City Council desires to regulate the use of UAS consistent with Federal Aviation Rules.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby adopts the recitals set forth above as true and correct.

SECTION 2. The Lompoc Municipal Code is hereby amended by adding Chapter 9.56 - Unmanned Aircraft Systems to read as follows:

CHAPTER 9.56 – UNMANNED AIRCRAFT SYSTEMS

- 9.56.10 Purpose and Intent.
- 9.56.20 Definitions.
- 9.56.30 Use or Activity Prohibited.
- 9.56.40 Exemptions.
- 9.56.50 Enforcement.

9.56.010 Purpose and Intent

The purpose of this Chapter 9.56 is to reasonably regulate the use of any unmanned aircraft system (UAS), as defined herein, within the City in order to promote public safety and welfare, protect individual privacy, and protect people attending large venue special events. This chapter is intended to operate in conjunction with the laws, regulation and policies of the Federal Aviation Administration (FAA).

9.56.020 Definitions

For purposes of this Chapter 9.56, unless the context clearly indicates otherwise, the following words and phrases have the meanings set forth below:

“Aircraft” shall mean any contrivance used or designed for navigation of, or flight in, the air.

“Airport” shall mean any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, and all airport buildings and facilities located thereon.

“Certificate of waiver” and “certificate of authorization” shall mean an FAA grant of approval for a specific flight operation.

“City-Sponsored Community Event” shall mean a social, philanthropic, cultural, recreational, dramatic, educational, or musical event sponsored solely by the City or co-sponsored by the City.

“Critical infrastructure” shall mean any system or asset so vital to the State of California or City the incapacity or destruction of the system or assets would have a debilitating impact on security, economic security, public health and safety, or any combination of those matters. “Critical infrastructure” shall include, but shall not be limited to, the buildings and structures of: City Hall, fire stations, police stations, community centers, water treatment and water facilities, electric facilities, transportation maintenance yards, **[NOTE: Add or delete more examples of city critical infrastructure.]** _____, _____, and _____. **[NOTE: Include “state critical infrastructure” in this definition only if SB 868 § 21754(a)(1) is not passed by the Legislature and signed by the Governor. If SB 868 § 21754(a)(1) is passed by the Legislature and signed by the Governor, then the definition should state it is applicable to “City critical infrastructure” only.]**

“Drone” shall mean an unmanned model aircraft that can fly under the control of a remote pilot or by a geographic positioning system (GPS) guided autopilot mechanism, including, but not limited to, toy or model aircraft, helicopters, and/or other similar personal and/or recreational devices.

“Harass” and “harassment” shall mean the act of unlawful violence, a credible threat of violence, or a knowing and willful course of unwanted conduct directed at a specific person or group of persons that seriously alarms, startles, threatens, intimidates, or annoys such person or persons, or places such person or persons in fear for their safety or welfare, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person or persons at whom the conduct is directed. **[This definition is consistent with CCP § 527.6(b).]**

“Heliport” shall mean any area of land, water, or structure used, or intended for use, for the landing and takeoff of helicopters, and any appurtenant areas that are used, or intended for use, for heliport buildings or other heliport facilities or rights-of-way, and all heliport buildings and facilities located thereon.

“Large venue special events” shall mean any event held in a public park or an open-air facility that is open to the public and intended to attract large groups of people.

“Model aircraft” shall mean a UAS that is capable of sustained flight in the atmosphere and flown for hobby or recreational purposes.

“Operation of unmanned aircraft” and “operate” shall mean the use, navigation, or piloting of any UAS in the airspace over the land or waters of the City during the takeoff, flight, or landing of that UAS.

“Operator” shall mean any person using, navigating, or piloting any UAS in the airspace over the land or waters of the City during the takeoff, flight, or landing of that UAS.

“Permanent areas” shall mean areas on land or water that provide for launch, recovery, and operation of small UAS.

“Person” shall mean any individual, firm, partnership, corporation, limited liability company, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative.

“Pilot” shall mean the person in command of a UAS while underway.

“Public unmanned aircraft system” shall mean any UAS that meets the qualifications and conditions required for operation of a public aircraft, as defined in Section 40102 of Title 49, United States Code.

“Recreational use” and “hobby use” shall mean the operation of UAS for personal interests or enjoyment outside one’s regular occupation and not for work, business purposes, or for compensation of hire.

“Sense and avoid capability” shall mean the capability of any UAS to remain a safe distance from and to avoid collisions with other airborne aircraft.

“Small unmanned aircraft” shall mean a UAS weighing less than 55 pounds.

“Unmanned aircraft system” and “UAS” shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft, that are required for the pilot in command to operate safely and efficiently in the national airspace system.

“Unmanned aircraft” shall mean an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.

“Visual line of sight” shall mean the UAS operator’s unobstructed view of that UAS.

9.56.030 Use or Activity Prohibited

- A. Nothing contained in this Chapter 9.56 shall be deemed to permit or authorize any use or activity of any UAS that is otherwise prohibited by any state or federal law. Therefore, no person shall operate any UAS within the City in a manner that:
1. **[is prohibited by any federal statute or regulation governing aeronautics, NOTE: Include this provision only if SB 868 § 21758(a)(2) is not passed by the Legislature and signed by the Governor.]**
 2. in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the FAA,
 3. **[is careless or reckless so as to endanger the life or property of another; the standard for what constitutes careless and reckless operation under this section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics, including, but not limited to Federal Aviation Rule § 91.13, NOTE: Include this provision only if SB 868 § 21758(a)(3) is not passed by the Legislature and signed by the Governor.]**
 4. **[constitutes a nuisance under Section 3479 of the Civil Code, NOTE: Include this provision only if SB 868 § 21758(a)(4) is not passed by the Legislature and signed by the Governor.]**
 5. **[violates an individual’s right to privacy under Section 1 of Article I of the California Constitution, NOTE: Include this provision only if SB 868 § 21758(a)(5) is not passed by the Legislature and signed by the Governor.]**
 6. **[constitutes trespass under California law, NOTE: Include this provision only if SB 868 § 21758(a)(6) is not passed by the Legislature and signed by the Governor.]** and

7. **[does not first comply with all licensing, registration, and marking requirements required by the FAA. NOTE: Include this provision only if SB 868 § 21760 is not passed by the Legislature and signed by the Governor.]**
- B. In addition, no person shall do any of the following within the City:[NOTE: Add to or delete the following prohibitions.]
1. **[operate any UAS within five miles of an airport without the prior express authorization of the airport air traffic control tower, NOTE: Include this provision only if SB 868 § 21754(c) is not passed by the Legislature and signed by the Governor.]**
 2. **[operate any UAS within 1,000 feet of a heliport without the prior express authorization of the owner or operator of the heliport, NOTE: Include this provision only if SB 868 § 21754(b) is not passed by the Legislature and signed by the Governor.]**
 3. **[operate any UAS in a manner that interferes with manned aircraft, NOTE: Include this provision only if SB 868 § 21758(a)(1) is not passed by the Legislature and signed by the Governor.]. [In addition, the operator must always give way to any manned aircraft-Include this provision only if SB 868 § 21758(b) is not passed by the Legislature and signed by the Governor.]**
 4. operate any UAS beyond the visual line of sight of the person operating the UAS. In addition, the operator of the UAS must only use his or her own natural vision, which includes vision corrected by standard eyeglasses or contact lenses, to observe the UAS while the UAS is in operation,
 5. use any other person in lieu of the operator of the UAS for maintaining visual line of sight of the UAS while the UAS is in operation,
 6. use any vision-enhancing device, such as binoculars, night vision goggles, or powered vision magnifying devices, or other device designed to maintain a visual line of sight of the UAS by the person operating that UAS while the UAS is in operation,
 7. operate any UAS other than during daylight hours, defined as between official sunrise and official sunset for local time,
 8. operate any UAS more than 400 feet above the earth's surface,
 9. unless during emergency landings, operate any UAS closer than 25 feet to any individual or animal, except the operator or the operator's helper(s),

10. operate any UAS within a half-mile of any City-sponsored community event or large venue special event, including, but not limited to, any stadium, public park, or public facility, including sports facilities, while such event is taking place,
11. operate any UAS within _____ feet of a public right-of-way, **[NOTE: A policy decision must be made on this issue. Consider the potential physical dangers UAS pose to vehicle operators, pedestrians, bicyclists, and utility poles and wires. Also consider a small distance, such as fifty feet, may prohibit the operation of UAS in a single-family dwelling front yard or backyard.]**
12. operate any UAS in a manner that harasses any pedestrian, bicyclist, or vehicle operator, or threatens any person's safety and welfare,
13. operate any UAS over or upon any private or real property, including, but not limited to, a private residence or office, inhabited building or structure, and its surrounding yard, parking lot, or landscaping, in which the resident or owner of the subject real property has a reasonable expectation of privacy, unless the operator has a right of entry or does so with the permission of the property owner or a person who has a real property interest in the property,
14. operate any UAS to record or transmit any visual image or audio recording of any person or private or real property, including, but not limited to, inside a private residence or office, inhabited building or structure, and its surrounding yard, parking lot, or landscaping under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy, unless the operator does so with the permission of the person, property owner, or a person who has a real property interest in the property,
15. through the operation of any UAS interfere with the efforts of a firefighter, police officer, or other public safety officer to extinguish or respond to a medical or other emergency,
16. **[operate any UAS within 500 feet of critical infrastructure without first obtaining the consent of the owner or operator of the critical infrastructure, NOTE: Include state critical infrastructure in this provision only if SB 868 § 21754(a)(1) is not passed by the Legislature and signed by the Governor. If SB 868 § 21754(a)(1) is passed by the Legislature and signed by the Governor, then the provision should state that it is applicable to "City critical infrastructure" only.]**
17. **[operate any UAS within the City in a way that unreasonably interferes with the operation of critical infrastructure or poses an imminent and credible threat to the safety or security of the critical infrastructure, NOTE: Include state critical infrastructure in this provision only if SB 868 § 21754(a)(1) and SB 868 § 21754(a)(2)(B) are not passed by the**

Legislature and signed by the Governor. If SB 868 § 21754(a)(1) and SB 868 § 21754(a)(2)(B) are passed by the Legislature and signed by the Governor, then the provision should state that it is applicable to “City critical infrastructure” only.] and

18. **[weaponize any UAS or operate a weaponized UAS. NOTE: Include this provision only if SB 868 § 21757 is not passed by the Legislature and signed by the Governor.]**

9.56.040 Exemptions

The terms and restrictions of this Chapter 9.56 shall not prohibit the lawful use of UAS by:

- A. any local, state, or federal law enforcement agency or public safety agency, or any agent thereof, or
- B. the City, or any agent thereof.
- C. The restrictions of this Chapter 9.56 shall apply to all small UAS operated for recreational or hobby use and meeting the criteria specified in Section 336 of Public Law 112-95; otherwise, the provisions of Part 107 of Title 14 of the Code of Federal Regulations, effective August 29, 2016, shall govern where duplicative of or in conflict with the provisions of this Chapter 9.56.

9.56.050 Enforcement

The violation of any provision in this Chapter 9.56 or any rule or order issued pursuant to this Chapter is declared to be a public nuisance and contrary to the public interest and shall, in addition to any other remedy, at the discretion of the City, may be prosecuted as:

- A. a misdemeanor, punishable as provided by law; provided, that if in his or her determination the public interest is better served, then the City Attorney may reduce any violation to an infraction punishable as provided by law, or
- B. an administrative citation, subject to the fines and related penalties set forth in Chapter 1.36 of this Code.

SECTION 3. The City Council hereby finds and determines it can be seen with certainty there is no possibility this ordinance may have a significant adverse effect on the environment. Thus, the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 4. This ordinance shall take effect 30 days after its adoption. The City Clerk, or the duly appointed deputy, shall attest to the adoption of this ordinance and shall cause this ordinance to be posted in the manner required by law.

This Ordinance was introduced on_____, 2016, and duly adopted by the City Council of the City of Lompoc at its duly noticed regular meeting on _____, 2016, by the following electronic vote:

PASSED AND ADOPTED this ___th day of ___ 2016, by the following electronic vote:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):

Bob Lingl, Mayor
City of Lompoc

Attest:

Stacey Haddon, City Clerk
City of Lompoc

DRAFT