

# **Drones: Municipal Use and Regulation**

*Get details on legal developments surrounding unmanned aircraft systems (UAS), or drones. Learn how cities are using drones, how cities can legally operate drones, and other considerations for cities before flying drones. In addition, learn about a city's authority to regulate drones and access links to helpful Federal Aviation Administration documents and materials.*

## **RELEVANT LINKS:**

FAA, [Unmanned Aircraft System](#).

FAA, [Aircraft Registration: Unmanned Aircraft](#).

*Michael P. Huerta,  
Administrator, Federal  
Aviation Administration,  
Complainant v. Raphael  
Pirker, Respondent, NTSB  
Order No. EA-5730,  
November 17, 2014.*

[14 C.F.R. § 107.](#)

*See, e.g., Debbie Irmen,  
Perham Fire Department's  
new aerial flight vehicle used  
at Callaway train derailment,  
PERHAM FOCUS, April 1,  
2016.*

## **I. What are drones?**

A “drone” is a common name for an unmanned aircraft system (UAS). A UAS is an aircraft without a human pilot on board. Instead, the pilot controls the aircraft from the ground. A UAS can range in size, from toys that weigh a few ounces, to military units capable of carrying loads of 3,800 pounds. The Federal Aviation Administration (FAA) refers to a UAS weighing less than 55 pounds as a small UAS (or sUAS). Throughout the remainder of the memo, “drone” will be used in place of UAS or sUAS.

## **II. Federal regulation**

As the federal agency tasked with ensuring the safety of the airspace of the United States, the FAA has jurisdiction to regulate drones. A 2014 decision by the National Transportation Safety Board (NTSB) determined that drones are legally considered to be aircraft. This decision provided the FAA with the requisite authority to regulate drones as aircraft. However, because drones are vastly different than manned aircraft and come with much different safety concerns, the FAA has worked to develop regulations specific to drones. More broadly, regulations applying to manned aircraft do apply to drones when possible.

## **III. City users of drones**

### **A. City employees as pilots**

Cities are finding many useful applications for drones. Cities in Minnesota are using drones in creative ways, such as assisting with emergencies and search-and-rescue operations. To comply with FAA guidelines, municipalities have two options. Cities may choose to either comply with Part 107, which is generally applicable to all commercial drone pilots, or to register under public operation registration.

## RELEVANT LINKS:

[FAA, Commercial Operators.](#)

[14 C.F.R. § 107.51\(b\).](#)

[14 C.F.R. § 107.29.](#)

[14 C.F.R. § 107.31.](#)

[14 C.F.R. § 107.39, 14 C.F.R. § 107.100](#)

[14 C.F.R. § 107.61.](#)

[14 C.F.R. § 107.3.](#)

[FAA, Part 107 waivers.](#)  
[FAA, Waiver Safety](#)  
[Explanation Guidance.](#)

[14 CFR Parts 11, 21, 43, and 107.](#)  
[FAA, Operations Over People General Overview.](#)

[FAA, Certificate of Waiver or Authorization \(COA\).](#)  
[FAA, Drones in Public Safety: A Guide to Starting Operations, February 2019.](#)  
[Operate a Drone, Start a Drone Program, FAA.](#)

[UAS COA Online System.](#)

## 1. Registration under Part 107

Part 107 is a comprehensive regulation developed by the FAA to integrate non-hobby drones into the national airspace. The regulations govern remote pilot certification, aircraft registration, and operating requirements.

Key Part 107 regulations require that drones:

- Fly no more than 400 feet above ground level or 400 feet above a structure.
- Fly only during the day unless the remote pilot and UAS meet certain requirements.
- Must be kept within the visual line of sight of the pilot.
- Must not be flown over people unless certain requirements are met.
- Must be operated by remote pilots who have passed a knowledge test or hold a pilot certificate and are at least 16 years old.
- Weigh less than 55 pounds.

Remote pilots who wish to operate a drone contrary to the rules in Part 107 may request an operational waiver from the FAA. These waivers require remote pilots to demonstrate they can still fly safely using alternative methods. Absent a waiver, the flight would not be authorized.

The FAA published the Operation of Unmanned Aircraft Systems Over People final rule in 2021. The rule allows remote pilots operating under Part 107 to fly at night, over people, and moving vehicles without a waiver as long as they meet the requirements defined in the rule. Airspace authorizations are still required for night operations in controlled airspace under 400 feet.

## 2. Public operation registration

Cities are not required to comply with Part 107. The Certificates of Waiver or Authorization (COA) issued by the Air Traffic Organization is a separate registration process for government entities conducting public operations with drones. The COA provides flexibility to public entities and allows agencies to self-certify drone pilots and drones that perform governmental functions. The COA application is more extensive than obtaining authorization through Part 107. Under this process, a city must:

- Register online for a new UAS COA Applicant Process System (CAPS) account. You will need a public letter of declaration submitted by your city attorney declaring that you are a public entity.

## RELEVANT LINKS:

[FAA FAQ, COA Application Required Documents Checklist.](#)

Contact the FAA/UAS office with questions or for more information regarding COA [9-AJR-36-UAS@faa.gov](mailto:9-AJR-36-UAS@faa.gov)

[FAA, Public Aircraft Operations Advisory Circular.](#)

[FAA, Public Aircraft Operations.](#)

[FAA, Emergency Situations.](#)

[FAA, Emergency Operation Request Form.](#)

FAA's System Operations Support Center (SOSC) [9-ator-hq-sosc@faa.gov](mailto:9-ator-hq-sosc@faa.gov)

- Meet the COA requirements. Once a city has done so, they will be granted access to submit a COA request online through the CAPS website. Once online registration is completed, the city will be given an FAA registration number and issued a username and password to complete the COA application process.
- Follow the provisions set out in the COA. The COA will indicate when and where the drone can be flown, as well as any other limitations on the operation of the drone.

Part 107 includes default rules for flight operation. Cities should use the alternative registration method if the city determines its drone use would not comply with Part 107. Alternatively, as discussed above, the city could still use Part 107 for most drone flights and seek a waiver for drone activity that would fall outside of Part 107's parameters. The COA process can be complicated and requires the involvement of the city attorney.

Not all flights conducted by a city will be considered public operations by the FAA. The FAA has released an advisory circular to assist entities in determining whether a given flight meets the requirements of a public operation.

Under this guidance, for drone flights to be considered public operations an organization must:

- Be a political subdivision of the United States government, a State or U.S. territory government, or an Indian Tribal Government.
- Own and operate the unmanned aircraft or hold an exclusive lease on it for more than 90 days.
- Meet statutory criteria of a governmental function flight missions on a flight-by-flight basis.
- Not fly for commercial purposes or receive compensation for flight operations.

Best practices suggest that a city work with its attorney to determine if a given flight meets the definition of a public operation.

### 3. Special Governmental Interest waiver

First responders and organizations responding to natural disasters and other emergency situations may be eligible for expedited waiver approval through the Special Governmental Interest (SGI) process. To apply for a waiver through the SGI you must be an existing Part 107 Remote Pilot or have an existing COA. Operations that may be considered under SGI include:

## RELEVANT LINKS:

[Minn. Ch. 360.](#)  
[MN Dep't of Transportation, Drones. MN Dep't of Transportation, Government UAS Operators. MN Aircraft Registration Application.](#)  
[Minn. Stat. § 360.59.](#)

[UAS Department MnDOT - Office of Aeronautics droneinfo.dot@state.mn.us 651-234-7201](#)

[MN Dep't of Transportation, Commercial Operators Listing.](#)

[LMC, Contract Review Service.](#)

- Firefighting
- Search and rescue
- Law enforcement
- Utility or other critical infrastructure restoration
- Damage assessments supporting disaster recovery related insurance claims
- Media coverage providing crucial information to the public

## 4. State registration and insurance requirements

State law requires aircrafts used in airspace over Minnesota to be registered with the Minnesota Department of Transportation (MnDOT). MnDOT is the state-level regulatory agency that governs aircraft. An operator will need a FAA registration number to complete the MnDOT registration. Cities operating drones are exempt from aircraft registration fees but must register drones with both the FAA and MnDOT.

Minnesota law requires that any operator of an aircraft must have liability insurance that meets certain minimum coverage levels. The insurance requirements apply equally to drones. If a city has liability insurance through the League of Minnesota Cities Insurance Trust, the city's insurance will exceed the standards required by statute.

While city users are not required to pay the registration fee, they must register and provide proof of insurance.

## B. Contracting for service

Cities can still obtain the benefits of drones without owning or operating their own aircraft. Many businesses offer drone services that could be of use to cities. Before working with any drone contractor, cities should carefully evaluate whether the contractor has the appropriate clearances to conduct the city's proposed drone operation. Specifically, cities should ensure the contractor has satisfied the FAA and MnDOT's registration requirements, as well as MnDOT's insurance requirements.

The League offers a free contract review service for its members. A League attorney will review any agreement with a drone contractor before it is signed to be sure the city's interests are protected.

## C. Practical considerations

While registration and compliance with MnDOT and FAA rules are both essential prerequisites for flying drones, cities should also be aware of other general considerations and requirements before taking flight.

## RELEVANT LINKS:

See, e.g., [St. Paul police plan to buy drones, asking for public comments on policy](#), Pafoua Yang KSTP April 11, 2023.

[FAA, Privacy Guidelines.](#)

MN Dep't of Administration, [Drone Data](#).

LMC information memo, [Data Practices: Analyze, Classify, Respond](#).

### 1. Internal drone policies

Cities should consider adopting internal policies regarding drone use. Any policy should address, at a minimum, who has the authority to operate the drone. Beyond operational authority, cities should also consider when and how a drone will be used, or who will have the authority to order a drone's operation.

A city interested in using drones should also consider the public perception of drone usage. Before getting or using a drone, the city should clearly explain to the public what it plans to do with the drone. This can help dispel potential concerns.

The city should also consider providing notice to the public to let them know when flights will occur. While not required by law, providing the public with notice of a city drone operation could help reduce the number of questions the city receives regarding a drone flying around the city.

The FAA has released privacy guidelines for drone users. Though these guidelines are not law, they do provide some good ideas for all drone users for protecting the privacy of others. The voluntary best practices encourage drone users to:

- Inform affected persons of drone use and collection of data.
- Take care in the collection and storage of information that identifies a particular person.
- Limit the use and sharing of such data.
- Keep data secured.
- Monitor and comply with the law as it evolves.

Any city operating drones should consider including some of the recommendations, or related policies, in its internal drone policy.

### 2. Data practices and data retention

Drone usage will likely create government data because many drones are equipped with cameras. If a city takes photos or records videos or audio with a drone, that data is subject to the Minnesota Government Data Practices Act and the city's data retention policy. Before using a drone, a city should ensure that its data retention policy includes any data generated by a drone.

Any data obtained while using a drone should be destroyed only per the city's data retention policy. Relatedly, cities must consider the data practices implications of any drone footage they maintain. This should include budgeting for the costs of maintaining and securely storing the additional data a city's drone may create.

## RELEVANT LINKS:

[Minn. Stat. § 13.82, subd. 15 and subd. 32.](#)

[Minn. Stat. § 626.19.](#)

[Minn. Stat. § 626.19.](#)

[Minn. Stat. § 626.19 subd. 3.](#)

### 3. Warrant requirements

Certain uses of drones may require the city to obtain a warrant prior to the drone operation. While a new law on police use of drones generally requires a warrant, a city's use outside of a criminal context could also raise warrant issues. For example, if a city uses a drone to fly over a landowner's backyard to check for code violations, a court could determine that a search requiring a warrant has occurred. However, case law regarding drones is scarce at this point.

### 4. Law enforcement drone use

#### a. Law enforcement warrant requirements

In 2020, the Minnesota Legislature passed legislation related to law enforcement's use of drones.

Under the law, law enforcement agencies are generally required to obtain a search warrant before using a drone. However, there are exceptions. A search warrant is not required when a drone is used:

- During or in the aftermath of an emergency situation that involves the risk of death or bodily harm to a person.
- Over a public event where there is a heightened risk to the safety of participants or bystanders.
- To counter the risk of a terrorist attack by a specific individual or organization.
- To prevent the loss of life and property in natural or man-made disasters and to facilitate post-recovery efforts.
- To conduct a threat assessment in anticipation of a specific event.
- To collect information from a public area if there is a reasonable suspicion of criminal activity.
- To collect information for crash-reconstruction purposes after a serious or deadly collision occurring on a public road.
- Over a public area for officer training or public relations purposes.
- For a non-law-enforcement purpose at the written request of a government entity. The government entity must specify the reason for the request and the proposed period of use.

This last exception applies when a city department requests the use of a drone from the police department. For example, the city's parks and recreation department requests to use the police department's drone to take aerial footage of the city's public parks. However, as previously mentioned, some drone use outside the law enforcement context could also raise warrant issues.

## RELEVANT LINKS:

[Minn. Stat. § 626.19 subd. 4.](#)

[Minn. Stat. § 626.19, subd. 9.](#)

[Minn. Stat. § 626.19, subd. 10.](#)

[Minn. Stat. § 626.19, subd. 6\(a\).](#)

[Minn. Stat. § 13.82, subd 7.](#)  
[Minn. Chapter 13.](#)

Therefore, the city should consult the city attorney regarding the specific use if it is unsure since case law on drones is still scarce at this point.

State law requires law enforcement to follow the FAA rules and regulations. It also prohibits deploying facial recognition or other biometric-matching technology on drones, unless authorized by a warrant. It also prohibits equipping drones with weapons or collecting data on public protests or demonstrations unless authorized by a warrant or under one of the search warrant exceptions above.

### **b. Public comment requirements**

Before a law enforcement agency purchases or uses a drone, the agency must provide an opportunity for public comment. The agency itself must accept public comment electronically or by mail.

The city council must also provide an opportunity for public comment at a regularly scheduled meeting.

### **c. Written policies**

Similar to requirements for body-worn cameras, before the operation of a drone, the police chief must establish and enforce a written policy that governs its use. This includes a policy for handling requests for use by other government agencies.

While developing and adopting this policy, the agency must provide an opportunity for public comment, either electronically or by mail. The city council must also provide the opportunity for public comment at a regularly scheduled council meeting. The drone policy must be displayed on the city's website unless the city does not have a website.

### **d. Data classification**

Law enforcement data collected by a drone is classified as private data on individuals or nonpublic data. Exceptions include:

- If the data subject requests a copy of the recording; data on other individuals who do not consent to its release must be redacted.
- Disclosure as necessary in an emergency situation that involves the risk of death or bodily harm to a person.
- Disclosure to the government entity making a request for drone use for non-law-enforcement purposes.
- If drone data is criminal investigative data, this data is governed by Minnesota Statutes, section 13.82, subdivision 7.
- Classification under other provisions of Minnesota Statutes, chapter 13 are retained.



## RELEVANT LINKS:

[Minn. Stat. § 626.19, subd. 12.](#)

[MN Commissioner of Public Safety, UAV Agency Data Collection Form.](#)

[Singer v. City of Newton, CV 17-10071-WGY, 2017 WL 4176477 \(D. Mass. Sept. 21, 2017\).](#)

[FAA, State and Local Regulation of Unmanned Aircraft Systems \(UAS\) Fact Sheet.](#)

[MN Dep't of Transportation, UAS Information for Communities.](#)

[National League of Cities, \*Cities and Drones: What Cities Need to Know About Unmanned Aerial Vehicles \(UAVs\)\*. National League of Cities, \*Cities' Role to Play in America's Growing Drone Economy\*.](#)

[National League of Cities, \*Drone Ordinance Brief\*.](#)

### e. Reporting

By Jan. 15 of each year, any law enforcement agency that maintains or uses a drone must report the following information to the Commissioner of Public Safety:

- The number of times a drone has been deployed without a search warrant.
- The date of each deployment.
- The authorized use for each deployment.
- The total cost of the drone program.

## IV. City regulation of drones

Cities may be interested in regulating drones to ensure the safety and privacy of residents. However, a city's ability to regulate drones is a bit complicated. Cities likely have little authority to impose many regulations on drones because the FAA's authority largely preempts a city ordinance in this area.

Generally, prohibitions or restrictions on flight paths, required equipment, or knowledge tests for drone operators would likely not be within the purview of local government regulation. On the other hand, privacy concerns involving drones—such as flying close to homes to look inside—is an area local government likely has the authority to regulate.

The FAA has expressed that it is concerned with safely incorporating drones into the national airspace, but not with how a drone is used or what tools (such as a camera) may be incorporated onto a drone. As an example, the FAA has indicated a state law prohibiting drones from being used for hunting or fishing is acceptable.

It appears likely that cities have the authority to regulate some aspects of drone use via zoning ordinances. Such regulations may include the takeoff and landing locations for drones, restricting the use of drones in residential areas during certain hours, and establish time, manner, and place restrictions. However, cities should be careful not to use this authority to effectively ban drone operations within the city. A broad prohibition is likely to be challenged. It seems unlikely a city's authority would be broad enough to enact what essentially amounts to a ban on drone operation within city limits.

The National League of Cities has developed a model ordinance for drone use that attempts to balance a city's interest in regulation with the general interest in allowing innovation in the growing drone industry.



## RELEVANT LINKS:

Cities interested in regulating drones may find it helpful to look to their current ordinances to determine if any of them can be applied to drones or could be modified to apply to drone operations. It is likely, for example, that an ordinance prohibiting voyeurism could be enforced against a drone operator who is using the drone for voyeuristic purposes.

## V. Conclusion

Drones represent a rapidly changing new technology. The law is only beginning to catch up to the present technology. The League is closely monitoring all developments in the drone arena. Cities may find it beneficial to use drones, but they must plan carefully to keep drone operations safe.