

ORDINANCE NO. 328

**AN ORDINANCE TO ENCOURAGE INNOVATIVE AND SAFE USES OF UNMANNED AIRCRAFT WHILE ADDRESSING CONCERNS ABOUT ACCOUNTABILITY.**

**BE IT ORDAINED by the City of Valley Springs, South Dakota:**

**Sec. 1 – Definitions.**

Under this article:

“Aircraft” means any contrivance invented, used, or designed to navigate or fly in the air.

“Altitude” means the height of an aircraft above the surface of the land or water below it.

“City airspace” means the space on a vertical plane perpendicular to and above the land, water, and waterways within the jurisdiction of the city of Valley Springs.

“Drone” means an aircraft that (1) is operated without the possibility of direct human intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of the operation, including the weight of any payload or fuel. The term “drone” does not include “toy aircraft” or “public aircraft” as defined herein.

“Firearm” has the meaning ascribed to the term in SDCL § 22-1-2(16).

“Hobby or recreational purposes” means a pursuit engaged in for relaxation, and not for business purposes, and not for compensation or hire.

“Open air assembly unit” means any structure, enclosed area, or other demarcated space used for the assembly of persons in the open air, including, but not limited to, amusement parks, stadiums, athletic fields, automotive speedways, aviation fields, band stands, beach enclosures, grandstands, observation platforms, outdoor public swimming pools, outdoor theaters, race tracks, reviewing stands, street festivals, or parade routes.

“Operate” means to pilot, steer, direct, fly, or manage an aircraft through the air whether from within the aircraft or remotely. The term “operate” includes managing or initiating a computer system that pilots, steers, directs, flies, or manages an aircraft.

“Public aircraft” has the meaning ascribed to the term in 42 U.S.C. § 40102.

“Surveillance” means the gathering, without permission and in a manner that is offensive to a reasonable person, of visual images, physical impressions, sound recordings, data, or other information involving (1) an active crime, accident, or fire scene or investigation; or (2) the private, personal, business, or familial activities of another person, business, or entity, or that otherwise intrudes upon the privacy, solitude, or seclusion of another person, business, or entity regardless of whether a physical trespass onto real property

owned, leased, or otherwise lawfully occupied by such other person, business, or other entity, or into the airspace above real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity occurs in connection with such surveillance.

“Toy aircraft” means (1) a glider or hand-tossed aircraft that is not designed for and is incapable of sustained flight; or (2) an aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire.

“Weapon” means any instrument, article, or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing harm or damage to any person or property, including, but not limited to, firing a bullet, projectile, or laser.

**State law references** – Definition of aircraft, SDCL § 50-1-1; definition of firearm, SDCL § 22-1-2(16); ownership of air space, SDCL § 50-13-3.

## **Sec. 2 – Operating regulations.**

The City authorizes limited drone operation in city airspace for hobby or recreational purposes only, except that it shall be unlawful to exceed such authorization by operating a drone:

- (1) over any person who is not involved in the operation of the drone, without such person’s consent
- (2) over vehicular traffic;
- (3) over property that the operator does not own, unless the property owner consents and subject to any restrictions that the property owner may place on such operation;
- (4) over property owned, leased, or operated by the city, including but not limited to airports, parks, lakes, public swimming pools, trails, parking lots, and buildings, except drones may be operated in conformity with this section:
  - (a) to temporarily cross from one authorized property to another authorized property over streets, roads, and alleys via the most direct route; and
  - (b) over the following city properties, subject to any restrictions thereon imposed by the City:

(i) Legion Park; and

(ii) Cassidy Park;

(5) by a child under 13 years of age when not accompanied by the child's parent or guardian or an adult designated by the child's parent or guardian. The failure of a parent or designated adult to supervise an underage child's operation of a drone shall be a violation by the parent or designated adult;

(6) at an altitude higher than 400 feet above ground level;

(7) outside the visual line of sight of the operator. The operator shall use his or her own natural vision, which includes vision corrected by standard eyeglasses or contact lenses, to maintain at all times an unobstructed view of the drone, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles designed to provide a "first person view" from the model or similar devices;

(8) in a manner that interferes with, or fails to give way to, any manned aircraft or moving vehicle;

(9) during the period between sunset and sunrise;

(10) whenever weather conditions impair the operator's ability to operate the drone safely;

(11) over any open air assembly unit, school, school yard, hospital, swimming pool, place of worship, or law enforcement building, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;

(12) within 500 feet of any electric generating facility, substation, or control center, or within 100 feet of any electric transmission facility, or within 25 feet of any electric distribution facility or of any overhead wire, cable, conveyor, or similar equipment for the transmission of sounds or signal, or of heat, light or power, or data, upon or along any public way within the city, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation;

(13) for the purpose of conducting surveillance, unless expressly permitted by law;

(14) with 0.08 percent or more by weight of alcohol in that person's blood or while under the influence of alcohol, any drug, any intoxicant, or any combination

thereof, as set forth in SDCL § 32-23-1, which renders that person incapable of safely operating such drone;

(15) that is equipped with a firearm or other weapon;

(16) with intent to use such drone or anything attached to it to cause harm to persons or property; or

(17) in a reckless or careless manner.

**State law references** – Driving under the influence prohibited, SDCL § 32-23-1; public nuisance, SDCL § 21-10-3; ownership of air space, SDCL § 50-13-3; overflight of lands and waters, SDCL § 50-13-4.

### **Sec. 3 – Construction.**

(a) *Operations authorized by FAA and city.* Nothing in this article shall be construed to prohibit any person who is permitted by the Federal Aviation Administration, the city council, the chief of police, the fire chief, the public works director, the airport manager, or the parks, recreation and forestry director to operate a drone in city airspace from conducting such operations in accordance with the terms of such authorization and, if applicable, in accordance with this article.

(b) *Operations prohibited by federal or state regulation.* Nothing in this article shall be construed to authorize the operation of any drone in city airspace in violation of any federal or state law or rule promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration. This article shall not be construed to permit interference by any drone operation with air traffic or airport operations or in a manner less restrictive than Federal Aviation Administration guidelines regarding unmanned aerial systems and regulations regarding air space obstructions.

(c) *Governmental operations authorized.* Nothing in this article shall be construed to prohibit the use of a drone by a law enforcement agency or to conduct governmental operations by or on behalf of the City, Minnehaha County, the state of South Dakota, or the federal government.

(d) *Negligence per se.* Section 2 is enacted to protect the health and safety of all persons lawfully within the city or city airspace and to prevent damage to persons and property. A violation of section 2 without legal excuse is negligence as a matter of law.

**Sec. 4 – Penalty.**

(a) A violation of this article by an adult is a Class 2 misdemeanor. Any adult who violates this article shall be fined not less than \$120.00 nor more than \$500.00 for each offense, nor jailed for more than 30 days, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(b) A violation of this article by a minor is a petty offense.

(c) A law enforcement officer may seize a drone as evidence of a violation of this article. The drone thereafter shall be disposed of in accordance with state law for disposition of seized property.

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Carl Moss  
Mayor  
City of Valley Springs, South Dakota

ATTEST:

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Sandy Severtson  
Municipal Finance Officer  
City of Valley Springs, South Dakota

(SEAL)

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