



To: Billy Urquia, City Clerk

From: Gustavo J. Ceballos, Assistant City Attorney

Approved By: Miriam Soler Ramos, City Attorney

RE: Legal Opinion Regarding the Use of Drones

Date: July 16, 2021

During our normal course of business, the topic of drone operation within the City has arisen on multiple occasions. Specifically, the applicability of City Code Section 38-3 "Aircraft - Minimum Altitude" on the operation of drones has led to repeat discussions and research into the subject. This opinion is being drafted in order to formalize the City's position regarding this section of the City Code and to address any inconsistencies between the current City Code and applicable State and Federal regulation of aircraft/drones.

The City's ability to regulate aircraft/airspace, is largely regulated by the Federal Government and the State of Florida which have established regulations for drone operation – using U.S. codes and federal regulations on the federal level and by statute on the state level. The United States Congress has vested the Federal Aviation Administration "FAA" with exclusive authority to regulate airspace use within the US. 49 U.S.C. §§ 40103, 44502, and 44701-44735. Unmanned aircraft systems (UAS), commonly known as drones, are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground. The FAA focuses primarily on safety while the State of Florida statutes focus on the appropriate use of UAS and the protection of privacy.

Under Florida Statutes § 330.41, "Unmanned Aircraft Systems Act," the authority to regulate the operation of UAS is **vested in the state** except as provided in federal regulations, authorizations, or exemptions, and it **expressly provides that a political subdivision may not enact or enforce an ordinance or resolution relating to the operation of an UAS**, including airspace, altitude, flight paths, equipment or technology requirements.

Florida Statutes do not limit the authority of a local government to enact or enforce local ordinances relating to land use, zoning, privacy, trespass, and law enforcement operations if the ordinances are not specifically related to the use of UAS. Consequently, the City may choose to regulate certain aspects of UAS operations, such as take-offs and landings within

City parks or events and comply with § 330.41, F.S., but City Code Sections 38-3 or 38-4 are expressly preempted by the State.

Therefore, Sections 38-3 and 38-4 of the City Code are hereby stricken as preempted by state law. The City Attorney has been granted express authority to take such action under Section 2-252(e)(9) of the City Code. Accordingly, pursuant to that section, please make the following administrative correction:

Strike “Section 38-3. – Aircraft –Minimum altitude” and Section 38-4 – “Same—Stunty flying prohibited” from the City Code.