

ORDINANCE NO. 13
Series 2015

November 17, 2015: Introduced as Council Bill 9, Series 2015 by Councilor Mike Gallagher, seconded by Councilor Mark Griffin and considered in full text on first reading. Passed by a vote of 5 yes and 1 no.

December 9, 2015: Considered in full text on second reading. Passed by a vote of 4 yes and 1 no.

**A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 7 OF THE MUNICIPAL CODE TO ADD A NEW
ARTICLE VII CONCERNING REGULATIONS APPLICABLE TO THE
OPERATION OF UNMANNED AIRCRAFT SYSTEMS**

WHEREAS, the City of Cherry Hills Village ("Village") is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, the Village may exercise any power and perform any function relating to its government and affairs, including the power to regulate for the protection of the public health, safety and welfare; and

WHEREAS, the City Council has determined that the use of unmanned aircraft systems ("UAS"), commonly known as drones, within the Village may be detrimental to the personal safety, privacy rights, and welfare of the inhabitants; and

WHEREAS, the use of UAS in the Village may cause nuisances to wildlife, livestock and domesticated animals; and

WHEREAS, the use of UAS are no longer limited to military and government uses and there is evolving a wide range of civilian, commercial and recreational uses; and

WHEREAS, the City Council recognizes there is a strong market growth predicted for the use of UAS by hobbyists for recreational purposes as well as by commercial operators; and

WHEREAS, the City Council acknowledges that the United States Government has exclusive sovereignty of navigable airspace of the United States¹; and

WHEREAS, the Federal Aviation Administration ("FAA") is the ultimate authority on regulating aircraft, including UAS, in navigable airspace; and

WHEREAS, the FAA Modernization and Reform Act of 2012 mandates that the FAA develop a plan for integrating drones into the existing regulatory framework of navigable airspace FAA Modernization and Reform Act of 2012; however, none have been adopted to date; and

WHEREAS, currently, no federal law expressly prohibits or preempts municipalities from establishing laws concerning UAS usage that address nuisance and trespass issues within municipalities' specific borders; and

WHEREAS, in the 2015 Colorado General Assembly, failed House Bill 2015-1115 was introduced to address the privacy concerns arising from public and private use of UAS by creating two separate crimes for the misuse of UAS by private individuals; and

WHEREAS, to date, there is only one Colorado regulation concerning the specific operation of UAS and such regulation prohibits use of UAS for hunting wildlife; and

WHEREAS, the current state laws do not adequately address potential nuisance concerns with unregulated use of UAS; and

WHEREAS, the City Council determines that it is in the best position to regulate and enforce UAS operations within its jurisdiction, subject to the jurisdiction of the FAA; and

WHEREAS, the FAA has recognized that state and local law enforcement agencies are often in the best position to deter, detect, immediately investigate, and as appropriate, pursue enforcement actions to stop unauthorized or unsafe UAS operations²; and

¹ 49 U.S.C. § 40103(a).

WHEREAS, City Council further finds that its police department and other local public safety agencies generally will be the first responders to UAS accidents; and

WHEREAS, the City desires to retain and exercise its broad police powers to address the negative impacts arising from the use of UAS within the jurisdiction of Cherry Hills Village, particularly at low altitudes under 400 feet above ground level at which most UAS operate; and

WHEREAS, the regulations adopted herein will be subject to any future state or federal regulations governing UAS through navigable airspace.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. A new Article VII of Chapter 7 of the Municipal Code is hereby added to read in full as follows:

Article VII
Regulation of Unmanned Aircraft Systems

- 7-7-10. Purpose and Intent.**
- 7-7-20 Definitions.**
- 7-7-30 Exemptions.**
- 7-7-40 General Requirements for Hobby Operators.**
- 7-7-50 Enforcement and Penalties.**

Section 7-7-10. Purpose and Intent.

The purpose of this Article VII is to establish a registration system for Hobby Operators and regulations pertaining to any unmanned aircraft system operating within the jurisdictional borders of the City of Cherry Hills Village. It is the intent of this Article to be interpreted in conformance with any existing or future federal or state laws or regulations that address the operation of unmanned aircraft systems.

Section 7-7-20. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

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

City Airspace means and includes all airspace above the jurisdictional boundaries of the City, to the full extent such airspace can legally be regulated by the City.

Domestic animal shall have the same meaning as set forth in Article V of Chapter 7 of this Code.

Livestock shall have the same meaning as set forth in Article V of Chapter 7 of this Code.

Model Aircraft means an unmanned aircraft that is: (1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes.

Navigable airspace means airspace above the minimum altitudes of flight prescribed by FAA regulations, including airspace needed to ensure safety in takeoff and landing of aircraft.

Operate means to fly, use, launch, land, employ or navigate an unmanned aircraft system through the air.

Hobby Operator means an individual or entity operating an unmanned aircraft system for strictly recreational or hobby use.

Person shall have the same meaning as set forth in Section 1-2-10 of Chapter 1 of this Code.

² Law Enforcement Guidance for Suspected Unauthorized UAS Operations, U.S. Department of Transportation, Federal Aviation Administration.

Unmanned aircraft system or UAS means an aircraft, powered aerial vehicle, or other device without a human pilot on board, the flight of which is controlled either autonomously by on board computers or by remote control of a pilot operator on the ground or in another vehicle or aircraft, and all associated equipment and apparatus. It includes model aircrafts and drones.

Section 7-7-30. Exemption from Registration. The following operations of unmanned aircraft systems are exempt from the registration requirements of this Article:

- (a) Any local, state or federal government agency lawfully operating unmanned aircraft systems for a government purpose or function.
- (b) Any commercial operator authorized by the FAA to operate a UAS, as evidenced by a valid certificate of authorization or exemption issued by the FAA.

Section 7-7-40. General Requirements for Hobby Operators.

- (a) Registration required. Registration of UAS is required for all Hobby Operators operating a UAS within City Airspace.
 - (1) Registration. A Hobby Operator of an unmanned aircraft system shall register the UAS as provided in this Section prior to operating an unmanned aircraft system within City Airspace. The City may accept a federal registration in lieu of City registration of a specific UAS only if the federal registration program enables the City to confirm a registration number for such UAS and to obtain substantially the same application information as required by the City in subsection (2) below. The City Council may establish other registration requirements by resolution.
 - (2) Application form. Application for registration of an unmanned aircraft system shall be made on a form provided by the City Clerk, which form shall include but not be limited to the following: (a) name, address and telephone number of owner of UAS; (b) type, model of UAS; and (c) weight of UAS.
 - (3) Registration fee. The registration fee shall be ten dollars (\$10.00) for each UAS, which fee must be paid to the City at the time of submission of the registration form. The City Council may increase or decrease the registration fee by resolution as codified in the City's comprehensive fee schedule.
 - (4) Registration Identification. Upon receipt of a completed application, and required registration fee, the City will issue a registration number for each UAS properly registered by the City. The designated City or federal registration number shall be prominently displayed on the UAS before and as a condition of its operation within the City or City Airspace.
- (b) Operating requirements. Except as otherwise provided in this Article VII, persons operating a UAS in City Airspace shall comply with the following operating regulations:
 - (1) UAS operated by Hobby Operators must weigh no more than fifty-five (55) pounds at the time of operation, inclusive of equipment, payload and fuel.
 - (2) Hobby Operators must have a visual line of sight of the UAS at all times. Visual line of sight means the UAS must be visible at all times to the Operator, using his or her own natural vision to observe the UAS, including the use of standard eyeglasses or contact lenses.
 - (3) Without express prior written authorization from the City Manager, no person may operate a UAS on or over any City property inclusive of public streets, alleys, bridle paths, trails, playgrounds, parks, open space, parking lots, and public buildings.
 - (4) No person shall enter, hover, launch, or land an unmanned aircraft system on or over another person's property without the prior consent of the property owner. Such unauthorized entry onto another's property shall be deemed a trespass.
 - (5) No person shall operate a UAS in a reckless or careless manner so as to endanger or cause reasonable risk of harm or actual harm to persons, property, or any domestic animal or livestock.

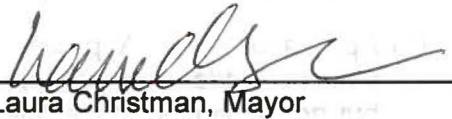
Section 7-7-50. Enforcement and Penalties.

It shall be unlawful to violate any provision of this Article. Any person who is convicted of a violation of any provision of this Article shall be punished in accordance with Section 1-4-20 of this Code. In addition, any UAS operated in violation of this Article may be immediately impounded in the interest of public safety. Law enforcement officers are authorized to disable any UAS operating within the City Airspace that poses an imminent threat to public safety.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid or preempted, such invalidity or preemption shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid or preempted portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

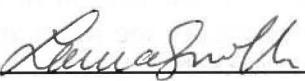
Section 3. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 13 Series 2015, by the City Council of the City of Cherry Hills Village, Colorado this 9th day of December, 2015.



Laura Christman, Mayor

ATTEST:



Laura Smith, City Clerk

Approved as to form:



Linda C. Michow, City Attorney

Published in the Villager

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ADOPTION OF ORDINANCE
ORDINANCE 13, SERIES 2015

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Copies of the Ordinances are on file at
the office of the City Clerk and may be
inspected during regular business hours.

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