



## Town of Atherton

### CITY COUNCIL STAFF REPORT – REGULAR AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**FROM: JENNIFER LARSON, ASSISTANT CITY ATTORNEY**

**DATE: DECEMBER 7, 2016**

**SUBJECT: CONSIDERATION OF AN ORDINANCE TO ADD CHAPTER 9.06 OF  
THE ATHERTON MUNICIPAL CODE REGULATING OPERATION  
OF UNMANNED AIRCRAFT SYSTEMS (AKA DRONES, MODEL  
AIRCRAFT).**

### **RECOMMENDATION:**

Consider an ordinance regulating operation of unmanned aircraft systems within the Town. Direct the City Clerk to schedule a public hearing if necessary.

### **BACKGROUND**

The possible regulation of the operation of unmanned aircraft systems (also “UASs” or “drones”) was first discussed at the July 6, 2016 City Council Meeting. At that time, Council considered the various issues related to the use of drones, including privacy, safety, noise, identification, enforcement, use in Holbrook-Palmer Park, and use on private property. Following a public hearing and discussion on the matter, Council directed staff to prepare an ordinance addressing these issues, with particular emphasis on protection of privacy and mitigation of noise, and to return at the November City Council meeting for a public hearing and possible adoption of an ordinance.

“Small” unmanned aircraft systems, defined by the Federal Government as those weighing less than 55 pounds, have become relatively common as the technology continues to improve and their popularity increases. The Modernization Act of 2012 gave regulatory authority to the FAA, which has subsequently endeavored to provide a framework for safe and responsible operation. For example, all UASs must be registered with the FAA and proof of registration must be on hand during operation. The FAA’s last rule took effect in August of 2016 (safety regulations for commercial UAS use), so there are now comprehensive regulatory frameworks for both public (aka “government”) and civil (aka “commercial”) operation of drones. There are Federal regulations for model (aka “hobby”) UAS operation, but to a lesser extent. As a result, we believe this is a plausible area for additional local regulation.

State-level regulation appears to be in the form of strengthening privacy law and preventing UASs from interfering with public operation of UASs, as in an emergency situation. At this time we are not concerned with state preemption of local regulation.

## **DISCUSSION**

### **1) Existing regulation of model UAS operation:**

The Modernization Act exempted model UAS operators from more stringent UAS rules as long as they comply with the following rules regarding operation. A model UAS must:

- 1) be flown within the operator's visual line of site;
- 2) be flown for hobby or recreational use only;
- 3) be operated in accordance with a community-based set of safety guidelines;
- 4) weigh no more than 55 pounds;
- 5) not interfere with and give way to any manned aircraft; and
- 6) notify any airport within 5 miles prior to use.

In addition, the FAA and industry associations created the following guidelines (re #3 above):

- 7) fly below 400 feet and remain clear of surrounding obstacles;
- 8) do not fly over people or moving vehicles, and remain at least 25 feet away from individuals and vulnerable property;
- 9) do not fly in adverse weather conditions (e.g., high winds or reduced visibility);
- 10) do not fly under the influence of drugs or alcohol;
- 11) ensure the operating environment is safe and that the operator is competent;
- 12) do not fly near or over sensitive infrastructure or property (power stations, etc.);
- 13) check and follow local laws and ordinances before flying over private property;
- 14) do not conduct surveillance or photograph persons in violation of their privacy;
- 15) do not attach weapons or other pyrotechnic devices to drones.

Finally, all UASs must be registered with the FAA by a person at least 13 years old, and proof of registration must be on hand during operation. Failure to register can result in civil and criminal penalties, at least in theory. In addition, there are numerous other laws, both state and local, that further protect privacy and the quiet enjoyment of property.

### **2) Proposed ordinance:**

The proposed ordinance reiterates the current Federal regulations enumerated above along with any future revisions. (9.06.040). While this may be redundant, we intend for these standards to remain even if the FAA or industry associations reduce the level of protection at any point in the future. The ordinance affirms all applicable Federal, state and local laws where any UAS is operated within the town, even though we do believe additional regulation of Civil or Public UAS operation would be preempted by the FAA. (9.06.050). With respect to Holbrook-Palmer Park, the ordinance as drafted restricts Model UAS use to the North Meadow and requires an operating permit for Civil UAS use, for example if a photographer wanted to get aerial shots during an event. (9.06.060).

### **3) Other local regulation of model UAS operation:**

No neighboring jurisdictions have adopted local UAS regulations, with the exception of Menlo Park. Chapter 8.28.130(5) prohibits drones except in designated areas, and except use by public safety personnel for emergencies. It is likely that local regulation will become more common if UAS operation continues to increase as predicted.

We recommend the Council review the proposed ordinance and suggest revisions where appropriate, or approve as submitted.

### **POLICY FOCUS**

The Council should consider whether regulation of drones is a priority and whether they wish to regulate such that no drones, other than public safety drones are permitted or whether there are permissive levels in between.

### **FISCAL IMPACT**

None.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

In addition, the Town has had an Open Town Hall topic on drone regulations up on the Town's website since July 2016. There have been approximately 59 visitors to the site and 16 statements. A summary is attached.

### **ATTACHMENT**

Open Town Hall Topic Summary  
Ordinance Adding Chapter 9.06 of the Atherton Municipal Code

# Hobbyist Drone Regulations

*What are your thoughts about drone regulation in Atherton?*

All Statements sorted chronologically

As of December 1, 2016, 10:19 AM



*Atherton Open Town Hall is not a certified voting system or ballot box. As with any public comment process, participation in Atherton Open Town Hall is voluntary. The statements in this record are not necessarily representative of the whole population, nor do they reflect the opinions of any government agency or elected officials.*

# Hobbyist Drone Regulations

*What are your thoughts about drone regulation in Atherton?*

As of December 1, 2016, 10:19 AM, this forum had:

Attendees: 59

All Statements: 16

Minutes of Public Comment: 48

This topic started on July 14, 2016, 2:54 PM.

## Hobbyist Drone Regulations

What are your thoughts about drone regulation in Atherton?

Name not available (unclaimed)

October 16, 2016, 3:28 PM

I am in favor of authorizing the Atherton Police Department to use drones with video capabilities as follow up to alarms and calls from residents. The use of drones could positively impact apprehension of felons. Encouraging residents to install motion sensing outdoor lighting would make the drones even more effective.

Jerome Leugers inside Atherton (registered)

October 15, 2016, 10:03 PM

I would severely restrict the use of drones in the airspace above the town to government emergency services. Also, a cursory measurement leads me to believe that all of Atherton lies within five statute miles of either Palo Alto or San Carlos airports. Does a small drone operator need authorization from these ATC facilities even below 400'?

Gary Lauder inside Atherton (registered)

September 29, 2016, 11:58 AM

Here are suggestions for Atherton's drone regulations:

All rules should be accompanied by their rationales so that if they no longer make sense, it will be easier to change them. For example, some drones fit in the palm of one's hand, make very little noise and have no cameras. Who knows what current and future devices will not meet the built-in assumptions of drone regulations.

Residents should be free to fly drones over their own properties, but:

- 1) they should not intentionally violate their neighbors' privacy. This is hard to define, but easy to recognize. A view across the tree tops clearly doesn't, but a zoomed in view of another's home and residents clearly does. Accidental inclusion of neighbors or property should not be published nor shared.
- 2) Drones can be noisy, so one should not be allowed to have a noisy drone operating many hours per day (e.g. as an airborne surveillance camera) if it is loud enough to bother neighbors. If it's not noisy and it's not spying, then it should be OK.

Residents should seek permission to fly them over other's private property. When drones are flown outside of one's own property, there should be labeling on the bottom of the drone that identifies the owner that would be visible from the ground. It should be made with a label maker with black on white or white on black with a minimum font height of 1/2" and should contain the owner's name and phone #.

If drones are to fly from one property to another, unless permission is obtained to overfly, they should travel over the streets over the correct lane for the direction travelled. Drones that do that are at risk of falling out of the sky for various reasons (including bird strikes), so they must be designed in a way that they would not harm people nor cars upon impact. This would be done by managing the weight, terminal velocity, softness and sharpness of the drone and its cargo. For example: the Parrot drones (as of 2014) are mostly styrofoam and have propeller guards. Owners of drones are fully responsible for the damage that the drones cause to 3rd parties, with the exception that if another party causes the drone to fall, that party would share some or all of the liability for the damage if it can be proven.

## Hobbyist Drone Regulations

What are your thoughts about drone regulation in Atherton?

Drones flown in public parks must be away from other people (even if the drone got there first) or, if flown around people, must have propeller guards and be sufficiently harmless that it would not harm anyone if it fell.

People are not allowed to discharge firearms inside city limits except in self-defense, and shooting a drone is not self-defense unless it can be proven that the drone was armed and that retreating inside was not an option (unlikely). Drones flying over your property may be "shot down" using other means as long as those means won't harm anyone and comply with all laws. For example directed energy weapons for this have been developed, but they violate FCC rules for civilian use. If projectiles are used, such as sling shots, the user is liable for where the projectiles come down and any harm from the falling drone. Other drones that drop a net or trained birds should be OK if over your own property. Captured drones are not automatically the property of the capturer but should be handed over to the Atherton police who may require that the camera (or other electronic) contents be divulged to determine whether they were lawfully used.

Drones may not be armed with guns or explosives (other than harmless ones such as biodegradable confetti launchers).

The Town of Atherton may use drones in a way that does not comply with all of these guidelines (for example a police drone may overfly properties and photograph/video as needed in pursuit of a criminal).

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Bob MacLean inside Atherton (registered)

September 26, 2016, 1:33 PM

Welcome to the crowded neighborhoods, skies, roads, schools and other sports and transportation systems that cause noise and inconvenience.

Living near a school, near Middlefield Rd, under the approach to San Carlos Airport and not too far from the train tracks, I get noise around the clock! And now with the building boom in Atherton, I am surrounded by 2 story houses that overlook my yard, have late night parties, kids playing, and lights on at night causing all sorts of "pollution".

I happen to love the planes, glad that I am near two small plane and two large plane airports, enjoy the sounds of kids playing and the occasional ball over the fence into my yard, thankful for my proximity to the trains, and appreciate the cooperation among my neighbors.

So as long as they don't spy or take photos of me or my property without permission and are operated thoughtfully with neighbors in mind, I welcome drones as yet another fun and useful element to the modern suburban mix.

If we want to work on something, let's start with moms crowding our streets to drop off and pick up kids, trains that blow their horns in the middle of the night, and create open spaces and/or times in our parks for dogs, kite flying, drones, and sports events as well as social and town gatherings.

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Name not available (unclaimed)

September 23, 2016, 4:47 PM

Drones should be allowed with reasonable use guidelines and penalties for failure to adhere to such guidelines.

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Name not available (unclaimed)

September 23, 2016, 3:07 PM

## Hobbyist Drone Regulations

What are your thoughts about drone regulation in Atherton?

I am for the total ban, with few exceptions, since I see no value to Atherton residents by allowing drones over our properties. I would allow recreational drone use by children or adults directly over public parks ONLY (i.e., Holbrook Palmer is OK) or for special events, i.e., weddings/graduations, directly over the site hosting the event and for a limited period of time (15 minutes seems adequate). The real question here is the value to residents by allowing drones and I fail to see any material benefit. We don't need our Amazon deliveries dropped from the sky! As for nosy spies, enough said.

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Name not available (unclaimed)

September 23, 2016, 1:14 PM

I oppose the private use of drones in the town of Atherton, also oppose the private use of drones from adjacent towns which would view into Atherton properties.

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Name not available (unclaimed)

September 23, 2016, 10:41 AM

Not over my home--thanks

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Name not available (unclaimed)

September 23, 2016, 9:58 AM

The Menlo Park Fire Protection District has been certified to operate UAS or Drone Platforms for emergency public safety purposes. Similar to our request in other communities that we serve and protect, we are asking that the Town create an "exemption" for public safety in any rule or regulation that it establishes.

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joanne knapp inside Atherton (registered)

September 23, 2016, 5:52 AM

I am not against using a drone for a specific purpose and with the homeowner's knowledge and permission. This includes the use of same by law enforcement. Otherwise I want no drones and certainly not in the park. The individual's right to play with new toys is superseded by an individual's right to privacy.

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Laurent Mayer inside Atherton (registered)

September 23, 2016, 4:37 AM

My main concern is noise. If these things are like giant loud flies buzzing around, it's going to be a total nuisance... Same as leaf blowers, mowers and other loud machines we have to endure.

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Name not shown outside Atherton (registered)

July 18, 2016, 9:21 AM

We use this for Construction purposes. This is something that is very helpful for the homeowner and shows the progress of what is happening. (It is useful to look back on if need also.) I agree that it should only be used for

## Hobbyist Drone Regulations

What are your thoughts about drone regulation in Atherton?

the homeowner and not invade neighbors.

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Name not shown inside Atherton (registered)

July 17, 2016, 10:07 AM

If people want to fly drones over private property, the owner's permission should be required. If flying over town property, drones should be permitted as long as they do not cause any problems (i.e. excessive noise, aggressive piloting, etc.). Any pictures or filming into private property should not be allowed without owner permission.

2 Supporters

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Name not shown inside Atherton (registered)

July 16, 2016, 9:40 AM

If one flies over my backyard, I'll get out my shotgun and make it go away

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Name not shown inside Atherton (registered)

July 15, 2016, 5:10 PM

I would recommend a near total ban of drones for hobbyist use. My neighbor flew a drone in their yard last year, close to our shared property line, and I was quite surprised at the extreme noise level. It was very disturbing and made use of my yard impossible to enjoy. I was able to hear the drone from inside the house as well. At the time, I was also concerned about my privacy; although the drone did not cross into my yard, I did wonder if the neighbor had a camera on the drone. Although at first it seems reasonable for hobbyists to have a space in a public park, please be cautious of this use as well and consider banning such activity. The noise from the drones are sufficient to bother (and even frighten) dogs as well as people trying to enjoy our parks and other open spaces. Given the current technology, I cannot imagine being able to fly drones in the park while at the same time enable all other uses of the park to go on undisturbed. Perhaps exceptions can be made for very short term use (such as to obtain a photograph) with drone models that are exceptionally quiet.

2 Supporters

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Patrick Kelvie inside Atherton (registered)

July 15, 2016, 5:06 PM

Our little town with finite resources needs to know its limitations and concentrate its resources where a material difference can be made. Let the larger government entities lead. Enough with the micromanagement. We squander appalling time prohibiting/regulating pet chickens when there is no problem in the first place. Shall we debate nuclear power plants in town limits, GMO plants in our yards or consumed at our residences, food labeling, and gracious knows what else. Egad! Use time and resources wisely.

3 Supporters

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**ORDINANCE NO. 9.06**

**ORDINANCE OF THE TOWN OF ATHERTON ADOPTING A NEW CHAPTER 9.06  
OF THE ATHERTON MUNICIPAL CODE REGARDING  
UNMANNED AIRCRAFT SYSTEMS**

THE CITY COUNCIL OF THE TOWN OF ATHERTON DOES ORDAIN as follows:

A new Chapter 9.06 of the Atherton Municipal Code regarding regulation of unmanned aircraft systems is hereby adopted to read as follows:

**Chapter 9.06  
UNMANNED AIRCRAFT SYSTEMS**

**Sections:**

- 9.06.010 Title.**
- 9.06.020 Purpose and intent.**
- 9.06.030 Definitions.**
- 9.06.040 Model Aircraft Operation.**
- 9.06.050 UAS Operation Generally.**
- 9.06.060 UAS Operation in Holbrook-Palmer Park.**
- 9.06.070 Violations.**
- 9.06.080 Compliance with Federal and State Law.**
- 9.06.090 Severability.**

**9.06.010 Title.**

This Chapter shall be known as the “Unmanned Aircraft Systems Ordinance,” “UAS Ordinance,” or “Drone Ordinance” and may be so cited.

**9.06.20 Purpose and intent.**

The operation of unmanned aircraft systems (herein known as “UAS” including drones, model aircraft and other unpiloted aircraft) can pose a hazard to piloted aircraft in flight and to persons and property on the ground. In addition to safety concerns, UASs raise serious privacy and trespass concerns. It is therefore the intent of this ordinance to regulate UAS operation in the Town of Atherton to the extent possible pursuant to Federal Aviation Administration rules and state law in order to mitigate such risks, to respect privacy and trespass issues, and to protect the public from the hazards associated with their operation.

**9.06.030 Definitions.**

As used in this Chapter:

- A. “Unmanned aircraft” shall mean an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft. This definitely includes, but not limited to, “drones,” “unmanned aircraft vehicles,” and “model aircraft.”
  - B. “Unmanned aircraft system,” (also referred to as “UAS”) shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.
  - C. “Person” shall mean any individual, partnership, corporation, or joint-venture.

- D. "Model Aircraft" shall mean a UAS operated by any person strictly for hobby or recreational purposes.
- E. "Civil unmanned aircraft system" shall mean a UAS operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency. It shall not include Public unmanned aircraft systems as defined below.
- F. "Public unmanned aircraft system" shall mean a UAS operated by any public agency for government-related purposes.
- G. "Visual Line of Sight" means that the operator of a UAS has an unobstructed view of the UAS without use of any vision-enhancing devices, other than prescription glasses, such as binoculars, night vision goggles, or anything designed to provide a "first-person" view from the UAS.
- H. "Drone" shall refer to a pilotless, remote-controlled aircraft.

**9.06.040 Model Aircraft Operation.**

In addition to all regulations set forth by the FAA and/or state law, at present or in the future, the following shall apply to the operation of any Model Aircraft within the Town of Atherton:1. A Model Aircraft must be flown within the operator's Visual Line of Sight;

2. No Person shall operate any Model Aircraft in a way that interferes with manned aircraft and shall always give way to any manned aircraft;

3. If a Model Aircraft is to be flown within five (5) miles of an airport, including the Palo Alto and San Carlos airports, the operator must provide prior notification to the airport air traffic control tower identifying the location where the Model Aircraft will be operated;

4. No Person shall operate any Model Aircraft at a flying altitude of more than four hundred (400) feet above ground level;

5. No Person shall fly any Model Aircraft over people or moving vehicles;

6. No Person shall operate any Model Aircraft closer than 25 feet to any individual, except at takeoff and landing;

7. No Person shall operate any Model Aircraft in adverse weather conditions (e.g. high winds or reduced visibility) or while under the influence of drugs or alcohol;

8. No Person shall operate any Model Aircraft near or over protected critical infrastructure as defined by federal law;

9. No Person shall operate any Model Aircraft to which is attached any device capable of receiving, recording and/or transmitting visual images or sound, including but not limited to any still or video camera;

10. No Person shall operate any Model Aircraft to which is attached any weapon, explosive, pyrotechnic, or incendiary device;

11. No Person shall conduct surveillance, photograph, or record people or private property or events in violation of a reasonable expectation of privacy;

12. Model Aircraft may only be operated during daylight hours, defined as the time between official sunrise and official sunset for local time.

**9.06.050 UAS Operation Generally.**

The following shall apply to the operation of any Model UAS, Civil UAS, or Public UAS operation within the Town of Atherton:

1. No Person shall operate any UAS in a manner that is prohibited by any Federal, state, or local regulation.

2. No Person shall operate any UAS in a careless or reckless manner so as to harrass, endanger, or threaten injury or damage to 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.

3. No Person shall operate any UAS in a manner that violates an individual's reasonable expectation of privacy, as set forth by all applicable federal, state, and local laws and regulations.

**9.06.060 UAS Operation in Holbrook-Palmer Park.**

The following shall apply to any UAS operation within Holbrook-Palmer Park:

**A. Operation Limited to the North Meadow.**

No person shall operate any UAS in Holbrook-Palmer Park except in the area commonly known as the North Meadow and only during times when the North Meadow is not reserved for use by a group or for an event. Persons operating Model Aircraft in Holbrook-Palmer Park are subject to all of the operating requirements and restrictions in this chapter.

**B. Civil UAS Operation.**

Any person intending to operate a Civil UAS in the Park must first obtain an operating permit from the Town's City Manager. An application for a Civil UAS operating permit shall be on a form provided by the Town and show:

1. Name and phone number of the operator;
2. Make, model and serial or N-number of the UAS;
3. Proof of registration and compliance with FAA requirements for Civil UAS
4. Description of proposed flight activity including whether filming, taking of images, and/or sound recording will occur;
5. Signature of operator.

An operating permit shall be issued to persons meeting the requirements of this chapter upon payment of any fees required.

**9.06.070 Violations.**

It is unlawful for any person to violate or fail to comply with this chapter. Any person violating the provisions of this chapter shall be subject to the provisions of Chapter 1 of this Code and may be cited criminally or administratively.

**9.06.080 Compliance with Federal and State Law.**

This chapter is intended to supplement rules and regulations and terms and conditions set forth by the Federal Aviation Administration and the State of California, particularly in the area of Model Aircraft operation. This chapter is not intended to place restrictions on the use of Public UASs operated pursuant to, and in compliance with, all rules and regulations and the terms and conditions set forth by any current and enforceable authorization granted by the Federal Aviation Administration.

**9.06.090 Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council of the Town of Atherton hereby declares that it would have adopted the remainder of this chapter, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

\_\_\_\_\_  
Mayor of the Town of Atherton

\_\_\_\_\_  
Attest: City Clerk

Approved as to form

\_\_\_\_\_  
William B. Conners, City Attorney

ORDINANCE NO. \_\_\_\_ of the Town of Atherton introduced on \_\_\_\_\_, 2016, and adopted on \_\_\_\_\_, by the following vote of the City Council:

AYES: Councilmembers \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSENT: Councilmembers \_\_\_\_\_

ABSTAIN: Councilmembers \_\_\_\_\_