



Meeting Date: December 15, 2016

Agenda Item: 13-A

Report to Town Council

Topic: Consideration of drone ordinances.

Recommended Motion: None required.

Summary: Please see attached memorandum.

Requested by: Councilmember Paritsky

Approved by: Ms. Witt, Town Manager

TO: Jeaneen C. Witt, Town Manager
FROM: Lois Paritsky, Councilmember, Seat #5
DATE: December 7, 2016
SUBJECT: Consideration of Drone Ordinances

BACKGROUND:

A drone is an unmanned aircraft, subject to regulation by the Federal Aviation Administration to ensure the safety of the flight. The use of drones poses safety and welfare issues for municipalities; namely, voyeurism, law enforcement and harm to individuals and property. The federal government has recognized that certain aspects of drone use are best addressed at the state or local levels.

DISCUSSION:

The initial inquiry is whether, and to what extent, a Florida municipality has the authority to enact ordinances addressing voyeurism, personal injury and property damage, where federal and Florida state law address most areas relating to drone use¹. If the authority exists, the next question is whether Ponce Inlet wishes to enact such ordinances. Florida Attorney General Pam Bondi drafted an Advisory Legal Opinion dated March 30, 2016 (Attachment A), and the Volusia County Legal Department in an opinion letter dated September 9, 2016 (Attachment B) addressed the issues of federal pre-emption and municipal ordinances relating to drone use. The advisory legal opinions indicate such enactment is permissible if the ordinance enhances the protection of the public health, safety and welfare and there is no attempt to regulate the operation or flight of the aircraft.

PRIVACY ISSUE: The concerns raised regarding privacy are easily imaginable if one considers his or her own expectation of privacy within one's home, and then see a drone with a camera attached, flying outside a bedroom or bathroom window. An example of this privacy invasion can be viewed on YouTube at: <https://www.youtube.com/watch?v=PqSmaOTiWxM>

PERSONAL INJURY, PROPERTY DAMAGE & SURVEILLANCE OF LAW ENFORCEMENT ISSUES:

The issues raised when a weapon is attached to a drone or a drone is used for aerial spraying, focus on personal injury and property damage. Imagination is the sole limitation of the kind of injury and destruction such uses can cause in a community:

- Potential personal injury as a result of a weapon (gun) attached to a drone can be viewed at: <https://www.youtube.com/watch?v=xqHrTtvFFIs>

¹ Federal Aviation Regulation (FAR) 101.41 prohibits the operation of unmanned aircraft within 5 nautical miles of an airport without permission from Air Traffic Control (ATC) as well as the airport owner. Florida Statute Section 934.50, known as "Freedom from Unwarranted Surveillance Act," provides, in part, to make it illegal for a law enforcement agency to use a drone to gather information without a warrant and for a drone operator to record images of a privately owned property, in violation of a person's reasonable expectation of privacy without the individual's consent.

- Aerial “dusting” of noxious fumes can be “dusted” over a crowd of people – a crop dusting video can be viewed: <https://www.youtube.com/watch?v=QG8JowFa16o>
- The Ponce Inlet Lighthouse stands proudly in our Town, and is a draw for thousands of visitors each year. It is also a place where a number of drone users operate their drones. An example of a video taken with the use of a drone at our Lighthouse: <https://www.youtube.com/watch?v=bbtZrTFGbIE&sns=em> . Not only are visitors at risk should a drone be used in a fashion to cause harm in and around the Lighthouse, but the New Smyrna Airport is located within 1 mile of the Ponce Inlet Lighthouse. The danger to pilots flying their approach into the New Smyrna Airport is significant – a pilot cannot see the drone and the drone can hit the plane. The approach chart for Runway 25 at New Smyrna Beach is flown directly over the lighthouse (See Attachment G).
- Attachment F depicts a drone being used to surveil the location of law enforcement vehicles to provide “cover” for criminal activity. Criminals can commit crimes and then flee the scene before police can respond because the criminals are able to track the location of police cars.

Florida municipalities have started to address the concerns raised by drone use, recognizing that technology has surpassed current law. Examples of ordinances enacted by several Florida municipalities include:

Miami City Code section 37-12 (Attachment C)

Bonita Springs Code 28-41 (Attachment D)

Aventura – (Attachment E) adopted, but not yet codified

RECOMMENDATION:

The Ponce Inlet Police Department does not enforce federal laws. By enacting local ordinances, we are providing our police with a valuable tool that can be used if necessary to approach and question suspicious individuals who are operating drones within our Town.

I am asking Council to consider authorizing our Town Attorney to prepare ordinances that will protect our citizens, preserve their right to privacy and prevent drones from being used as a means to commit crimes.

I have studied this matter in depth and am prepared to assist our Town Attorney to accomplish these important goals.

Florida Attorney General Advisory Legal Opinion

Number: AGO 2016-04

Date: March 30, 2016

Subject: Municipalities -- Drones -- Privacy Rights

Mr. David M. Wolpin
Attorney for the City of Aventura
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, Florida 33134

RE: MUNICIPALITIES--MUNICIPAL CODE ENFORCEMENT--DRONES--PRIVACY RIGHTS.
Authority of municipality to enact ordinance prohibiting private use of
drones to invade privacy rights of citizens. s. 934.50, Fla. Stat.

Dear Mr. Wolpin:

On behalf of the City of Aventura, you ask the following:

Does section 934.50, Florida Statutes, preempt the adoption of a municipal ordinance prohibiting the use of drones equipped with imaging devices within the city's limits by private individuals and entities, when such use invades the privacy rights of the city's residents?

In sum:

Section 934.50, Florida Statutes, does not preempt the adoption of a municipal ordinance prohibiting the use of drones by private individuals for surveillance which invades the privacy rights of the city's residents.

You state that the City of Aventura is contemplating the enactment of an ordinance to prohibit the unauthorized use of surveillance drones by private persons, when such use invades the privacy rights of citizens. The proposed ordinance would track the statutory exclusions from the prohibition in section 934.50(4), Florida Statutes, and would impose civil penalties for its violation pursuant to the authority in Chapter 162, Florida Statutes.[1] The city, however, questions whether such an ordinance would be preempted by or be in conflict with section 934.50, Florida Statutes, the "Freedom from Unwarranted Surveillance Act." [2]

Initially, I would note that the discussion below generally addresses the provisions in section 934.50, Florida Statutes, and does not speak to the specific language the city may use in its ordinance.

ATTACHMENT A

Section 934.50(3), Florida Statutes, in prohibiting the use of drones, [3] provides:

"(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone."

Specific exceptions to the prohibition against the use of drones are enumerated. [4] The statute further provides remedies for violation of its terms:

"(5) (a) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this section.

(b) The owner, tenant, occupant, invitee, or licensee of privately owned real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision that violates paragraph (3) (b). In such action, the prevailing party is entitled to recover reasonable attorney fees from the nonprevailing party based on the actual and reasonable time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

(c) Punitive damages for a violation of paragraph (3) (b) may be sought against a person subject to other requirements and limitations of law, including, but not limited to, part II of chapter 768 and case law.

(d) The remedies provided for a violation of paragraph (3) (b) are cumulative to other existing remedies." [5]

Section 166.021(1), Florida Statutes, a provision of the "Municipal Home Rule Powers Act," states that municipalities may exercise any power for municipal purposes except when expressly prohibited by law. Section 166.021(3), Florida Statutes, provides that pursuant to the authority set forth in section 2(b), Article VIII, Florida Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject upon which the state Legislature may act except, among other things, any subject that is expressly prohibited by the constitution or any subject that is expressly preempted to state or county government by the Constitution or by general law. [6] The term "express" as used in

section 166.021, Florida Statutes, has been construed to mean a reference that is distinctly stated and not left to inference.[7]

A review of section 934.50, Florida Statutes, does not reveal an express preemption of the regulation of drones, nor do the provisions of the statute appear to be so pervasive so as to preclude any other regulation by a local government.[8] At this time, there does not appear to be a uniform state law which would preempt local regulation of the use of drones by private persons in the manner proposed by the city.

As was established in *City of Miami Beach v. Rocio Corporation*[9]:

"The principle that a municipal ordinance is inferior to state law remains undisturbed. Although legislation may be concurrent, enacted by both state and local governments in areas not preempted by the state, concurrent legislation enacted by municipalities may not conflict with state law. If conflict arises, state law prevails. An ordinance which supplements a statute's restriction of rights may coexist with that statute, whereas an ordinance which countermands rights provided by statute must fail."

Accordingly, it is my opinion that section 934.50, Florida Statutes, does not preempt the adoption of a municipal ordinance prohibiting the use of drones equipped with imaging devices within the city limits by private individuals and entities, when such use invades the privacy rights of the city's residents.

Sincerely,

Pam Bondi
Attorney General

PB/tls

[1] Chapter 162, Fla. Stat., establishes administrative enforcement procedures and a means of imposing administrative fines by local governing bodies for violations of local codes and ordinances for which no criminal penalty has been specified.

[2] While you have limited your inquiry to the impact of s. 934.50, Fla. Stat., the Federal Aviation Authority and federal law may be implicated in the regulation of drones. Regrettably, this office does not interpret federal law, so it may be advisable to contact the Federal Aviation Authority for further direction.

[3] Section 934.50(2)(a), Fla. Stat., provides:

"'Drone' means a powered, aerial vehicle that:

1. Does not carry a human operator;
2. Uses aerodynamic forces to provide vehicle lift;

3. Can fly autonomously or be piloted remotely;
4. Can be expendable or recoverable; and
5. Can carry a lethal or nonlethal payload."

[4] Section 934.50(4), Fla. Stat.:

"EXCEPTIONS.—This section does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(d) By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(e) By an employee or a contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.

(f) To capture images by or for an electric, water, or natural gas utility:

1. For operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;
2. For inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;
3. For assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;
4. For utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or
5. For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.

(g) For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.

(h) To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.

(i) To capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law."

[5] Section 934.50(5), Fla. Stat.

[6] Section 166.021(3)(b) and (c), Fla. Stat.

[7] See *Edwards v. State*, 422 So. 2d 84, 85 (Fla. 2d DCA 1982); Op. Att'y Gen. Fla. 84-83 (1984). Cf. *Pierce v. Division of Retirement*, 410 So. 2d 669, 672 (Fla. 2d DCA 1982).

[8] Compare Inf. Op. to Mr. James D. Palermo, dated September 25, 2002, Florida's Beverage Law does not expressly preempt local regulation prohibiting individuals under the age of 21 from entering a bar.

[9] 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981), petition for review denied, 408 So. 2d 1092 (Fla. 1981).

ATTACHMENT A



Legal Department

September 9, 2016

Robert F. Apgar, Mayor
City of DeLand
120 S. Florida Avenue
DeLand, FL 32720

Re: FAA - Unmanned Aircraft Systems

Dear Mayor Apgar,

As the chair of the Roundtable of Volusia County Elected Officials, you inquired as to the authority for local governments to regulate drone operations within their jurisdiction. The Federal Aviation Administration (FAA) recently adopted a rule regulating the Operation and Certification of Small Unmanned Aircraft Systems for non-hobby and non-recreational purposes. The purpose of the rule is to integrate small Unmanned Aircraft Systems (UAS) into the National Airspace System (NAS). These small aircraft are defined as weighing less than 55 pounds and are commonly referred to as drones.

During the rulemaking process, the FAA considered explicitly preempting state and municipal governments from adopting local laws but concluded "that specific regulatory text addressing preemption is not required in the final rule." As explained by the FAA:

Preemption issues involving small UAS necessitate a case-specific analysis that is not appropriate in a rule of general applicability. Additionally, certain legal aspects concerning small UAS use may be best addressed at the State or local level. For example, State law and other legal protections for individual privacy may provide recourse for a person whose privacy may be affected through another person's use of a UAS.

This statement reflects an acknowledgment that traditional state and local police power, such as land use, zoning, privacy, trespass, and local law enforcement operations are not subject to federal regulation.¹ However, navigable airspace is within the exclusive regulatory authority of the FAA and inconsistent state and local regulations that attempt to regulate the operation or flight of aircraft are preempted.² Congress

¹ *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

² *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), *French v. Pan Am express, Inc.*, 869 F.2d 1 (1st Cir. 1989).

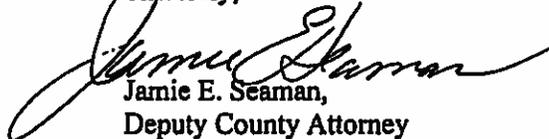
intended to have a single, uniform system for regulating aviation safety and even complimentary state regulations are impermissible.³

Any state or local regulations attempting to ban drones or to restrict flight altitude or path will be strictly scrutinized by the courts to insure that the NAS is not fractionalized and airspace safety is not jeopardized by a "patchwork quilt" of regulations.⁴ Any regulations mandating training of pilots or equipment are not consistent with federal regulations.⁵ The FAA recommends that state or local governments consult with the agency prior to enacting regulations that effect flight altitude, flight paths; operational bans; or any regulation of the navigable airspace.

In recent years, the proliferation of recreational drones has resulted in more than half of the states to consider legislation attempting to regulate drones. Congress is currently considering language in the Federal Aviation Administration Reauthorization Act of 2016 to clarify the exclusive authority of the FAA and the ability of state and local governments to exercise their police powers. Section 2142(a) of the FRA is an explicit federal preemption of state and local laws relating to the design, manufacture, testing, licensing, registration, certification, operation, or maintenance of a drone, including airspace, altitude, flight paths, equipment or technology requirements, purpose of operations, and pilot, operator, and observer qualifications, training, and certification. Section 2142(b) excludes from federal preemption any "[s]tate or local laws relating to nuisance, voyeurism, harassment, reckless endangerment, wrongful death, personal injury, property damage, or other illegal acts arising from the use of the unmanned aircraft systems if such laws are not specifically related to the use of an unmanned aircraft system for those illegal acts."

The proposed language is textually awkward; however, it appears that the intent of Congress is to codify case law recognizing that local governments retain limited police power over conduct in the operation of drones. The pending legislation should be monitored closely by local governments. Local governments should seek the advice of their attorneys regarding any proposed regulation of drones.

Sincerely,



Jamie E. Seaman,
Deputy County Attorney

JS/irm

cc: Volusia County Council Members
Daniel D. Eckert, County Attorney
James T. Dinneen, County Manager
Frederick B. Karl, Department Director, Daytona Beach International Airport
Michael Pleus, Deland City Manager
Darren J. Elkind, Esq.

³ *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992); *Montalvo v. Spirit Airlines*, 508 F.3d at 471.

⁴ *City of Burgank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002); *American Airlines v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968); *American Airlines v. City of Audubon Park*, 407 F.2d 1306 (6th Cir. 1969).

⁵ *Med-Trans Corp. v. Benton*, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); *Air Evac EMS, Inc. v. Robinson*, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

Sec. 37-12. - Public safety and unmanned aircraft systems, commonly known as drones.

(a) Purpose and intent. This section is intended to promote public safety and protect people attending large venue public events from the flying of unmanned aircraft systems ("UAS") in and over such large public events. The city commission wishes to regulate the use of UAS within a half-mile radius around stadiums and sport facilities when these devices are in use, and over other large venue special events in public parks, public facilities, streets, plazas, open spaces and the like that will attract large groups of people. All restrictions are intended to protect persons gathered in groups where a UAS incident would cause greater harm and risk of injury due to a greater number of people gathered in a close proximity. It is not intended to restrict legitimate hobbyists operating UAS in compliance with FAA rules and any other applicable laws, and outside of the prohibited areas. This Section is not intended to preempt FAA rules, but rather to operate in conjunction with those rules to promote public safety while recognizing the limitation in the FAA's enforcement capabilities.

(b) Definitions.

Applicant shall mean the person or corporation that registers their UAS provided all the requirements in the code have been met.

Large venue special event shall mean any event held in a public space, open space, plaza, street, park, stadium, or any open-air facility or closed-air facility that is open to the public, ticketed and/or non-ticketed audience and is an event intended to attract people. A large venue special event includes but is not limited to, a sporting event, concert, festival, protest, etc.

Unmanned aircraft systems (UAS) shall mean an unmanned aircraft or unmanned aircraft system that can fly under the control of a remote pilot or by global positioning system (GPS) guided autopilot mechanism. UAS are more commonly known as "drones."

(c) Prohibitions.

(1) Unless otherwise exempt under this section, UAS are prohibited from being deployed, launched or flown in any airspace within or over any sporting and/or large venue special event, including but not limited to, over and within a half-mile radius of Bayfront Park, Marlins Ballpark, Miami Marine Stadium, or the Calle Ocho Festival when it is in use during a large venue special event, and over public parks and public facilities during large venue special events.

(2) In all other areas of the city, the following restrictions shall apply:

a. UAS may not be larger than five pounds including any attachments, and may not be equipped with detachable cargo, releasable payload, or any device equipped to carry a weapon. Any modifications to a UAS must be pursuant to FAA approval and registered via the city's application process.

b. UAS over five pounds may be operated only by a registered member of the Academy of

ATTACHMENT C

Model Aeronautics (AMA), if the operator is subjected to and compliant with AMA rules. Notwithstanding the weight limit, all other provisions of this section shall apply.

- c. Conditions in subsections (2)a. and b. above shall be included as conditions in the application process.

(d) Application.

- (1) An application is required for certain activities so that city officials and employees can regulate activities which would tend to damage private/public property, endanger the public or event attendees, or which are likely to create an atmosphere which would discourage use of city-owned property, other locations or venues for their intended purpose.
 - a. The application form shall be completed by the applicant.
 - b. The application shall be processed and approved by the appropriate city official (s) and departments as is accustomed through the city's regular special event and temporary event process as established in the City Code in chapters 54 and 62 prior to allowing the use of a UAS pursuant to this article.
 - c. The applicant's form shall require the name of applicant, valid governmental issued identification, current address and phone number(s) of applicant, photograph of UAS to be registered, UAS name and serial number or product number, and statement of purpose for use of the UAS.
 - d. Applications must be made at least 14 days prior to requested usage time of UAS to ensure proper review of application by city officials.
 - e. The city manager is authorized to establish fees for the processing of applications pursuant to this article. Thereafter, the city manager shall set and annually revise and adjust said fees, if necessary, prior to the first day of September, and such revised fees shall become effective the first day of October of each fiscal year via an administrative memorandum. In reviewing the existing schedule of fees to determine whether or not to revise and adjust the same, the city manager shall take into consideration any one, or all of the following criteria: (i) purpose and type of event(s) or program(s) conducted at the city-owned properties or at the large venue special events, including benefits to the community; (ii) operating expenses of the application process described herein; (iii) and/or other factors deemed appropriate by the city manager. At any time, the city manager shall be authorized to negotiate the fee for all applications to use UAS above should it be determined that the current schedule of fees does not properly address a particular type of event.
 - f. Same—Rules and conditions. The following rules and conditions shall apply to applications sought pursuant to this section:
 1. UAS activity described in this article is allowed on a first come, first served basis.

2. Applications are nontransferable, and are valid only on the date specified thereon.
 3. The applicant shall be held responsible for any damage and be liable to any third party.
 4. The applicant shall observe, obey and comply with the rules and regulations established by this section, as well as all applicable city, county, state and federal laws, rules and regulations.
 5. The applicant shall assume all risk in the use of the UAS and shall be solely responsible and answerable in damages for all accidents and injury to person or property, as well as fines in connection with violations of this section or other applicable law.
 6. Special conditions related to safety may be imposed for particular large venue special events depending upon occupancy or other safety considerations.
- (e) Exemptions. This section shall not prohibit the use of UAS by an applicant under this section or by any law enforcement or fire rescue agency for lawful purposes and operated in a lawful manner. Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit, limit, or otherwise restrict any person who is authorized by the Federal Aviation Administration to operate small unmanned aircraft in any city air space, pursuant to Sections 331—336 of the FAA Modernization and Reform Act of 2012 or certificate of waiver, certificate of authorization, or airworthiness certificate under section 44704 of Title 49 of United States Code or other Federal Aviation Administration grant of authority for a specific flight operation or operations, from conducting such operation(s) in accordance with the authority granted by the Federal Aviation Administration.
- (f) Enforcement.
- (1) Penalty. Any person in violation of any provision of this section shall be subject to the penalty as provided in section 1-13; however, in addition to, or in lieu of any criminal prosecution, the city shall have the power to sue in civil court and to enforce the provisions of this article before its code enforcement board established in chapter 2, article X of the Code of the City of Miami as amended. In addition to the penalties referenced above, a UAS operated in violation of this chapter will be impounded and held until the conclusion of the court or code enforcement proceedings.
 - (2) Release and disposal. Following the city's receipt of the request for an adversarial hearing by the owner of the UAS, the city shall schedule such hearing to take place before a hearing officer within 45 days. The hearing officer shall conduct a full adversarial hearing, and will render a decision in writing at the conclusion of the hearing. At the hearing, it shall be the city's burden to demonstrate a violation of this section. If the hearing officer finds that the city has not met this burden, it shall relinquish possession of the UAS to the owner. Formal rules of evidence shall not apply at the hearing and hearsay and circumstantial evidence shall be admissible. Title to any unclaimed UAS lawfully impounded pursuant to this section in the custody of the city shall vest

permanently in the city 60 days after the conclusion of the proceeding in accordance with F.S. § 705.105, as amended.

(g) Liability and insurance.

- (1) Prior to the finalization of the application, the applicant/operator shall furnish to the city a signed statement, approved by the city attorney, that the applicant/operator shall hold-harmless, indemnify and defend the city, its elected officials, officers, and employees for any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the application.
- (2) Applicant shall furnish and maintain such public liability and property damage insurance to protect from all claims and damage to property or bodily injury which may arise from operations under the application or in connection therewith subject to an assessment by risk management.

(Ord. No. 13581, § 2, 12-10-15)

ATTACHMENT C

Sec. 28-41. - Aviation; bicycles and vehicles.

- (a) *Aviation.* No person shall launch or land within or upon any park, preserve or littoral waters any manned airplane, balloon, parachute, hang glider, or other aerial device (excluding kites), except that certain areas may be designated appropriate landing places for medical evacuation helicopters, law enforcement, or official government aviation equipment unless authorized by the director.
- (b) *Confined to roads.* No person shall ride an all terrain vehicle (ATV), bicycle, scooter, skateboard, or roller blades/skates in any area other than an area designated for that purpose.
- (c) *Operation.* All persons shall ride a bicycle in a safe manner as directed by the F.S. ch. 316, to include F.S. § 316.2065.
- (d) *Rider prohibited.* No person shall ride any other person on a bicycle that is designed for use by only one person.
- (e) *Designated racks.* No person shall leave a bicycle in a place other than a bicycle rack when such is provided and there is a space available.
- (f) *Immobile.* No person shall leave a bicycle lying on the ground or paving, or set against trees, or in any place or position where other persons may trip over or be injured by them.
- (g) *Mountain biking.* Mountain biking activity shall be limited to areas specifically designated for this sport.
- (h) *Roller blades, roller skates, scooters, skateboards.* Roller blades, roller skates, scooters, and skateboards must be used only in areas specifically designated for that purpose.
- (i) *Golf carts.* Golf carts may be used in public parks, in areas specifically designated for that purpose and the city park road system if the posted speed limit is 35 miles per hour or less. Golf carts may be operated only during the hours between sunrise and sunset, unless equipped with headlights, brake lights, turn signals, and a windshield. A golf cart must be equipped with efficient brakes, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear. A golf cart may not be operated by any person under the age of 14.
- (j) *Human transporter devices (a/k/a segways).* Human transport devices or similar self-balancing, electric powered transportation devices may be used on city park property in the same manner as bicycles are permitted in this section, or if being used as an other power driven mobility device ("OPDMD") by individuals with mobility disabilities, in accordance with the "parks and recreation mobility policy" adopted June 19, 2013, as it may be amended from time to time. Law enforcement on duty may use a human transport device in any location of the park facilities.
- (k) *Unmanned aircraft.* Any person who obtains a special event permit may use a drone to photograph their special event in the park during the course of the event. For hobby or recreational use, unmanned remote control non-occupied planes and drones may only be flown at Community Park, unless there is a concessionaire agreement. Use of unmanned aircraft may only occur when the fields are unoccupied. Operation of any unmanned aircraft must be done so as to not be flown within 25 feet of people, power lines, buildings or light fixtures. Any delivery service or commercial use of drones must obtain the consent of the parks and recreation director through the use of a written concessionaire agreement for operation on any city lands.

(Ord. No. 09-08, § 23, 6-3-2009; Ord. No. 11-10, § 23, 8-17-2011; Ord. No. 14-026, § 1, 11-6-2014)

ATTACHMENT D

ORDINANCE NO. 2016-10

AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA; AMENDING THE CITY CODE BY AMENDING CHAPTER 30 "ENVIRONMENT", BY CREATING ARTICLE VIII "DRONE REGULATIONS AND PRIVACY PROTECTIONS", BY CREATING SECTION 30-210 "DRONE RESTRICTIONS AT PUBLIC GATHERINGS"; TO REGULATE AND RESTRICT DRONE USE IN AND OVER OUTDOOR PUBLIC GATHERINGS, AND BY CREATING SECTION 30-211 "PROTECTION OF PRIVACY FROM DRONE USE" TO PROVIDE FOR A CODE ENFORCEMENT MECHANISM CONCERNING ANY USE OF A DRONE THAT VIOLATES INDIVIDUAL PRIVACY AS PROTECTED BY SECTION 934.50, FLORIDA STATUTES; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR PENALTY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Aventura ("City") finds that it is necessary to amend Chapter 30 "Environment" of the City Code to restrict Drone operations at outdoor public gatherings within the City, and to afford a means of protecting personal privacy from Drone intrusions via City Code enforcement mechanisms; and

WHEREAS, the City Commission has held the required public hearing, duly noticed in accordance with law; and

WHEREAS, the City Commission finds that this proposed Ordinance serves to further enhance the protection of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

ATTACHMENT E

Section 2. City Code Amended. That Article VIII "Drone Regulations and Privacy Protections" is hereby created within Chapter 30 "Environment" of the City Code, consisting of Section 30-210 " Drone Restrictions at Public Gatherings", and Section 30-211 " Protection of Privacy from Drone Use ", to read as follows:

ARTICLE VIII. DRONE REGULATIONS AND PRIVACY PROTECTIONS

Section 30-210. Drone Restrictions at Public Gatherings.

(a) *Purpose and intent.* This Section is intended to promote public safety and protect people attending outdoor public gatherings from dangers posed by the flying of unmanned aircraft systems (the "UAS" or "Drones") in and over such public gatherings. The City Commission wishes to regulate the use of Drones at outdoor venues where people gather, such as parks and athletic field facilities, open spaces and similar areas that may attract groups of people. The restrictions of this Section are intended to protect persons gathered in groups where a Drone incident would cause greater harm and risk of injury due to a greater number of people gathered in a close proximity. This Section shall not be construed to conflict with FAA regulations, but rather to operate in conjunction with those regulations to promote public safety.

(b) *Definitions.* As used herein, the following terms shall have the meaning which is indicated below:

Operator shall mean the person or corporation that operates or controls a Drone.

Public Gatherings shall mean an outdoor area within the City of Aventura at which more than fifty (50) people congregate or assemble to observe and/ or participate in an athletic or sporting event, festival, show, outdoor movie, concert, exhibit, or engage in an organized demonstration or similar free speech activity, which is held in a public space, open space, plaza, street, park, athletic field, school grounds, shopping center or mall parking lot, or any open-air facility, when the time, date and location of such Public Gathering is posted on the City's website for the purpose of providing advance notice to the public and Drone Operators. The date of such posting on the City's website shall be at least three (3) days prior to the date of the Public Gathering in order to be considered effective notice under this provision.

Unmanned aircraft systems (UAS or Drone) shall mean a powered, aerial vehicle as defined in Section 934.50(2)(a), Florida Statutes, which statutory definition is hereby incorporated herein.

(c) *Prohibitions.* Unless otherwise exempt under this Section, a Drone is prohibited from being deployed, launched or flown in any airspace within or over any Public Gathering, as

defined above. Accordingly, no person shall deploy, launch or fly a Drone in any airspace within or over a Public Gathering in the City.

(d) *Exemptions.* This Section shall not prohibit the use of a Drone by any law enforcement or fire rescue agency, public utility, or local, county, regional, state, or federal governmental agency for lawful purposes and operated in a lawful manner. Notwithstanding the prohibitions set forth in this Section, nothing in this Section shall be construed to apply to any person who demonstrates that such person is expressly authorized by the Federal Aviation Administration to operate a Drone in City air space at a Public Gathering, in accordance with the authority granted by the Federal Aviation Administration.

(e) *Enforcement.*

(1) *Penalty.* Any person in violation of any provision of this Section shall be subject to the penalty provided in Section 1-14 of the City Code. However, in addition to, or in lieu of any such penalty, the City shall have the power to sue in civil court and/or to enforce the provisions of this Section before its code enforcement special magistrate established in Chapter 2, Section 2-331, et. seq. of the Code of the City of Aventura, as amended.

(2) In addition to the penalties referenced above, a Drone operated in violation of this Section may be impounded by a Police Officer of the City and held until the conclusion of the applicable court or code enforcement proceedings.

Section 30-211. Protection of Privacy from Drone Use.

(1) **SHORT TITLE.** — This Section may be cited as the “Drone Privacy Protection Ordinance.”

(2) **DEFINITIONS.** — As used in this Section, the term:

(a) “*Drone*” means a powered, aerial vehicle as defined in Section 934.50(2)(a), Florida Statutes, which statutory definition is hereby incorporated herein.

(b) “*Image*” means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

(c) “*Imaging device*” means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

(d) “*Surveillance*” means:

1. With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or
2. With respect to privately owned real property, the observation of such property’s physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

(3) PROHIBITED USE OF DRONES.

- (a) A person shall not use a Drone equipped with an Imaging Device to record an Image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct Surveillance on the individual or property captured in the Image in violation of such person’s reasonable expectation of privacy without his or her written consent. For purposes of this Section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a Drone.
- (b) No person shall engage in conduct which is prohibited by paragraph (a) above.
- (c) This Section is intended to prohibit conduct by a person that would give rise to a cause of action under Section 934.50(5)(b), Florida Statutes, as authorized by Florida Attorney General Opinion 16-04(2016).

(4) EXCEPTIONS. — This section does not prohibit the use of a Drone:

- (a) By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the Drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person’s or entity’s license. However, this exception does not apply to a profession in which the licensee’s authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- (b) By an employee or a contractor of any local, county, state or federal governmental agency who uses a Drone solely for governmental purposes.
- (c) To capture Images by or for an electric, water, or natural gas utility:

1. For operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;
 2. For inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;
 3. For assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;
 4. For utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or
 5. For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.
- (d) For aerial mapping, if the person or entity using a Drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- (e) To deliver cargo, if the person or entity using a Drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- (f) To capture Images necessary for the safe operation or navigation of a Drone that is being used for a purpose allowed under federal or Florida law.

(5) ENFORCEMENT FOR VIOLATION.

The City may initiate City code enforcement proceedings, and impose administrative fines and costs, pursuant to Section 2-331, et. seq. of Chapter 2 of the City Code against any person in violation of paragraph (3) of this Section, at the written request of the owner, tenant, occupant, invitee, or licensee of privately owned real property within the City who is aggrieved by a violation of this Section or Section 934.50(3)(b), Florida Statutes. Alternatively, such code enforcement proceedings may be commenced upon the City's own initiative.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any

part.

Section 4. Inclusion in the Code. That it is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Aventura; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Penalty. That any person who violates any provisions of Section 30-210 of this Ordinance shall, upon conviction, be punished by a fine not to exceed \$500.00 or imprisonment in the County jail not to exceed sixty (60) days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This Ordinance shall also be subject to enforcement under the Local Government Code Enforcement Act, Chapter 162, F.S., as amended, and City Code Section 2-331, et. seq., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Section 6. Implementation.

- A. That the City Manager is authorized to take any action which is necessary to implement and enforce this Ordinance.
- B. Further, the City Manager is authorized to investigate the potential purchase and deployment of technological devices and systems which may enable the safe immobilization of drones which are found to be operated in violation of this Ordinance or applicable laws within the City.

Section 7. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

City of Aventura Ordinance No. 2016-10

The foregoing Ordinance was offered by Commissioner Cohen, who moved its adoption on first reading. This motion was seconded by Commissioner Narotsky, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	<u>Yes</u>
Commissioner Teri Holzberg	<u>Yes</u>
Commissioner Marc Narotsky	<u>Yes</u>
Commissioner Robert Shelley	<u>Yes</u>
Commissioner Howard Weinberg	<u>Yes</u>
Vice Mayor Denise Landman	<u>Yes</u>
Mayor Enid Weisman	<u>Yes</u>

The foregoing Ordinance was offered by Commissioner Holzberg who moved its adoption on second reading. This motion was seconded by Commissioner Weinberg and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	<u>Yes</u>
Commissioner Teri Holzberg	<u>Yes</u>
Commissioner Marc Narotsky	<u>Yes</u>
Commissioner Robert Shelley	<u>Yes</u>
Commissioner Howard Weinberg	<u>Yes</u>
Vice Mayor Denise Landman	<u>Yes</u>
Mayor Enid Weisman	<u>Yes</u>

PASSED AND ADOPTED on first reading this 3rd day of May, 2016.

PASSED AND ADOPTED on second reading this 7th day of June, 2016.

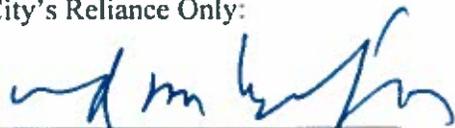

Enid Weisman, Mayor



ATTEST:


Ellisa L. Horvath, MMC
City Clerk

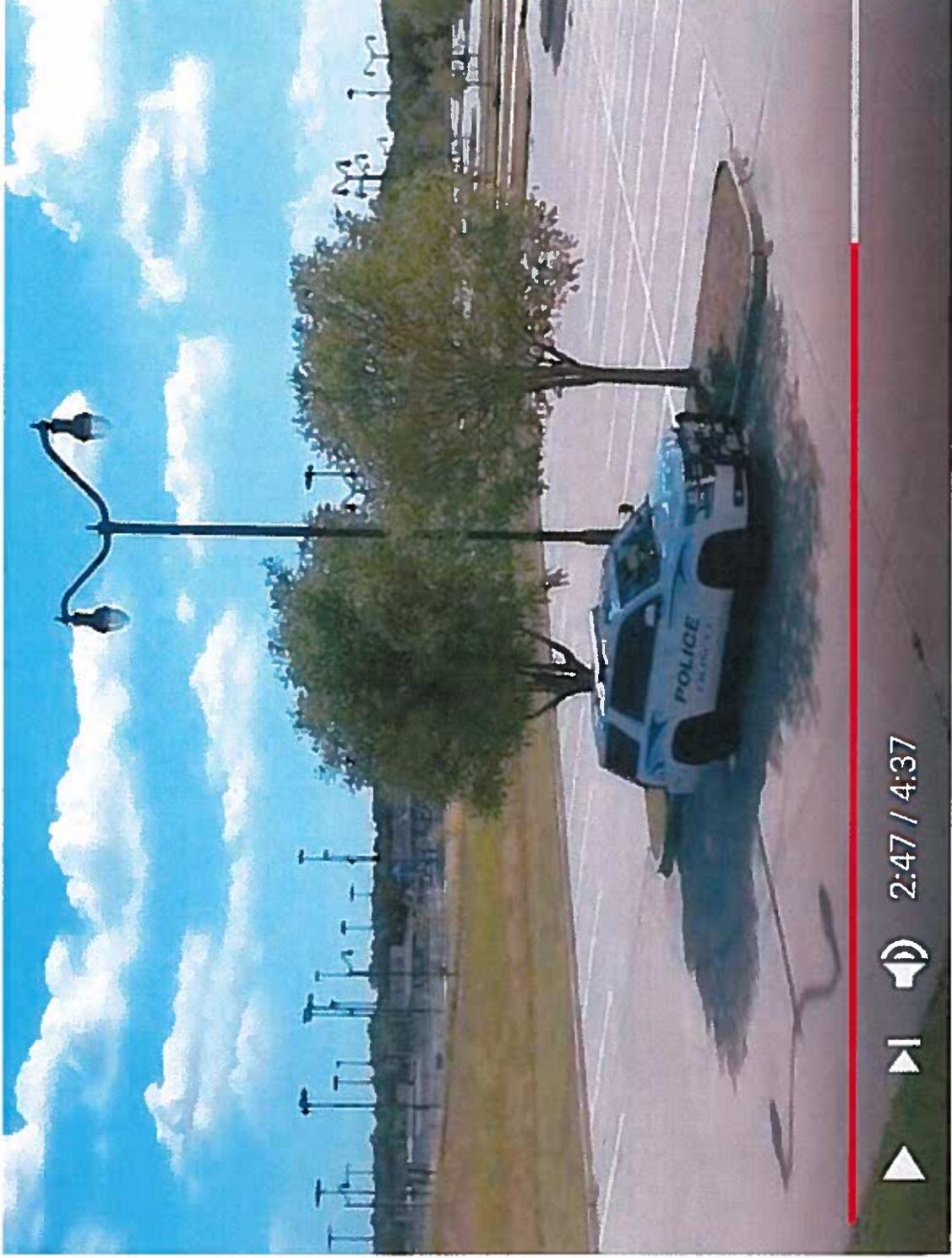
Approved as to Form and Legal Sufficiency
For City's Reliance Only:



City Attorney

ATTACHMENT F

Drone being used to monitor police vehicle locations so that criminals can commit crimes and flee the scene before police respond.

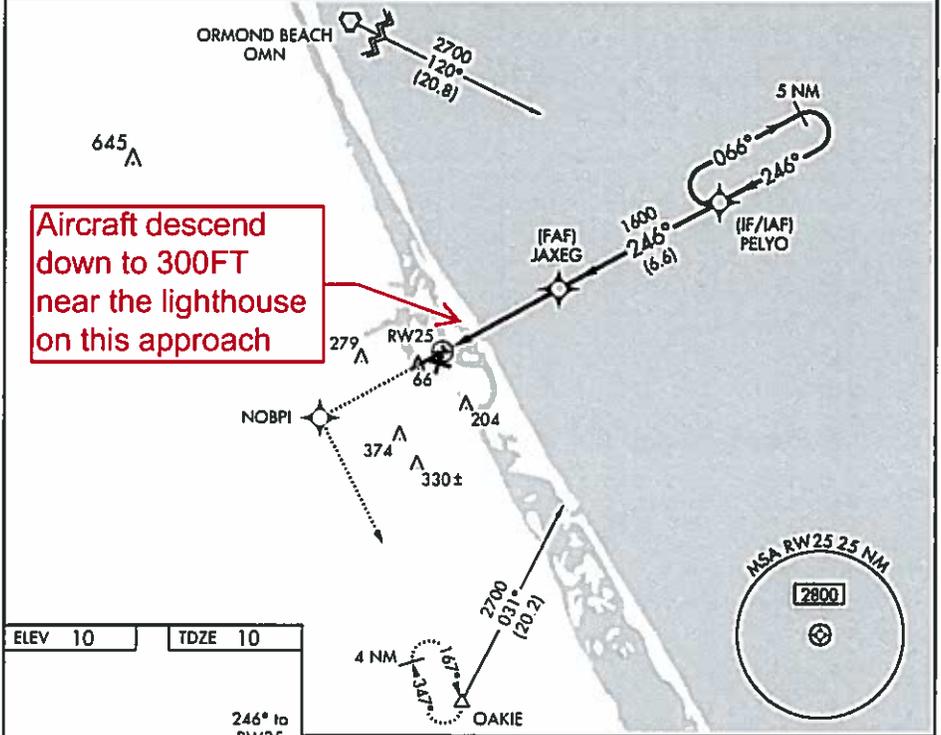


ATTACHMENT G

NEW SMYRNA BEACH, FLORIDA AL-6459 (FAA) 15232
RNAV (GPS) RWY 25
 NEW SMYRNA BEACH MUNI (EVB)

Use Daytona Beach Intl altimeter setting; if not received, use Orlando Sanford Intl altimeter setting and increase DA to 337 feet and all MDA's 40 feet. DME/DME RNP-0.3 NA. Helicopter visibility reduction below 1 SM NA. Night landing: Rwy 7, 11, 25 NA.
 MISSED APPROACH: Climb to 4000 direct NOBPI and via 157° track to OAKIE and hold, continue climb-in-hold to 4000.

ATIS 124.625	DAYTONA APP CON 125.35 322.3	NEW SMYRNA TOWER* 119.675 (CTAF) 0	GND CON 121.325	UNICOM 122.8
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SE-3, 10 NOV 2016 to 08 DEC 2016

SE-3, 10 NOV 2016 to 08 DEC 2016

ELEV 10	TDZE 10				
		4000	NOBPI	OAKIE	PELYO
		↑	✦	↑	5 NM Holding Pattern
			tr 157°	△	
		JAXEG		066° → 2700	
		RWY 25		← 246°	
		1600		GS 3.00°	
		4.7 NM		TCH 60	
		6.6 NM			
CATEGORY	A	B	C	D	
LPV DA	303-1	293 (300-1)		NA	
RNAV MDA	380-1	370 (400-1)		NA	
CIRCLING	440-1 430 (500-1)	460-1 450 (500-1)	580-1½ 570 (600-1½)	NA	

MIRL Rwys 7-25 and 11-29
 NEW SMYRNA BEACH, FLORIDA
 Orig-A 03APR14
 29°03'N-80°57'W
 NEW SMYRNA BEACH MUNI (EVB)
RNAV (GPS) RWY 25