EXAMPLE

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.

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.

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	Yes
Commissioner Teri Holzberg	Yes
Commissioner Marc Narotsky	Yes
Commissioner Robert Shelley	Yes
Commissioner Howard Weinberg	Yes
Vice Mayor Denise Landman	Yes
Mayor Enid Weisman	Yes

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	Yes
Commissioner Teri Holzberg	Yes
Commissioner Marc Narotsky	Yes
Commissioner Robert Shelley	Yes
Commissioner Howard Weinberg	Yes
Vice Mayor Denise Landman	Yes
Mayor Enid Weisman	Yes

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