

TOWN OF OPHIR



Box 683 • Ophir, CO 81428

ORDINANCE NO. 2020 - 2

AN ORDINANCE TO PROHIBIT THE USE OR OPERATION OF UNMANNED AIRCRAFT SYSTEMS WITHIN THE BOUNDARIES OF THE TOWN OF OPHIR

WHEREAS, the Town of Ophir, Colorado (Town), is a home-rule town and political subdivision of the State of Colorado, duly organized and operating under the Constitution and laws of the State and the Ophir Town Charter; and

WHEREAS, the Town is authorized under its general policy powers and C.R.S. Section 31-15-401 to adopt regulations in furtherance of the public health, safety and welfare of its animals, residents, visitors and the environment; and

WHEREAS, unprecedented advances in Unmanned Aircraft Systems (UAS), otherwise known as remote controlled aircraft, drones and model aircraft have empowered realtors, inspectors, biologists and preservationists, farmers and agricultural researchers, photographers and others to document the world around them; and

WHEREAS, UAS are evolving from earlier strictly military or government use into civilian, commercial and recreational uses among a range of residents and visitors of the Town; and

WHEREAS, the Town is aware of a number of reported UAS accidents in which either property, people, animals or the environment have been injured, or accidents with UAS that have been narrowly avoided, and instances of UAS either harassing or endangering animals, people and the environment; and

WHEREAS, the Town determines it is in the best interest of its residents, visitors, property owners and animals to regulate and enforce UAS operations within the boundaries of the Town of Ophir; and

WHEREAS, the Town has determined that the use of UAS within the Town may be detrimental to the personal safety, privacy rights, public health and welfare of the property owners, residents and visitors of the Town and might otherwise also be detrimental to the Town's ability to control and regulate use and activities occurring on land owned by the Town or within the Town's jurisdiction; and

WHEREAS, the Town has studied various alternatives for the regulation of safety, privacy, nuisance, trespass, and related policy power and zoning issues raised by UAS, and has taken into account the approaches adopted by communities regionally; and

WHEREAS, the Town recognizes the difficulty of identifying UAS operators raises concerns regarding enforcement of existing laws and tying UAS operators to their devices; and

WHEREAS, the Town has exclusive authority over land use and zoning decisions within the Town, and multiple court precedents protect the ability of towns to regulate such activities that take place upon Town land, including the take-off and landing of aircraft; and

WHEREAS, the FAA has declared that State and local governments have historically been able to regulate the take-offs and landings of aircraft within their boundaries; and

WHEREAS, the FAA's MicroUAS task force has recommended that UAS operators coordinate with State and local officials; and

WHEREAS, the FAA has declared that the remote pilot in command of a UAS may need to comply with State and local trespassing rules; and

WHEREAS, the FAA has declared that the operation of UAS near or over the perimeter or interior of certain locations may violate State or local trespassing laws; and

WHEREAS, the FAA has declared that they lack the resources and willingness to investigate drone related accidents involving less than \$500 worth of damage or injuries that do not require hospitalization; and

WHEREAS, the National Telecommunications and Information Administration (NTIA) best practices recommend that UAS operators should not operate over or within private property without consent of the property owner or without appropriate legal authority; and

WHEREAS, the Town finds that it would be a valid exercise of its policy powers to deny the use of UAS within the boundaries of the Town of Ophir, and

Section 1 – Purpose.

The Town prohibits use of UAS, while protecting and promoting the health, safety, and welfare of property, animals, people and the environment.

Section 2 – Definitions.

A "UAS" shall mean an aircraft operated without the possibility of direct human intervention from within or on the aircraft. This definition includes devices commonly referred to remote controlled aircraft, drones and model aircraft.

Section 3 – Deny Operation of use of UAS within Town Boundaries of Ophir

No Person shall operate a UAS for takeoff and landing on Town of Ophir owned land.

Section 4 - General Penalty for Violations

- A. The General Penalty for Violation any provision of this Ordinance shall be as follows:
 - a. No person shall violate or fail to comply with any of the provisions of this Ordinance.
 - i. Any person who violates any provision of this Ordinance shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars (\$1,000.00).
 - b. Each such person shall be guilty of a separate violation for each and every day during any portion of which any violation of any provision of this Ordinance is committed, continued or permitted by any such person, and such person shall be punished accordingly.
- B. Persons violating the provisions of this Ordinance shall have the option of paying the following penalty assessments if paid prior to the court date:
 - a. Unauthorized drone use or operation: \$250.00.

Section 5 – Remedies

In addition to the imposition of fines or penalty assessments, the Town may also seek an injunction to restrain a person from violating any provision of this Ordinance. The cost of obtaining such injunction, including reasonable attorney’s fees, shall assessed against the violator. These remedies shall be in addition to all other remedies and penalties provided for by local ordinance or which are available at law.

SECTION 6 - PUBLICATION.

After final adoption, this Ordinance shall be published in full.

SECTION 7 - SEVERABILITY.

If any one or more sections or parts of this Ordinance is adjudged unenforceable or invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various provisions herein are severable

SECTION 8 - EFFECTIVE DATE.

This Ordinance shall take effect upon publication of notice of adoption.

Introduced, Read and Approved on First Reading by the General Assembly of the Town of Ophir on the 20th (twentieth) day of October 2020.

Approved and Adopted on Second and Final Reading by the General Assembly of the Town of Ophir on the 17th (seventeenth) day of November 2020.

By: Corinne Platt
Corinne Platt (Dec 22, 2020 07:48 MST)

Corinne Plat, Mayor

Attest: Sydney Roop

Sydney Roop, Town Clerk

Stephen B. Johnson

Approved as to Form: Steve Johnson, Town Attorney