Drakenstein, South Africa

Use of Remotely Piloted Aircraft and Model Aircraft in Public Open Spaces and Streets By-law, 2020

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Drakenstein
South Africa

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Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, Drakenstein Municipality enacts as follows:-

1. Definitions

In this by-law, unless inconsistent with the context-

"**authorised official**" means an employee of the municipality or any other person who is appointed or authorised thereto by the municipality to perform any act, function or duty related to the provisions of this by-law, or exercise any power in terms of this by-law;

"**municipality**" means the Municipality of Drakenstein established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"**municipal area**" means the jurisdictional area of Drakenstein municipality;

"**municipal services infrastructure**" means infrastructure provided by the municipality for the purposes of service delivery to its residents in terms of section 156 of the Constitution of the Republic of south Africa, 1996 and section 84 of the Municipal Structures Act, 1998 (Act 117 of 1998), including, but not limited to-

(a) water supply systems:

(b) electricity supply systems;

(c) waste water disposal systems; and

(d) solid waste disposal sites.

"**model aircraft**" means a heavier-than-air aircraft of limited dimensions, with or without a propulsion device, unable to carry a human being and to be used for competition, sport or recreational purposes rather than unmanned aeronautical vehicles (UAV) developed for commercial or governmental, scientific, research or military purposes, and not exceeding the specifications as set by the Federation Aeronautique Internationale as more fully described in the Schedule hereto;

"**public place**" means any land, square, building, park, recreation ground, square, camping area, caravan park, public parking area, sports grounds, open space, public resort, recreation site, river, dam, the Paarl Mountain Nature Reserve, zoo-logical, botanical or other garden, or hiking trail, including any portion thereof which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission fees or not, but excluding a public road or street;

"**Regulations**" means the Civil Aviation Regulations GN R425 of 2012, promulgated under the Civil Aviation Act, 2009, (Act 13 of 2009);

"**remotely piloted aircraft**" means an unmanned aircraft, hereinafter referred to as RPA, which is operated from a remote pilot station, excluding model aircraft as defined in this section;

"**street**" means any street, public road, public parking area, cycle path, thoroughfare or any other place, including-

(a) the verge of any such road, street or thoroughfare;

(b) any footpath, sidewalk or similar pedestrian portion of a road reserve;

(c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;

(d) any other object belonging to such road, street or thoroughfare, which has at any time been-

(i) dedicated to the public;

(ii) used without interruption by the public for a period of at least thirty years;

(iii) declared or rendered such by the municipality or other competent authority, or

(iv) constructed by a local authority, and

(v) any land, with or without buildings or structures thereon, which is shown as a street on-

(aa) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or

(bb) any general plan as defined in the Land Survey Act, 1927, registered or filed in a deeds registry or Surveyor General's office;

2. Purpose of by-law

The municipality has a duty to promote a safe and healthy environment for all its residents and to protect municipal services infrastructure for the purpose of service delivery to such residents. The municipality therefor adopts this by-law to regulate and manage the operation of RPA's and model aircraft in all public places and streets in the municipal area and to regulate behaviour that endangers or is likely to endanger municipal services infrastructure.

3. Prohihition on the use of RPA's and model aircraft

(1) Without derogating from the provisions of the Regulations, and subject to the provisions of sections 4, no person may operate or allow to be operated an RPA or model aircraft-

(a) in or over any public place within the municipal area; or

(b) in a manner that endangers or is likely to endanger municipal services infrastructure;

(2) No person may use any street in the municipal area as a place of landing or take-off of an RPA without the permission of the municipality.

(3) A person who wishes to use any street for landing or take-off of an RPA, or who wishes to operate an RPA in or over a public place, must apply to the municipality for permission to do so in writing and the municipality may grant such application on the conditions it may find necessary.

(4) Where an application to use any street for landing or take-off of an RPA in terms of sub section (2) is granted, the municipality may close such street for public use as provided for in regulation 101.5.15 of the Regulations.

(5) If an application is refused, the municipality must provide the applicant with the reasons for such refusal.

4. Exceptional circumstances in which the operation of RPA may be allowed in puhlic places or streets

(1) The provisions of section 3 shall not apply to the operation of an RPA if-

(a) operated by an authorised official appointed by the municipality for the purpose of enforcement of this by-law or any other legislation relating to the functions of the municipality, provided that such operation shall be undertaken in compliance with the Regulations; or

(b) operated for scientific research purposes only within a controlled and restricted environment, and in partnership or collaboration with an accredited research institution.

(2) An institution that wishes to operate an RPA for purposes of scientific research in or on a public place or street must apply to the municipality in writing and in considering such an application the municipality may impose conditions and apply criteria, including but not limited to-

(a) potential impacts on bird- or wild life;

(b) safety of other users of public places or streets;

(c) potential damage to municipal property or services infrastructure;

(d) time and hours during which research will be done;

(e) duration of the research project;

(f) qualifications and experience of the personnel undertaking the research;

(g) compliance with the Regulations; or

(h) any other criteria the municipality may find necessary to consider.

(3) The municipality may, with reasonable notice, revoke an approval given under this section where any of the conditions imposed are not complied with, or without notice where circumstances arise during the operation which requires immediate revocation.

(4) If an application in terms of sub section (2) is refused, the municipality must provide the applicant with the reasons for such refusal.

5. Powers and functions of authorised official

An authorised official may-

(a) investigate any act or omission which on reasonable suspicion may constitute an offence in terms of this by-law;

(b) if he or she is a Peace Officer, in accordance with section 334(1) of the Criminal Procedures Act, 1977, search a person for and seize anything-

(i) which is used in, or is on reasonable grounds believed to be used in a contravention or failure to comply with any provision of this by-law;

(ii) which may afford evidence of such contravention or failure; or

(iii) which is intended to be used or on reasonable grounds believed to be intended to be used in such contravention or failure.

6. Offences and penalties

(1) A person commits an offence if he or she-

(a) threatens, resists, hinders or obstructs, or uses foul. abusive or insulting language towards or at an authorised official in the exercise of his or her powers or execution or his or her duties;

(b) falsely pretends to be an official;

(c) furnishes false or misleading information when complying with a request of an authorised official; or

(d) fails to comply with a request of an authorised official.

(2) A person who contravenes section 3(1), (2), (3) or 4(2), or fails to comply with any of the conditions imposed in terms of thee said sections, commits an offence and shall on conviction be liable to-

(a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment; and

(b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and

(c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

7. Appeal

A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefor in terms of section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

8. Short title and commencement

This by-law shall be known as the Drakenstein Municipality By-law Relating to the Use of Remotely Piloted Aircraft and Model Aircraft in Public Open Spaces and Streets and shall come into operation on the date of publication thereof in the *Provincial Gazette*.

Schedule 1

Model aircraft

1. General characteristics of model aircraft

(1) The general characteristics of model aircraft are set by the Federation Aeronautique Internationale and may be found in section 4 of its document ABR, Part 4 C.

(2) Unless otherwise stated, model aircraft shall meet the following general specifications:

(a) maximum flying weight with fuel-25kg;

(b) maximum surface area-5m^2;

(c) maximum loading-5kg/m^2;

(d) maximum swept volume of piston motor(s)-250cm^3

(e) electric motors power source maximum no-load voltage-42 volts;

(f) metal-bladed propellers are prohibited.

(3) Model helicopters shall meet the following general specifications:

(a) Maximum weight with fuel-5kg;

(b) maximum swept area of the lifting rotor(s) counting only once any superimposed areas-3m^2; Provided that in the case of co-axial model helicopters whose rotors are further than one rotor diameter apart, the total area of both rotors is counted;

(c) piston motor swept volume maximum-10cm^3;

(d) Rubber motor-no restrictions.

(4) Free-flying model aircraft that are neither radio- or line- controlled shall not have a maximum mass exceeding 5 kg.

(5) Noise limitations:

(a) Noise limitations shall be applied to powered model aircraft categories, with 96 dB (A) at 3 meters for any category, which does not have approval for any other noise rule. Specific noise measuring procedures are to be developed by relevant national body in which model aircraft operators are associated.

(b) Noise limits do not apply to model aircraft with electric motors.