

Unmanned Aerial System (UAS) Operations

Policy
455

Milpitas Police Department

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455.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines and protocol for the deployment and use of the Unmanned Aerial System (UAS) including the use, retention and/or destruction of media obtained using the UAS in accordance with applicable Federal law, State law, and City of Milpitas regulations.

455.2 DEFINITIONS

Definitions related to this policy include:

- a) **Unmanned Aerial System (UAS):** Consists of the small, unmanned aircraft weighing less than 55 lbs., the command system, a secure control link and other safety and support systems for operation of the UAS
- b) **Certificate of Authorization (COA):** Given by the Federal Aviation Administration (FAA) granting permission to fly the UAS within the specific boundaries and perimeters.
- c) **FAA Part 107 Certification:** Remote Pilot Certification given by the FAA to operate the controls of a small UAS under Part 107.
- d) **Operator:** A sworn or non-sworn member of the Milpitas Police Department or Milpitas Fire Department who is trained and authorized to control a UAS during flight.
- e) **Observer:** A member of the Milpitas Police Department or Milpitas Fire Department who is trained and authorized to maintain visual observation of the UAS while in flight.

455.3 POLICY

The UAS may be utilized to enhance the department's mission of protecting lives and property. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations, and industry best practices.

- UAS equipment and all data collected using a UAS is considered a confidential investigative record of and property of the department.
- UAS equipment and all data files are for official use only and shall not be utilized for personal use.
- UAS data shall not be copied, released, or disseminated in any form or manner outside the requirements of this policy.

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- Only authorized employees shall use or be in possession of a UAS device, data, or files.

455.4 PRIVACY

The department recognizes that use of a UAS involves potential privacy considerations and is committed to using UAS in a manner that respects privacy rights. UAS operators and observers will consider citizens' civil rights and reasonable expectations of privacy as key components of any decision made to deploy the vehicle. UAS operators and observers will ensure, and will be held accountable for ensuring, that operations of the UAS appropriately balance operational needs with maintaining public privacy and freedom from intrusion. To ensure that legitimate privacy considerations are observed, UAS operators and observers will:

(a) Absent a warrant or exigent circumstances, adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure).

(b) Take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.

455.5 USE OF UAS

(a) Department UAS's may be flown under two FAA regulatory authorizations:

1. Per the condition of a Certificate of Authorization (COA); or
2. FAA Part 107 Remote Pilot Certification

Only authorized operators who have completed the required training shall be permitted to operate the UAS.

(b) A supervisor may authorize the deployment of the UAS to preserve life, maximize public safety and/or officer safety, or collect investigative data. Uses may include but are not limited to:

1. High risk events such as; barricaded suspects, hostage situations, active shooters, apprehension of potentially armed and/or dangerous fleeing suspects, and high-risk search warrants;
2. Hot pursuit;
3. Mass casualty events;
4. Pursuant to a search warrant;

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5. Rescue events;
6. Disaster response and recovery;
7. Suspected explosive devices;
8. Fire suppression or investigation;
9. Hazardous material releases;
10. Post-incident crime scene and accident investigation, preservation and documentation;
11. Lost or missing persons;
12. Special Events;
13. When there is probable cause to believe that the UAS will record images of a place, thing, condition, or event, and that those images tend to show a felony has been committed, or tends to show that a particular person has committed a felony;
14. Anytime a UAS would enhance public safety, improve operational safety, incident stabilization or incident mitigation as determined by the supervisor;
15. Anti-UAV operations when a person is operating a UAV in a manner which impedes emergency personnel who, in the course of their duties, are coping with an emergency (refer to Penal Code § 402(a) 1);
16. Training missions;
17. In support of the Milpitas Fire Department when the underlying mission meets the uses outlined in this policy;
18. Mutual Aid support when the underlying mission meets the uses outlined in this policy; and
19. In support of any City of Milpitas department when the underlying mission meets the uses outlined in this policy.

455.6 PROHIBITED USE

The UAS video surveillance equipment shall not be used:

- (a) To conduct random surveillance activities.
- (b) To target a person based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- (c) Conduct any business other than official Department business.

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- (d) Shall not be weaponized.

455.7 EVIDENCE COLLECTION AND RETENTION

- (a) To avoid missing critical evidence during UAS operations, all UAS video will be recorded during flight. The pilot will manually activate the record feature on the UAS before take-off and will stop recording after landing.
- (b) At the conclusion of a UAS operation by the Milpitas Police Department or the Milpitas Fire Department, a Milpitas Police Department case agent or officer shall meet with the UAS operator to collect the UAS digital media storage device (DMSD) containing the video(s). All recorded video will be uploaded into the approved digital evidence management system (DEMS). After uploading the video(s) into the DEMS, the DMSD will be returned to service after reformatting the DMSD and deleting the video(s) from the DMSD. If uploading video(s) with evidentiary value to the DEMS is unavailable, the DMSD will be booked into MPD property as evidence. The collection and uploading of video(s) will be documented in an police report.
- (c) All data collected by the UAS shall be retained as follows:

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18)

1. Incident involving use of force by an officer
2. Officer-involved shootings
3. Incidents that lead to the detention or arrest of an individual
4. Recordings relevant to a formal complaint against a member of the Milpitas Police Department

Recordings of incidents involving the use of force by an officer(s), or officer-involved shootings that result in the death of an individual shall not be purged without the authorization of the Chief of Police or his/her designee.

Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days. Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18)

No data should be destroyed if it is the subject of a California Public Records Act request

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or a legal hold

Test/Training data will be retained at the discretion of the supervisor.

- (d) Unauthorized use, duplication, and/or distribution of UAS videos are prohibited. Personnel shall not make copies of any UAS videos for their personal use and are prohibited from using a recording device such as a personal camera or any secondary video capture device to capture duplicate UAS videos. All recorded media, images and audio are the property of the Milpitas Police Department and shall not be copied, released or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police or his / her designee.
- (e) Supervisors may review recorded UAS video files when there is a legitimate supervisory or business purpose. In addition, Milpitas Police personnel shall only review recorded UAS video files on a need/right to know basis. The District Attorney's Office or City Attorney's Office may review in connection with each office's legal duties. Authorized review may include the following circumstances:
 - 1. For the purpose of completing a criminal investigation and/or preparing official reports.
 - 2. Preparing for courtroom testimony or a courtroom presentation.
 - 3. Evaluation of a critical incident: with supervisor approval.
 - 4. For training purposes.
 - 5. California Public Records Act requests or subpoena.
- (f) Departmental request for a UAS video, including requests from the District Attorney's Office or City Attorney's Office, shall be forwarded as a written request to the Property and Evidence Unit. Requests should contain sufficient information to identify the specific UAS video being requested.
- (g) Non-Departmental requests for a UAS video, data and files shall be processed in accordance with Federal, State, and local laws, and existing Department policy for release of official records (discovery, media inquiries, subpoenas, Public Records Act requests, etc.).
 - 1. When practical, Department personnel will be advised prior to any release of UAS video under the California Public Records Act (CPRA).
- (h) Request for Deletion/Redaction or Accidental Recording

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1. In the event of an accidental or unintentional recording with the UAS camera system, a request that the UAS video be deleted/redacted may be requested in writing through the chain of command to the Chief of Police. The request must include sufficient information to locate the UAS video and the reason for the request. The Chief of Police, or his / her designee, is the authority that may approve video deletion/redaction. The authorization to delete/redact the video must be documented in an administrative memorandum and shall include sufficient information explaining the rationale for the authorization. Only supervisors and/or Police Evidence Technicians are permitted to modify/delete/redact recordings.

(i) Copying Procedures

1. A copy of the UAS video can be requested in accordance with the provisions of this policy.
2. Police Evidence Technicians will be responsible for duplication of video footage recorded by the UAS camera system pursuant to a discovery request, CPRA request, or other authorized request approved by the Chief of Police or his/her designee

(j) UAS video may be retained beyond the 10 days listed above in subsection (c)(1)(e) above, and utilized for training purposes with the approval of the Field Services Division Captain.

1. An officer or supervisor recommending the use of a UAS video for training purposes shall submit the recommendation through the Chain of Command to the Field Services Division Captain.
2. The Field Services Division Captain will notify the Police Evidence Technician of the approval to produce a training copy of the video. Any video approved to be retained for training will be stored in a UAS Training file. Videos stored in this file shall not be duplicated, downloaded, moved or copied from the file.
3. An officer or employee involved in the recorded incident may object to the use of the UAS video for training purposes. Their objection should be submitted in writing through the Chain of Command to the Field Services Division Captain to determine if the employee's objection outweighs the training value of the recording. The Field Services Division Captain may consider a series of factors such as; the identities of the person(s) involved, the sensitive nature of the incident, the benefit of using the video versus other means of training (scenario based training, training bulletins, etc.), or any potential negative impacts the video may have on involved parties or those that view it.

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455.8 ROLES AND RESPONSIBILITIES

The roles and responsibilities for UAS Program members are as follows:

(a) **Program Coordinator**- A Milpitas Police Lieutenant who manages the UAS Program and ensures the program operates in accordance with all Federal, State and local laws, and within department policy and guidelines. In addition, the Program Coordinator will ensure the UAS Unit completes the following:

1. Maintain all training flight and maintenance records for each operator and observer, as well as individual airframes.
2. Ensure operators and observers stay current with their training and certifications.
3. Maintain contact with the FAA and familiarity with the pertinent FAA regulations.
4. Evaluate airframes based on mission needs.
5. Remain up to date with current UAS case law, best practices, and industry standards.
6. Develop and maintain the UAS Operational Guidelines Manual

(b) **Operator**—the operator's role is to safely operate the UAS in accordance with all applicable law and policy.

1. The operator may reject a flight based on personnel safety or violation of FAA regulations.
2. The operator shall be responsive to requests and input from the observer in order to accomplish the safe and effective deployment of the UAS.
3. Operators are responsible for mission documentation.

(c) **Observer**—the Observer's role is to assist in the safe and effective operation of the UAS. The observer shall:

1. Assist the operator in avoiding obstacles.
2. Operate any attachments to the UAS .
3. Remain alert for safety issues surrounding the operator and observer.

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4. Handle radio communications.