

# TITLE 20 THE USE AND OPERATION OF DRONES

## Chapter 20.01 Definitions.

Under this Title:

“*Aircraft*” means any contrivance invented, used, or designed to navigate or fly in the air.

“*Altitude*” means the height of an aircraft above the surface of the land or water below it.

“*Business purposes*” means a pursuit engaged in for hire, for profit, for compensation, or earnings or monetary gain or a pursuit engaged in by a charitable or not-for-profit organization to advance the legitimate purposes of that organization.

“*County airspace*” means the space on a vertical plane perpendicular to and above the land, water, and waterways within the jurisdiction of Brown County, SD.

“*Drone*” means an aircraft that (1) is operated without the possibility of direct human intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of the operation, including the weight of any payload or fuel. The term “drone” does not include “toy aircraft” or “public aircraft” as defined herein.

“*Firearm*” has the meaning ascribed to the term in SDCL 22-1-2(16).

“*Hobby or recreational purposes*” means a pursuit engaged in for relaxation, and not for business purposes.

“*Open air assembly zone*” means any structure, enclosed area, or other demarcated space used for the assembly of persons in the open air, including, but not limited to, amusement parks, stadiums, athletic fields, automotive speedways, aviation fields, band stands, beach enclosures, grandstands, observation platforms, outdoor public swimming pools, outdoor theaters, race tracks, reviewing stands, street festivals, or parade routes.

“*Operate*” means to pilot, steer, direct, fly, or manage an aircraft through the air whether from within the aircraft or remotely. The term “operate” includes managing or initiating a computer system that pilots, steers, directs, flies, or manages an aircraft.

“*Operator’s Property*” includes all real property over which a drone operator is permitted to operate a drone by virtue of the fact that either:

- a) The drone operator owns or leases that real property; or
- b) The drone operator has permission from the owner or lessee of that real property to operate a drone over the property, subject to whatever restrictions the property owner or lessee may place on such operation; or
- c) The drone is being operated inside a building or structure with the consent of the person who owns or leases that building or structure, subject to whatever restrictions the property owner or lessee may place on such operation.

“*Public aircraft*” has the meaning ascribed to the term in 42 U.S.C. § 40102.

“**Surveillance**” means the gathering, without permission and in a manner that is offensive to a reasonable person, of visual images, physical impressions, sound recordings, data, or other information involving (1) an active crime, accident, or fire scene or investigation; or (2) the private, personal, business, or familial activities of another person, business, or entity, or that otherwise intrudes upon the privacy, solitude, or seclusion of another person, business, or entity regardless of whether a physical trespass onto real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity, or into the airspace above real property owned, leased, or otherwise lawfully occupied by such other person, business, or other entity occurs in connection with such surveillance.

“**Toy aircraft**” means (1) a glider or hand-tossed aircraft that is not designed for and is incapable of sustained flight; or (2) an aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire; or (3) model aircraft mentioned in SDCL 50-11-29.

“**Weapon**” means any instrument, article, or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing harm or damage to any person or property, including, but not limited to, firing a bullet, projectile, or laser.

#### **Chapter 20.02 Operating regulations, restrictions and limitations.**

Any person may operate a drone in county airspace for business, hobby or recreational purposes with the following exceptions, restrictions and limitations:

1. Not within one (1) mile of the Aberdeen Regional Airport and within the 10,000 feet non-precision approach areas to its runways *including Runway 31 and Runway 35 Approach Surfaces as identified in the current Airport Layout Plan (ALP) for the Aberdeen Regional Airport; or*
2. Not over property owned, leased, or operated by Brown County, including but not limited to the Brown County Fair Grounds, the Granary Rural Cultural Center and the Richmond Lake Youth Camp, *except* drones may be operated over county property pursuant to a license issued for this purpose by either the Brown County Commission or by one or more county officials authorized by the Commission to issue such licenses. The Brown County Commission, by resolution, may establish the requirements that must be met and the procedure that must be followed for the issuance of such licenses; or
3. Not by any child under 14 years of age when not accompanied by the child’s parent or guardian or an adult designated by the child’s parent or guardian. The failure of a parent or designated adult to supervise an underage child’s operation of a drone shall be a violation by the parent or designated adult; or
4. Not at an altitude higher than 400 feet above ground level; or
5. Not at such a low altitude as to interfere with the then existing use to which the land or water, or space over the land or water, is put by the owner of the property, or to operate in such a manner as to be imminently dangerous to persons or property lawfully on the land or water beneath, in violation of SDCL 50-13-4; or
6. Not in a manner that interferes with, or fails to give way to, any manned aircraft or moving vehicle or interferes with the movement or safety of vehicular traffic or creates a public nuisance; or

7. Not during the period between sunset and sunrise, unless the drone is being operated within or above the Operator's Property; or
8. Not when weather conditions impair the operator's ability to operate the drone safely; or
9. Not over any open air assembly zone, school, school yard, hospital, swimming pool, place of worship, or law enforcement building, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation; or
10. Not within 500 feet of any electric generating facility, substation, or control center, or within 500 feet of any electric transmission facility, or within 50 feet of any electric distribution facility or of any overhead wire, cable, conveyor, or similar equipment for the transmission of sounds or signal, or of heat, light or power, or data, upon or along any public way within the county, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation; or
11. Not for the purpose of conducting surveillance, unless expressly permitted by law; or
12. Not when the operator of the drone is under the influence of alcohol, any drug, any intoxicant, or any combination thereof. Specifically:
  - a) An operator is considered to be under the influence of alcohol if that person has 0.08 percent or more by weight of alcohol in his or her blood; or
  - b) An operator's ingestion of alcohol, any drug, any intoxicant or any combination thereof renders that person incapable of safely operating such drone.
13. Not when the drone is equipped with a firearm or other weapon or explosives including any type of commercially purchased fireworks; or
14. Not with the intent to use such drone or anything attached to it to cause harm to persons or property; or
15. Not in a reckless or careless manner; or
16. Whenever a drone is being operated other than on or above the Operator's Property, the drone must be within the operator's visual line of sight. The operator shall use his or her own natural vision, which includes vision corrected by standard eyeglasses or contact lenses, to maintain at all times an unobstructed view of the drone, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles designed to provide a "first person view" from the model or similar devices.

### **Chapter 20.03 Construction**

1. ***Operations authorized by FAA and County.*** Nothing in this Title shall be construed to prohibit any person who is permitted by the Federal Aviation Administration or the Brown County Commission or its designee from operating a drone in county airspace or to conduct such

operations on an ongoing basis in accordance with the terms of such authorization and, if applicable, in accordance with the exceptions and limitations listed in Chapter 20.02. In addition:

- a) Unless or until revoked or modified by the County Commission, the following county departments have ongoing authority, under the provisions of this section, to operate a drone in county airspace: Brown County Emergency Management, the Brown County Sheriff, the Brown County Highway Department, Brown County Fair and the Brown County Landfill.
  - a) By resolution and when circumstances justify, the Brown County Commission may give similar ongoing authority to operate a drone in county airspace to other county or local officials, units of government, special districts, rural fire departments and public agencies in Brown County.
2. ***Operations prohibited by federal or state regulation.*** Nothing in this Title shall be construed to authorize the operation of any drone in county airspace in violation of any federal or state law or rule promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration. This Title shall not be construed to permit interference by any drone operation with air traffic or airport operations or in a manner less restrictive than Federal Aviation Administration guidelines regarding unmanned aerial systems and regulations regarding air space obstructions.
  3. ***Governmental operations authorized.*** Nothing in this Title shall be construed to prohibit the use of a drone by a law enforcement agency, a fire department or an emergency management agency or to prohibit the conduct of governmental operations by or on behalf of a municipality, a county township, Brown County, the state of South Dakota, or the federal government.
  4. ***Negligence per se.*** This ordinance is enacted to protect the health and safety of all persons lawfully within Brown County or county airspace and to prevent damage to persons and property. A violation of Chapter 20.02, without legal excuse, is negligence as a matter of law.

**Chapter 20.04 Reserved**

**Chapter 20.05 Reserved**

**Chapter 20.06 Penalty**

- (1) A violation of this Title by an adult is a Class 2 misdemeanor.
- (2) A violation of this Title by a minor is a petty offense.