

MPD Proposed Policy draft: 4-226 Use of Unmanned Aerial Vehicles (drones)

In accordance with MN Statute section 626.19 Subd. 10, prior to the operation of a UAV, the chief officer of every state and local law enforcement agency that uses or proposes to use a UAV must establish and enforce a written policy governing its use, including requests for use from government entities. In developing and adopting the policy, the law enforcement agency must provide for public comment and input as described in subdivision 9. The written policy must be posted on the agency's website, if the agency has a website.

4-226 Use of Unmanned Aerial Vehicles

(xx/xx/22)

I. Purpose

- A. The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval, and dissemination of images and data captured by the UAS.
- B. MN Statute section 626.19 Subd. 10 requires that any local law enforcement agency that uses or proposes to use a UAV must establish and enforce a written policy governing its use, including requests for use from government entities.

II. Definitions

Remote Pilot in Command (RPIC): A person who holds a remote pilot certificate with a UAS rating and has the final authority and responsibility for the operation and safety of a UAS operation conducted under FAA's Small UAS Rule (Part 107).

Unmanned Aerial System (UAS): An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled without the possibility of direct human intervention from within or on the aircraft (UAV), and all of the supporting or attached systems designed for gathering information through imaging, recording, or any other means.

Unmanned aerial vehicle (UAV): MN Statute Section 626.19 Subd. 1 states: "unmanned aerial vehicle" or "UAV" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Visual Observer: A person acting as a flight crew member who assists the small UAS RPIC and the person manipulating the controls to see and avoid other air traffic or objects aloft or on the ground.

III. Policy

A. Protect Life and Property

1. Unmanned aerial systems may be utilized to enhance the MPD's mission of protecting lives and property, when other means and resources are not available or are less effective.
2. Any use of a UAS will be in strict accordance with constitutional and privacy rights.

B. Privacy

The use of the UAS potentially involves privacy considerations.

1. Absent a warrant or exigent circumstances, operators and observers shall 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).
2. Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

C. Requirements for Deployment

1. FAA requirements

In accordance with MN Statute section 626.19 Subd. 4, the MPD must comply with all Federal Aviation Administration requirements and guidelines, including, but not limited to:

- a. Daytime operation

UAS operations should primarily be conducted during daylight hours and only operated in the dark when the situation calls for immediate action.

- b. Populated areas

A UAS should not be flown over populated areas without FAA approval.

2. Pilot and observer

Deployment can only be conducted if there is an authorized Remote Pilot in Command and a trained Visual Observer conducting the mission.

3. Policy and law

A UAS shall only be deployed in accordance with MPD policy and MN Statute section 626.19.

4. Authorization required

A UAS shall only be deployed when authorized by the Commander of Special Operations and Intelligence, or the rank of Deputy Chief or above.

D. Limited Use

1. Search Warrant

In accordance with MN Statute section 626.19 Subd. 2, the MPD must not use a UAS without a search warrant issued under this chapter, except as provided in Authorized Use:

2. Authorized Use

In accordance with MN Statute section 626.19 Subd. 3, the MPD may use a UAS:

- a. During or in the aftermath of an emergency situation that involves the risk of death or bodily harm to a person;
- b. Over a public event where there is a heightened risk to the safety of participants or bystanders;
- c. To counter the risk of a terrorist attack by a specific individual or organization if the MPD determines that credible intelligence indicates a risk;
- d. To prevent the loss of life and property in natural or man-made disasters and to facilitate operational planning, rescue, and recovery operations in the aftermath of these disasters;
- e. To conduct a threat assessment in anticipation of a specific event;
- f. To collect information from a public area if there is reasonable suspicion of criminal activity;
- g. To collect information for crash reconstruction purposes after a serious or deadly collision occurring on a public road;
- h. Over a public area for employee training or public relations purposes; and
- i. For purposes unrelated to law enforcement at the request of a government entity, provided that the government entity makes the request in writing to the MPD and specifies the reason for the request and proposed period of use.

3. Requests by other law enforcement agencies

Any use of the MPD UAS at the request of another law enforcement agency shall only occur in accordance with MPD policy and applicable laws, and the operation of the UAS shall be done by MPD employees.

E. Prohibited Use

In accordance with MN Statute section 626.19 Subd. 4:

1. Facial recognition

The MPD shall not deploy a UAV with facial recognition or other biometric-matching technology, or search the data from a UAS with facial recognition or other biometric-matching technology, unless expressly authorized by a warrant and only if an exception was approved in accordance with Minneapolis 41.120.

2. Weapons

The MPD shall not equip a UAS with weapons.

3. Data on protests and demonstrations

The MPD shall not use a UAS to collect data on public protests or demonstrations, unless expressly authorized by a warrant or an exception applies the Limited Use section of this policy.

Additionally:

4. Random surveillance

The UAS video surveillance equipment shall not be used to conduct random surveillance activities. Any surveillance conducted shall only occur pursuant to an active criminal investigation, and in accordance with applicable laws and constitutional rights and expectations.

5. Targeting based on characteristics

The UAS video surveillance equipment shall not be used to target a person based solely on actual or perceived characteristics such as an individual's race, color, creed, religion, ethnic/national origin, gender, gender identity, age, disability (including pregnancy), or characteristics identified as sexual orientation, affectional preference, marital status, familial status, status with regard to public assistance and veterans status.

6. Harassment

The UAS video surveillance equipment shall not be used to harass, intimidate, or discriminate against any individual or group.

7. Personal business

The UAS video surveillance equipment shall not be used to conduct personal business of any type.

F. Use of Vision Enhancement Technology

1. Use of vision enhancement technology not generally available to the public is permissible in viewing areas only:
 - where there is no protectable privacy interest, or
 - when in compliance with a search warrant or court order.

In all other instances, legal counsel should be consulted prior to using vision enhancement technology.

G. Training Required

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

H. Program Coordinator

The Minneapolis Police Department will appoint a program coordinator who shall be responsible for the management of the UAS program. The program coordinator shall ensure that policies and procedures conform to current laws, regulations, and best practices.

I. Evidence

MN Statute section 626.19 Subd. 7 states:

Information obtained or collected by the MPD in violation of this section is not admissible as evidence in a criminal, administrative, or civil proceeding against the data subject.

IV. Procedures/Regulations

A. Data Classification

In accordance with MN Statute 626.19 Subd. 6, data collected by a UAS are private data on individuals or nonpublic data, subject to the following:

1. If the individual requests a copy of the recording, data on other individuals who do not consent to its release must be redacted from the copy;
2. UAS data may be disclosed as necessary in an emergency situation under subdivision 3, clause (1);

3. UAV data may be disclosed to the government entity making a request for UAV use under subdivision 3, clause (9);
4. UAV data that are criminal investigative data are governed by section 13.82, subdivision 7; and
5. UAV data that are not public data under other provisions of chapter 13 retain that classification.

B. Data Retention

Notwithstanding MN Statute section 138.17, the MPD shall delete data collected by a UAS as soon as possible, and in no event later than seven days after collection unless the data is part of an active criminal investigation.

C. Tennesen Warning

In accordance with MN Statute section 6126.19 Subd. 6:

The MN Statute on Tennesen Warnings (Section 13.04, subdivision 2), does not apply to data collected by a UAS.

D. Documentation Required

1. Incident information

a. Report required

The following information shall be documented in a Police Report for each use of a UAS, per MN Statute section 626.19 Subd. 5, subject to the exceptions below:

- i. A unique case number connected to the deployment.
- ii. The factual basis for the use of the UAS.
- iii. Whether a warrant was obtained, or an exception applied under subdivision 3 (and if so, the applicable exception).

b. Exceptions

A Police Report is not required for UAS training or using the UAS for public relations purposes.

2. Flight log

- a. A flight log of the aircraft shall be completed following deployment. The log shall contain:

- i. The name and badge numbers of the pilot and visual observer;
 - ii. The authorized use, search warrant or authorized exception;
 - iii. The supervisor that authorized the UAV deployment;
 - iv. A mission synopsis and results; and
 - v. Any performance issues, if applicable.
- b. Digital logs of aircraft mission profiles will be retained pursuant to FAA guidelines.

E. Required Reporting

In accordance with MN Statute section 626.19 Subd. 12:

By January 15 of each year, the MPD shall report to the commissioner of public safety the following information for the preceding calendar year:

1. The number of times a UAV was deployed without a search warrant issued under this chapter, identifying the date of deployment and the authorized use of the UAV under subdivision 3.
2. The total cost of the MPD's UAV program.

F. Program Coordinator Responsibilities

The UAS Program Coordinator (UAS PC) reports to the Special Operations and Intelligence Division Commander. The UAS PC is responsible for the day-to-day operations and will have the following additional responsibilities:

1. Certificate of Waiver or Authorization

The UAS PC shall coordinate the FAA Certificate of Waiver or Authorization (COA) application process and ensure that the COA is current.

2. Training

The UAS PC shall ensure that all authorized operators and required observers have completed all required FAA and MPD-approved training in the operation, applicable laws, policies, and procedures regarding use of the UAS.

3. Protocols

a. Requests for deployment

- i. The UAS PC shall develop a uniform protocol for submission and evaluation of requests to deploy a UAS, including urgent requests made during ongoing or emerging incidents.
- ii. The UAS PC shall develop protocols for reviewing and approving requests for use of the MPD UAS by government entities, as required by MN Statute section 626.19 Subd. 10.

b. Use in criminal investigations

The UAS PC shall develop protocol for conducting criminal investigations involving a UAS, including documentation of time spent monitoring a subject.

c. Operations

The UAS PC shall develop an operational protocol governing the deployment and operation of a UAS, including but not limited to safety oversight, use of visual observers, establishment of lost link procedures, and secure communication with air traffic control facilities.

d. Documenting missions

The UAS PC shall develop a protocol for fully documenting all missions.

e. Inspection and maintenance

The UAS PC shall develop a UAS inspection, maintenance, and record-keeping protocol to ensure continuing airworthiness of a UAS, up to and including its overhaul or life limits.

f. Data access and storage

- i. The UAS PC shall develop protocols to ensure that all data intended to be used as evidence are accessed, maintained, stored, and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements.
- ii. Electronic trails, including encryption, authenticity certificates, and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

g. Data retention

Developing protocols that ensure retention and purge periods are maintained in accordance with established records retention schedules.

4. Facilitate law enforcement access

The UAS PC shall facilitate law enforcement access to images and data captured by the UAS.

5. Ensure protocols are followed and report to Chief

The UAS PC shall ensure that established protocols are followed by monitoring and providing quarterly reports on the program to the Chief.

6. Submit required reports

The UAS PC shall prepare and submit the required annual report to the Commissioner of Public Safety, per MN Statute section 626.19 Subd. 12.

7. Post policy

The UAS PC shall ensure the MPD policy regarding the use of UAV is posted on the MPD's website, as applicable, per MN Statute section 626.19 Subd. 10.

8. Review program

a. Compliance

The UAS PC shall review the program and UAS use for compliance with MN Statute section 626.19.

b. Recommend enhancements

The UAS PC shall recommend program enhancements, particularly regarding safety and information security.