



# CITY OF McHENRY POLICE DEPARTMENT

333 S. Green Street, McHenry, Illinois 60050



Effective Date 08/07/2023

## GENERAL ORDER

General Order Number

**41.18**

Subject

### Small Unmanned Aircraft Systems (sUAS) aka Drone

Reference

[14 CFR Part 107](#)  
[725 ILCS 167/ Freedom from Drone Surveillance Act](#)  
[725 ILCS 5/108-3 Grounds for Search Warrant](#)

Rescinds/Replaces

New

Last Reviewed/Revised:

08/07/2023

CALEA Standard

17.5.2 Operational Readiness  
43.1.4 Equipment, Authorization, and Control  
43.1.5 Covert Operations

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Master File Copy  
All Employees

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Established by Order Of:

*John R. Birk*  
Chief of Police

## I. PURPOSE

This order establishes guidelines under which a small, unmanned aircraft system may be utilized, and the storage, retrieval and dissemination of images and data captures by such systems.

## II. POLICY

It is the policy of the McHenry Police Department to ensure authorized personnel are trained on the use of drones, to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of the sUAS will comply with relevant statutes, privacy rights, the Federal Aviation Administration (FAA) and 14 CFR 107 requirements.

## III. DEFINITIONS

**Federal Aviation Administration (FAA)** - the national aviation authority of the United States, with powers to regulate all aspects of American aviation.

**Information**- As defined by [725 ILCS 167/](#) means any evidence, images, sounds, data or other information gathered by a drone

**Parade**—A march, procession, or other similar activity consisting of persons, animals, vehicles, or things, or any combination thereof, upon a public street, sidewalk, alley, or other public place, which requires a street closing or otherwise requires stopping or rerouting vehicular traffic because the parade will not or cannot comply with normal and usual traffic regulations or controls. Parade does not include a political protest, march, demonstration, or other assembly protected by the First Amendment. ([725 ILCS 167/5](#))

**Remote Pilot in Command (RPIC)**- an individual who has full control over the drone during flight and is responsible for the overall flight operations.

**Routed Event**- A parade, walk, or race that: (1) is hosted by the State of Illinois or a county, municipality, township, or park district; (2) is outdoors and open to the public; and (3) has an estimated attendance of more than 50 people. Routed Event does not include any political protest, march, demonstration, or other assembly protected by the First Amendment. ([725 ILCS 167/5](#))

**Small Unmanned Aircraft Systems (sUAS)** – otherwise referred to as a drone; does not carry a human operator, weighing less than 55 pounds on takeoff, and its associated elements, including communication links and the components that control the aircraft that are required for the safe and efficient operation of the aircraft.

**Special Event**- A concert or food festival that: (1) is hosted by the State of Illinois or a county, municipality, township, or park district; (2) is outdoors and open to the public; and (3) has an estimated attendance of: (i) 150 or more people in a unit of local government with a population that is less than 50,000; (ii) 250 or more people in a unit of local government with a population that is greater than or equal to 50,000 but less than 100,000; (iii) 350 or more people in a unit of local government with a population that is greater than or equal to 100,000 but less than 500,000; or (iv) 500 or more people in a unit of local government with a population that is 500,000 or more. Special Event does not include any political protest, march, demonstration, or other assembly protected by the First Amendment. ([725 ILCS 167/5](#))

**Visual Observer (VO)** – a crew member for a flight mission who serves as a second set of eyes, monitoring the drone in flight to support the RPIC.

#### IV. PROCEDURES

##### A. Team Supervisor

The Investigations Sergeant or other Chief's designee shall be the team supervisor who is responsible for the management of the department's small, unmanned aircraft program. The team supervisor ensures that policies and procedures conform to current laws, regulations, and best practices. Listed below are the following additional responsibilities of the team supervisor:

1. Coordinate the FAA Certification of Authorization (COA) and/or the [14 CFR Part 107](#) application process; ensure all certifications are current.
2. Ensure authorized remote pilots in command have completed the required Federal Aviation Administration (FAA) and [14 CFR Part 107](#) training and department approved training in the operation, applicable laws, policies and procedures regarding use of the sUAS.
3. Develop uniform protocol for submission and evaluation of requests to deploy the sUAS, including urgent requests made during on-going or emerging incidents.
4. Develop protocol for conducting criminal investigations involving the sUAS, including documentation of time spent monitoring a subject.
5. Implement a system for notification to the public and media outlets regarding sUAS deployment, when appropriate.
6. Develop an operational protocol governing the safe deployment and operation of a sUAS, along with documenting all missions.
7. Develop sUAS inspection, maintenance and record keeping protocol to ensure continuing airworthiness of a sUAS, up to and including its overhaul or life limits.
8. Develop protocol to ensure 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. 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.
9. Develop protocol to ensure retention and purge periods are maintained in accordance with established records retention schedules
10. Facilitate law enforcement access to images and data captured by the sUAS.
11. Recommend program enhancements, especially regarding safety and information security.
12. Ensure established protocols are followed by monitoring and providing an annual program report to the Commander of Support Services to include but not be limited to an audit of the program and flight documentation.
13. Coordinate and implement a regular training curriculum to maintain proficiencies and stay apprised of current trends.
14. Annually report by April 1, to the [Illinois Criminal Justice Information authority](#) the following information:
  - a) The number of drones owned by the Department
  - b) The number of times a drone was used pursuant to each paragraph of [725 ILCS 167/15](#), including the date of use, time of use, reason for use, location, whether video was recorded, and whether the video is designated for retention for training purposes.
  - c) The report shall contain a copy of the Department's latest policy concerning drones as of the most recent April 1.

**B. Training**

1. Prior to authorization to operate a sUAS, assigned Department members must complete mandatory training provided by the Department to obtain an understanding on how to use the sUAS and the procedures outlined in this policy.
2. Annually, assigned members shall undergo refresher training on the equipment to ensure continued effective use and operation of the equipment, including changes, updates, or other revisions to the FAA and/or [14 Part CFR 107](#) requirements, statutes, or Department policy.
3. Additional training may be provided at periodic intervals for officers displaying a substandard performance in the use of sUAS equipment.

**C. Use of the sUAS**

**(CALEA 43.1.4 and 43.1.5)**

1. Pursuant to [725 ILCS 167/15](#) the drone may not be used to gather information except during the following types of situations:
  - a) to counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligences indicate there is that risk
  - b) pursuant to obtaining a search warrant based on probable cause under [section 108-3 of the Code of Criminal Procedure of 1963](#).
    - 1) The warrant must be limited to a period of 45 days, renewable by the judge upon a showing of good cause for subsequent periods of 45 days.
  - c) Under reasonable suspicion that under particular circumstances, swift action is needed to prevent imminent harm to life or to forestall the imminent escape of a suspect or the destruction of evidence.
    - 1) The use of the drone under this paragraph is limited to a period of 48 hours. Within 24 hours of the initiation of the use of a drone under this paragraph the Chief of Police must report in writing the use of a drone to the State's Attorney.
  - d) If a law enforcement agency is not undertaking a criminal investigation but is attempting to locate a missing person, engaging in search and rescue operations, or aiding a person who cannot otherwise be safely reached.
  - e) Crime scene and traffic crash photography must be conducted in geographically confined and time-limited to document specific occurrences.
  - f) To obtain information necessary for the determination of whether a disaster or public health emergency should be declared, to manage a disaster by monitoring weather or emergency conditions, to survey damage, or to coordinate response and recovery efforts. There is no requirement for an official declaration of disaster or public health emergency prior to use [725 ILCS 167/15\(6\)](#)
  - g) To obtain crime scene and traffic crash scene photography in a geographically confined and time-limited manner. Use of the sUAS under this paragraph on private property requires either a search warrant or lawful consent to search. As it relates to lands, highways, roadways or areas belonging to the state, a search warrant or consent to search is not required. Reasonable attempts shall be made to only photograph the crime scene or traffic crash scene and to avoid other areas.
  - h) To conduct an infrastructure inspection of a designated building or structure at the express request of a local government agency. Department members shall make every reasonable attempt to photograph only the building or structure and to avoid other areas.
  - i) To demonstrate the capabilities and functionality of a police drone for public relations purposes, provided that no information is collected or recorded by the drone during such demonstration.
  - j) In response to Public Safety Answering Point (PSAP) dispatched calls for service, when the sole purpose for using a drone is for one or more first responders to locate victims, to assist with immediate victim health or safety needs, or to coordinate the response of emergency vehicles and personnel to an emergency. The Department's Public Safety Answering Point (PSAP) is McHenry PD dba NERCOM.
  - k) If the Department is using a drone at a routed event or special event. The use of a drone under this section requires that:

- 1) Notice is posted at the event location for at least twenty-four (24) hours before the event and clearly communicates that drones may be used at the upcoming event for the purpose of real-time monitoring of participant safety; and
  - 2) Notice is posted, if practical, at major entry points to the event clearly informing the attendees that a drone may be used for the purpose of real-time monitoring of participant safety; and
  - 3) The drone is flown in accordance with Federal Aviation Administration safety regulations.
- 1) Under Section A.11 above, the Department may use the drone:
- 1) In advance of an event, before event participants have begun to assemble, for the sole purpose of creating maps and determining appropriate access routes, staging areas, and traffic routes, provided that no personal identifying information is recorded and provided further that no recorded information is used in any criminal prosecution; or
  - 2) During the event to proactively support public safety personnel by monitoring the event footprint in real time:
    - a. To detect a breach of event space, including a breach by an unauthorized vehicle, an interruption of a parade route, or a breach of an event barricade or fencing;
    - b. To evaluate crowd size and density;
    - c. To identify activity that could present a public safety issue for the crowd as a whole, including crowd movement;
    - d. To assist in the response of public safety personnel to a real-time public safety incident at the event; and
    - e. To assess the traffic and pedestrian flow around the event in real time.

#### D. Accident Reporting

1. The FAA requires notification of certain sUAS accidents. Pursuant to [14 CFR 107 Drone Operation and Certification Regulations](#), within 10 days after the accident, the remote pilot in command must report accidents to the FAA in the following situations:
  - a) Serious injury to any person or loss of consciousness.
  - b) Damage to any property, other than the sUAS, unless one of the following conditions is satisfied: (a) the cost of repair including materials and labor does not exceed \$500.00, or (b) the fair market value of the property does not exceed \$500.00 in the event of a total loss.
2. The remote pilot in command is required to initiate a police report for any accident involving the sUAS. The police report shall include the following information:
  - a) Name and contact information for operators and witnesses.
  - b) Type of operation.
  - c) Type of device and registration number/certificate.
  - d) Event location and incident details.
  - e) Evidence collection such as photos, video, and device confiscation, if necessary.
3. When the accident meets the criteria listed under [Section 1](#), the remote pilot in command shall provide notification to the FAA by using the FAA's DroneZone Portal at: <https://faadronezone.faa.gov/#/>.

#### E. Restrictions

1. The sUAS shall not be used to:
  - a) Conduct random surveillance activities or requests for information.
  - b) 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) Harass, intimidate, or discriminate against any individual or group.
  - d) Conduct personal business of any type.
  - e) Any situation outside what is considered an authorized Department use as outlined in this policy.
2. sUAS deployments by the Department must also adhere to the operating procedures established by the FAA. These rules are outlined below, but are not limited to:
  - a) Conduct a pre-flight check to ensure the sUAS in condition for safe operation.
  - b) Keep the sUAS in visual line of sight.
  - c) Fly at or below 400 feet above ground level or structure and 500 feet or more below cloud cover.
  - d) Fly at or below 100 mph.
  - e) Yield right of way to manned aircraft.

- f) Must not fly from a moving vehicle, except in rural areas.
- g) During an emergency situation, deviations from policy are permitted.

3. Use of Facial Recognition:

Department members are prohibited from using, during a flight, onboard facial recognition software that works in conjunction with the drone. Department members are prohibited from using any information gathered by a drone with any facial recognition software, unless either:

- a) The Department is using a drone to counter a high risk of a terrorist attack by a specific individual or organization and the United States Secretary of Homeland Security has determined that credible intelligence indicates that there is such a risk; or
- b) The Department possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent harm to life or to forestall the imminent escape of a suspect or the destruction of evidence. (725 ILCS 167/17)

4. Use of Weapons

Department members are prohibited from equipping or using on a drone any firearm, weaponized laser, kinetic impact projectile, chemical agent or irritant, or any other lethal or non-lethal weapon. (725 ILCS 167/18)

5. The Team Supervisor shall request a certificate waiver from the FAA which authorizes deviation from specific regulations. The certificate waiver will be granted when the FAA determines that the sUAS operation can be safely conducted under the terms of the certificate waiver.

6. A Department member shall notify the Team Supervisor when he/she knows or has reason to know that he/she has a physical or mental condition that would interfere with the safe operation of the sUAS.

F. Privacy Considerations

1. Use of the sUAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and visual 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. Operators and visual observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.

*(CALEA 43.1.5)*

2. When there are specific and articulable grounds to believe that the sUAS will collect evidence of criminal wrongdoing and/or if the sUAS will be used in a manner that may intrude upon reasonable expectation of privacy, the Department shall obtain a search warrant prior to conducting the flight.

G. Equipment Inspection and Care

*(CALEA 17.5.2)*

1. The sUAS and related equipment shall be maintained in the state of operational readiness. Assigned officers shall use reasonable care to ensure the proper functioning of the sUAS equipment. Malfunctions shall be brought to the attention of the Team Supervisor as soon as possible. Extra caution must be taken to ensure the equipment is not stored in extreme temperatures.

2. Prior to use, assigned officers shall:

- a) Inspect the sUAS and related equipment to verify proper functioning and ensure batteries are fully charged in accordance with the manufacturer's recommendations.
- b) Inspect the body of the sUAS, the charging and camera cables to look for signs of visible damage. Ensure the propeller blades are in flight worthy condition.

H. Security and Retention of Recordings

1. Department members should be aware that recordings may contain sensitive information and members are responsible for ensuring compliance to the information in this policy. A breach in security, careless handling of the recording, and/or intentional release of recordings to non-authorized individuals may jeopardize relationships with citizens, subject victims to an invasion of privacy, jeopardize prosecutions, and endanger the safety of individuals.

2. All recordings are considered investigative property of the McHenry Police Department. The utmost care and caution shall be taken to ensure the recordings are not mishandled or misused.
3. Members shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner recordings without written authorization by the Team Supervisor.
4. Any violations related to unauthorized edits, alterations, and dissemination of this data shall be cause for disciplinary action.
5. Pursuant to [725 ILCS 167/25](#), the disclosure of information is prohibited, except to another government agency when there is reasonable suspicion that the information contains evidence of criminal activity, or the information is relevant to an ongoing investigation or pending criminal trial.
6. Pursuant to [725 ILCS 167/20\(a\)](#), the Department shall destroy all information gathered by the sUAS,
  - a) Destruction within thirty (30) days after being gathered pursuant to:
    - 1) [725 ILCS 167/15\(1\)](#) (terrorist attack).
    - 2) [725 ILCS 167/15\(2\)](#) (search warrant).
    - 3) [725 ILCS 167/15\(3\)](#) (prevention of imminent harm to life, forestall imminent escape of a subject, or destruction of evidence).
    - 4) [725 ILCS 167/15\(4\)](#) (location of a missing person, search, and rescue operation, or aiding a person who cannot otherwise be safely reached).
    - 5) [725 ILCS 167/15\(5\)](#) (crime scene and traffic crash scene photography).
    - 6) [725 ILCS 167/15\(6\)](#) (disaster or public health emergency); or
    - 7) [725 ILCS 167/15\(9\)](#) (call for service dispatched by a PSAP where the sole purpose is to locate victims, assist with victim health and safety needs, or to coordinate an emergency response).
  - b) Destruction within twenty-four (24) hours after being gathered pursuant to:
    - 1) [725 ILCS 167/15\(10\)](#) (routed event or special event).
  - c) All information gathered pursuant to [725 ILCS 167/15\(7\)](#) (infrastructure inspection) shall be turned over to the requesting local government agency as soon as practicable, and all gathered information shall be destroyed immediately after the information has been turned over.
7. Notwithstanding [725 ILCS 167/20\(a\)](#) and the timeframes listed in section 6 above, a Department supervisor may retain information if:
  - a) There is reasonable suspicion that the information contains evidence of criminal activity;
  - b) The information is relevant to an ongoing investigation or pending criminal trial;
  - c) The supervisor deems that the information will be used exclusively for training purposes, provided that any such information shall not contain any personally identifiable information; or
  - d) The information consists of only flight path data, metadata, or telemetry information of the drone. ([725 ILCS 167/20\(b\)](#))
8. When the recording does not fall under the statutory exemptions listed in [725 ILCS 167/15](#), documentation pertaining to use of the sUAS, such as location, date, time, and scope of the mission, is not subject to being destroyed within the timeframes listed in [725 ILCS 167/20](#)
9. The retention of recordings which are exempt from the statutory destruction requirement is at the discretion of the Team Supervisor or determined by the completion of the criminal investigation or criminal trial.

#### I. Information Disclosure

1. All information gathered pursuant to [725 ILCS 167/15\(7\)](#) (infrastructure inspection) shall be turned over to the requesting local government agency as soon as practicable.
2. Pursuant to [725 ILCS 167/25](#) the Department shall not disclose any information gathered by the drone, except
  - a) to another government agency when there is reasonable suspicion that the information contains evidence of criminal activity, or the information is relevant to an ongoing investigation or pending criminal trial.
  - b) pursuant to a court order
  - c) in regard to a completed traffic crash investigation
3. Records of drone usage, including flight path data, metadata, or telemetry information of specific flights, if available, may be disclosed subject to the Freedom of Information Act ([5 ILCS 140/1](#)) and rules adopted under that Act.

J. Information Obtained from Private Drones

1. The Department may utilize information from private drones only for the purpose of undertaking the tasks outlined in Section C.1 above.
2. Private parties may voluntarily submit information acquired by the privately-owned drone to the Department.
3. The Department shall not disclose any information gathered by the private drone. However, a supervisor may disclose information to another government agency when there is reasonable suspicion that the information contains evidence of criminal activity, or the information is relevant to an ongoing investigation or pending criminal trial.

K. Assistance to Other Agencies

1. The sUAS equipment shall not be loaned to other agencies unless there is a valid Intergovernmental agreement in place or with permission of the Chief of Police or designee. Requests by other agencies for sUAS assistance require that a Department assigned operator respond with the equipment and operate it. All assists shall be documented, and an email sent to the Team Supervisor with the report number and general summary.

L. Policy Requirements and Violations

1. If the Department learns of violations of the Act, the Department shall immediately take prompt and appropriate actions to prevent future violations of the Act through any one or more of the following means: training, discipline, including progressive discipline for repeat violations, or other means that will prevent repeated violations of the Act by law enforcement. If the Department learns of willful and wanton violations of the Act, the Department shall immediately remove the pilot from its drone program and take action to prevent future willful and wanton violations of the Act. (725 ILCS 167/45(a))
2. The Department shall make publicly available on the Department's website the Department's policy governing the operation, use, administration, and oversight of its drone program. (725 ILCS 167/35(c))