

Model Aircraft and Unmanned Aircraft Systems FREQUENTLY ASKED QUESTIONS

Drone Laws in Texas: The Criminal and Civil Consequences of Operating Drones

Is it Legal to Operate a Drone in Texas? What are drones?

A drone is an unmanned aerial vehicle or UAV. They are commonly operated remotely and often carry audio and video recording equipment. Drones are becoming increasingly popular for recreational and non-recreational purposes. This article focuses on the criminal and civil liabilities a recreational operator might run into in Texas.

Who has the power to control airspace?

According to the [Federal Aviation Act \(49 USC 40103\)](#), the **federal government alone has control over “navigable airspace.”** Navigable airspace is the airspace above the minimum altitudes of flight including airspace needed for takeoff and landing. That is generally 500 feet or 1000 feet. **States retain the ability to control airspace below navigable airspace.**

Who regulates drone usage?

There are three separate sources of applicable laws for drone activity that must be considered:

- The Federal Aviation Administration (FAA),
- the Texas Privacy Act,
- and any applicable city ordinances.

FAA Regulations Regarding Drone Usage

The FAA has the authority to issue a Certificate of Authorization or COA for a **public agency** who seeks to operate a drone. A public agency has been defined as any agency that receives funding from the federal government. Currently, approximately 690 government agencies throughout the U.S. have applied for such permission. In Texas, the Arlington Police Department, Houston Police Department, Texas Department of Public Safety, Hays County Sheriff’s Department and Montgomery County Sheriff’s Department have authorization for drone usage.

The FAA does not issue COA’s to private citizens or civilian businesses.

The [FAA Modernization and Reform Act of 2012](#) requires that the FAA establish rules for drone operation by September 30, 2015.

Texas Drone Laws: Texas Privacy Act

Texas was ahead of the curve when it enacted the [Texas Privacy Act](#) (Government Code Chapter 423). The Texas Privacy Act limits the use of **drones in Texas**, but also sets out areas where drones may be operated legally.

In Texas, the primary concern with drone operation appears to be devices which are capable of capturing images or video in flight without the consent of the individuals featured in the media. Generally speaking, taking images without consent to conduct surveillance is generally a crime. [Texas Government Code Section 423.002\(a\)](#) provides it is lawful to capture an image using an unmanned aircraft in this state. The section continues by laying out a laundry list of circumstances under which drone usage is *not* illegal. Some of the acceptable usages include:

- Consent of the individual who owns or lawfully occupies the real property captured
- Images of public real property or a person on that property
- Images taken from a height no more than eight feet above ground level in a public place, if the image is not amplified beyond normal human perception
- Operation for the purpose of professional or scholarly research by a person acting on behalf of an institution of higher learning
- As part of a U.S. Military operation or training
- Images captured by satellite for mapping
- Images captured by or for an electric or natural gas company
- if the image is captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image
- Pursuant to a valid arrest or search warrant
- Law enforcement use in active pursuit of someone accused of a felony offense, or to capture a crime scene
- Search and rescue efforts for natural disasters or fires

Capturing Images Through Impermissible Surveillance

If you capture an image with intent to conduct surveillance and your activity is not exempted under the law, you could face a **Class C** Misdemeanor offense. The two possible Class C offenses are:

- Capturing an image with intent to conduct surveillance; or
- Capturing an image with intent to conduct surveillance and in possession of an image.

Both offenses are punishable by a fine of \$0-500.

Disclosure or Distribution of Image from Illegal Use of Unmanned Aircraft

If however you are accused of capturing an image with intent to conduct surveillance, **and** it is believed that you disclosed, displayed, distributed or used the images in any way, you could face a **Class B** Misdemeanor. The punishment range is 0-180 days in county jail and a fine of \$0-2,000.

In either the Class B or Class C offense, each image captured, possessed, or displayed is a separate offense.

Civil action is also a remedy for individuals who have been the victim of images captured without consent and in violation of the law.

Where can I legally fly a drone in Texas?

The most expansive permissive uses to fly a drone and record in Texas are:

1. in public places where the drone is no higher than eight feet off the ground,
2. to make recordings on public property, and of individuals on public property, or
3. with the consent of the owner or legal resident of the property.

A more exhaustive list of permissible uses includes:

- For educational purposes;
- In FAA designated test sites or ranges;
- By any branch of the military;
- For mapping by satellite;
- If the image is captured by or for an electric or natural gas utility for maintenance, assessment, routing, and inspections;
- With the consent of the individual who owns or lawfully occupies the real property;
- Pursuant to a valid search warrant;
- By law enforcement in immediate pursuit of someone they have reasonable suspicion to believe has committed a felony offense, or to document a felony crime scene, and a list of other instances when law enforcement might want to use aerial photography;
- At hazardous material spills;
- For fire suppression;
- To rescue an individual;
- By a real estate broker so long as no individuals are depicted;
- Of real property or of a person on real property that is within 25 miles of the US border;
- At a height of no more than 8 feet off the ground in a public place, if the image was captured without amplification;
- Of public real property or a person on public property;
- Pipeline inspections; and
- For port security.

Criminal Consequences of Improper Drone Use in Texas

The Texas Privacy Act also sets out the criminal consequences for improper use of drones. The following chart lays out the possible criminal charges arising from improper drone use in Texas and the criminal penalties that apply to each offense.

<https://legiscan.com/TX/text/HB912/id/721370>

<https://legiscan.com/TX/text/HB1481/2015>

Offense	Offense Level	Punishment Range
Illegal Use of Unmanned Aircraft to Capture Image with Intent to Conduct Surveillance	Class C Misdemeanor	\$0 - \$500
Possession of Image from Illegal Use of Unmanned Aircraft	Class C Misdemeanor	\$0 - \$500
Disclosure or Distribution of Image from Illegal Use of Unmanned Aircraft	Class B Misdemeanor	Up to 180 days in Jail and up to \$2,000

Civil Consequences of Improper Drone Use in Texas

Owners and tenants of private property can file lawsuits to recover civil penalties and attorney's fees from individuals who illegally use drones to make recordings. They can also file an action to stop an existing violation or prevent an imminent violation. Civil penalties of \$5,000 for all materials from a single recording episode, and \$10,000 for disclosure, display, distribution or other of all materials from a single recording episode apply. Additionally, if it is shown that the recording were disclosed, displayed or distributed with malice, the owner or tenant may recover actual damages.

If you have been charged with Illegal Use of an Unmanned Vehicle, or if you may be a party to a civil suit based on a violation of the statute.