

ORDINANCES

Second City, First Adopter—Chicago Keeps Drones in Sight and Under Control

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As recreational drone usage proliferates exponentially across America, communities are looking to governments to craft laws that will balance the interests of hobbyists and those seeking safety, quiet and privacy. Earlier this year, the New York City Council proposed an ordinance that would have greatly restricted drone usage anywhere in the City, while requiring registration and tagging of the drone and the obtaining of insurance to cover possible drone-related damage or injury. That measure stalled.

Chicago lawmakers, however, were more successful. Herewith is what is believed to be the nation's most comprehensive drone ordinance to date, enacted in November 2015:

Regulating the use of small unmanned aircraft in City airspace.

WHEREAS, The City of Chicago is a home rule unit of government pursuant to the Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, Pursuant to its home rule power, the City of Chicago may exercise any power and perfom1 any function relating to its government and affairs, including the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, A recent *Washington Post* investigation found that law enforcement agencies, universities and other registered drone users have reported 23 accidents and 236 unsafe incidents since November 2009; and

WHEREAS, Chicago has witnessed an increase in "flyaways", which occur when drones go rogue and fly off from their users; and

WHEREAS, Last August, Federal Aviation Administration (FAA) officials criticized a Chicago man for being "reckless and careless" after he sent a drone over the Lollapalooza music festival and posted videos from it on You Tube; and

WHEREAS, Videos have recently surfaced of a handgun-firing drone built by an 18-year-old Connecticut student for a college class; and

WHEREAS, On May 5, 2014, a DJI Phantom 2 Quadcopter crashed into the 30th floor of the Metropolitan Square building, the tallest building in St. Louis, Missouri; and

WHEREAS, Pilots have reported dozens of cases in which drones flew too close to their aircraft, and the FAA has stated that our Nation's air-traffic system is not equipped to handle thousands of small devices flying at low altitudes; and

WHEREAS, Chicago's airspace is among the busiest in the world. In 2014, Chicago O'Hare International Airport handled nearly 882,000 flights and 70 million passengers, while Chicago Midway Airport handled approximately 250,000 flights and 21 million passengers; and

WHEREAS, On July 21, 20 I 5, a drone crashed into the runway at Chicago Midway Airport while the United States National Guard was conducting a Blackhawk training mission there, causing a breach of security at the airport; and

WHEREAS, Drones can be equipped with highly sophisticated surveillance technology that threatens privacy; and

WHEREAS, Last December, the FAA launched a public awareness campaign urging novice operators to pay attention to safety and to avoid reckless and unsafe activities, such as flying too close to passenger planes, buzzing crowds or operating drones or unmanned aircraft while under the influence of alcohol or drugs; and

WHEREAS, The prevalence and unregulated use of drones throughout the City of Chicago poses a threat to the public health, safety and welfare and has created public health, safety and welfare concerns, including, but not limited to, privacy, nuisance and trespass concerns; and

WHEREAS, On the other hand, responsible and safe drone use is an increasingly popular recreational activity, particularly among amateur photographers, and promotes technological innovation, economic growth and job creation; and

WHEREAS, The use of drones for hobby and recreational purposes will enable Chicagoans of all ages to familiarize themselves with this exciting new technology, and will undoubtedly inspire a whole new generation of entrepreneurs and innovators to pursue careers in this field and in related high-tech industries that are flourishing in Chicago; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated into SECTION 2 of this this ordinance and made part thereof as though fully set forth therein.

SECTION 2. Chapter 10-36 of the Municipal Code of Chicago is hereby amended by inserting a new Article IV, and a new Section 10-36-400, as follows:

ARTICLE IV. SMALL UNMANNED AIRCRAFT

10-36-400 Small unmanned aircraft.

(a) *Definitions.* As used in this section:

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

"City airspace" means the airspace above the land, water and waterways within the jurisdiction of the city.

"Firearm" has the meaning ascribed to the term in section 8-20-010.

"Hobby or recreational purposes" means a pursuit engaged in for relaxation, and not for business purposes and not for compensation or hire.

"Open air assembly unit" 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 speed ways, 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 a small unmanned 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 a small unmanned aircraft.

"Public aircraft" has the meaning ascribed to the term in Section 401 02 of Title 49 of the United States Code.

"Small unmanned aircraft" 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 "small unmanned aircraft" does not include "toy aircraft" or "public aircraft" as defined herein.

"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 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 small unmanned aircraft that is not designed for and is incapable of sustained flight; or (2) a small unmanned aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire.

"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 death or serious physical injury.

(b) *Operating regulations.* Except as otherwise provided in subsection (c) of this section, no person shall operate any small unmanned aircraft in city airspace:

(1) except for hobby or recreational purposes only and in conformity with this section;

(2) directly over any person who is not involved in the operation of the small unmanned aircraft, without such person's consent;

(3) over property that the operator does not own, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;

(4) at an altitude higher than 400 feet above ground level;

(5) outside the visual line of sight of the operator. 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 small unmanned aircraft, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, goggles designed to provide a "first person view" from the model or similar devices;

(6) within five miles of any airport;

(7) in a manner that interferes with, or fails to give way to, any manned aircraft;

(8) between dusk and dawn;

(9) whenever weather conditions impair the operator's ability to operate the small unmanned aircraft safely;

(10) over any open air assembly unit, school, school yard, hospital, place of worship, prison or police station, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;

(11) within 500 feet of any water intake facility or any electric generating facility, substation or control center, or within 100 feet of any electric transmission facility, or within 25 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 city, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation;

(12) for the purpose of conducting surveillance, unless expressly permitted by law;

(13) while under the influence of alcohol, or other drug or drugs, intoxicating compound or compounds or any combination thereof, as those terms are defined in 625 ILCS 5/11-501, as amended;

(14) that is equipped with a firearm or other weapon;

(15) with intent to use such small unmanned aircraft or anything attached to it to cause harm to persons or property;

(16) in a reckless or careless manner; or

(17) in violation of any Federal or State law.

(c) *Construction of section.*

(1) *Operations authorized by the FAA- Exception.* Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit, limit or otherwise restrict any person who is authorized by the Federal Aviation Administration to operate a small unmanned aircraft in city air space, pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 or a certificate of waiver, certificate of authorization or airworthiness certificate under Section 44704 of Title 49 of the United States Code or other Federal Aviation Administration grant of authority for a specific flight operation(s), from conducting such operation(s) in accordance with the authority granted by the Federal Aviation Administration.

(2) *Operations prohibited by the FAA-Clarification.* Nothing in this section shall be construed to authorize the operation of any small unmanned aircraft in city airspace in violation of any Federal statute or rules promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration.

(3) *Operations authorized by the State of Illinois- Exception.* Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit the use of a drone by a law enforcement agency in accordance with Section 15 of the Freedom from Drone Surveillance Act, codified at 725 ILCS 167/1 et seq., or its successor provision.

(d) *Violation -Penalty.* Any person who violates this section or any rule promulgated thereunder shall be fined not less than $500.00 nor more than $5,000.00

Continued on page 32

Ordinances, Cont'd from page 21

for each offense, or may be incarcerated for a term not to exceed 180 days, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(e) *Seizure for unlawful use.* If the mayor, superintendent of police, commissioner of aviation, fire commissioner or their duly authorized enforcement officers or designees have a reasonable basis to believe that any small unmanned aircraft is or has been operating in violation of this section, said small unmanned aircraft may be seized by such duly authorized enforcement official, followed by an opportunity for an administrative hearing, with notice to the owner within seven calendar days of such seizure, for the purpose of reviewing the appropriateness of the seizure, and shall be held by the city until such time that the owner of such small unmanned aircraft reimburses the city for the actual cartage costs incurred in connection with the seizure and pays to the city $20.00 for each day, or part of a day, that the small unmanned aircraft is in storage. If criminal charges involving the use, condition or operation of the small unmanned aircraft are pending, the small unmanned aircraft shall be held until disposition of the criminal charges. If it is determined at an administrative hearing, by a preponderance of evidence, that the seized small unmanned aircraft was not operated in violation of this section, such small unmanned aircraft shall be returned to its owner without charge.

(f) *Rules.* The commissioner of aviation, in consultation with the corporation counsel, is authorized to promulgate rules necessary or appropriate to implement this section. Such rules shall be posted by the commissioner on the City of Chicago's rule web portal.

Section 10-36380 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

10-36-380 Helicopter operations- Prohibitions- Exception for governmental entities.

(Omitted text is unaffected by this ordinance)

.As used in this section, the term "other rotary wing aircraft capable of vertical landing and takeoff' does not include small unmanned aircraft, public aircraft or toy aircraft, as defined in section 10-36-400.

SECTION 4. This ordinance shall take full force and effect 10 days after its passage and publication. ML

Cases, Cont'd from page 31

ing.

The Florida statute cited by Golub protects an officer from personal liability for acts within the scope of his employment, unless the officer "acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Here there was sufficient evidence to raise a question of fact as to whether Golub acted willfully or with malice. His offense report appeared to contain fabrications about Claridy's behavior, which the State Attorney relied on in deciding to prosecute Claridy. The Circuit also denied Golub's state law immunity request.

Speech: Ban of Protestor from Arizona Senate Building Due to Potential for Future Disruptive Behavior Violates First Amendment *Reza v. Pearce, No. 13-15154 (9th Cir. Nov. 19, 2015).*

SUMMARY: Reversing the district court, the Ninth Circuit has found that a state senator's indefinite ban of a previously disruptive protestor from the Arizona Senate Building based on the possibility that the protestor might again be disruptive was a violation of the First Amendment.

FACTS: In February 2011 Salvador Reza, along with other members of Tonatierra, a community organization in Maricopa County, Arizona, attended a legislative hearing on the Omnibus Immigration Bill. The bill attracted a lot of attention, requiring the use of an overflow room in the Arizona Senate Building to accommodate the public. Reza was in the overflow room, which included both supporters and opponents of the bill. State Senator Pearce claimed that noise from the overflow room was interfering with the legislative debate. He told an officer who, in turn, approached Reza and told him to silence the audience. Reza refused to do so.

At the end of the day-long hearing, the sergeant-in-arms asked the crowd in the overflow room to stop applauding because it violated the Senate rules of decorum. This was reported to Senator Pearce who, as President of the Senate, was responsible for such rules. The Senator claimed, later, that this event took place just after the shooting of Gabriel Giffords in Arizona, leaving everyone on "edge," and as a result of that nervousness he asked the sergeant-in-arms to "handle" the protestors. The sergeant responded that since the hearing was ending shortly it would be better to just limit the disturbances as much as possible, and not arrest any protestors. Senator Pearce followed this advice, but after the hearing asked for the names of the disruptive protestors and directed the officers to deny those people entry to the building. No time limit was placed on this ban. Reza was put on this list of banned individuals.

Two days after the hearing Reza returned to the Building for a meeting with a senator and was denied entry. When he tried to enter the building anyway, he was arrested for trespassing and placed in the Maricopa County jail. Reza filed suit after the arrest, alleging a violation of his First Amendment rights. The district court granted summary judgment to Senator Pearce and to the two arresting officers, holding that they were protected by qualified immunity. Reza appealed.

HELD: The Ninth Circuit reversed the lower court grant of summary judgment to Senator Pearce, holding that he had violated of Reza's First Amendment rights and that at the time the law was clearly established, thus stripping Senator Pearce of qualified immunity protection. The grant of immunity to the officers was upheld.

DISCUSSION: The Circuit Court began by determining that the Arizona Senate Building is a limited public forum since it is a place where the public has the opportunity to address local government officials. The court noted that Reza's role in the Building at the hearing – e.g. as an audience member as opposed to a testimonial witness – had no bearing on the classification and that speech of spectators is protected by the same constitutional rules as the speech of those addressing the chamber. Thus, the government can impose time, place, and manner restrictions and may "reserve the forum for its intended purposes, communicative or otherwise, as long

Continued on page 33