

Meeting Date: 10/10/17 (19)

ORDINANCE NO. 10501(N.S.)

AN URGENCY ORDINANCE TO ADD CHAPTER 16 TO TITLE 3, DIVISION 2 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES, NECESSARY TO PRESERVE PUBLIC SAFETY, HEALTH AND WELFARE, RELATED TO UNMANNED AIRCRAFT OPERATION IN OR NEAR FIRES AND TEMPORARY AREA RESTRICTIONS, TO TAKE EFFECT IMMEDIATELY

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Pursuant to Government Code section 25123, this ordinance is declared to be an urgency measure necessary for the immediate preservation of the public peace, health, safety and welfare in order to ensure the County can limit, to the extent not in conflict with federal law and regulations, the operation of unmanned aircraft systems near areas where manned aircraft are being used to combat fires or where the Chief Administrative Officer has imposed a Temporary Area Restriction pursuant to Section 32.1501 of this Code. The following facts support the adoption of this urgency measure:

(a) San Diego County is now in the time of year known as “peak fire season” because of the long history of seasonal hot and dry winds known as “Santa Ana conditions” that contribute to disastrous wildfires. On October 1, the National Interagency Fire Center issued its monthly and seasonal outlook, assessing the “large fire potential” as “above normal” until December and characterizing this fall as “challenging...with regards to fire suppression efforts,” along with a prediction of greater than normal Santa Ana wind days for October through December.

(b) Firefighting efforts increasingly rely on rapid response with aerial assets such as helicopters and fixed wing aircraft to both deliver water and fire suppressant, and coordinate responses.

(c) Interference with aircraft and coordinated ground emergency operations by persons operating unmanned aircraft, commonly known as drones, is becoming more and more frequent. Launching, landing and operating a drone in an area where firefighting aircraft intend to operate will cause the firefighting aircraft to be excluded from the firefighting effort with potentially disastrous impact on ground operations.

(d) Laws exist that impose criminal penalties for interfering with firefighters, first responders and law enforcement, including but not limited to Penal Code section 402 (illegal to interfere by using a drone at the scene of an emergency) and Penal Code

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section 148.2 (interfering with firefighters). The Federal Aviation Administration may also issue Temporary Flight Restrictions affecting drones. However, the effort to curb interference, protect the safety of firefighting personnel and preserve the efficacy of integrated ground-air emergency operations would be greatly enhanced by the adoption of an ordinance that prohibits the operation of drones from unincorporated areas of San Diego County that are within three miles of a fire where firefighting efforts include the use of manned or unmanned aircraft.

(e) On September 26, 2017(16), the Board of Supervisors adopted an ordinance authorizing the Chief Administrative Officer to impose a Temporary Area Restriction that prohibits, within a defined area, items that may be used as weapons or implements of riot upon a determination that civil disturbances may occur. Recent events across the country have demonstrated that persons intending to engage in conflict and non-peaceful conduct may participate in these events and these persons may be equipped with items intended to be used as weapons. County Regulatory Code section 32.1501 was a necessary urgency ordinance because construction of prototype border walls in the unincorporated area was imminent. That construction has now started and a number of public roads have been closed to some or all vehicle traffic to ensure the health and safety of persons who may want to peacefully express their views on the border wall.

(f) A Temporary Area Restriction will be issued when there is a determination that there is an immediate and compelling need to ensure public safety against the use of weapons and items that may be used as weapons. The Sheriff must be able to effectively monitor the area under temporary restriction. To do so, the Sheriff must be able to safely operate manned and unmanned aircraft. Persons operating private drones in such areas could endanger the flight crews in Sheriff and other agency manned aircraft and interfere with the integrated ground-air operation of agency manned and unmanned aircraft. This ordinance will provide the Sheriff with an enforcement tool to prevent such interference. Therefore, it is imperative that this urgency ordinance be adopted in order to address this immediate public safety issue.

(g) Ordinances, other than urgency ordinances, must be introduced and adopted at separate regular meetings of the Board of Supervisors. (Government Code section 25131.) Unless enacted as an urgency measure, this new Chapter 16, Section 32.1601 would not be effective for 30 days after the second meeting, delaying the effective date and enforcement until November 23, 2017.

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Section 2. The Board of Supervisors hereby finds that the immediate enactment --and effective date-- of this ordinance is necessary for the preservation of the public peace, health, safety and welfare.

Section 3. Title 3, Division 2, of the San Diego County Code of Regulatory Ordinances is amended to add Chapter 16, Section 32.1601 as follows:

CHAPTER 16 UNMANNED AIRCRAFT SYSTEMS

Section 32.1601 Definitions

(a) For purposes of this Chapter:

- (1) "Person" shall have the same meaning as set forth in Section 12.115 of this Code.
- (2) "Small Unmanned Aircraft" means an Unmanned Aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.
- (3) "Small Unmanned Aircraft System" or "Small UAS" shall mean a Small Unmanned Aircraft and associated elements (including, but not limited to, any communication links and components that control the Small Unmanned Aircraft) that are required for the operation of the Small Unmanned Aircraft.
- (4) "Unmanned Aircraft" means an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.
- (5) "Unmanned Aircraft System" or "UAS" shall (A) mean Unmanned Aircraft and associated elements (including, but not limited to, any communication links and components that control the Unmanned Aircraft) that are required for the operation of the unmanned aircraft; and (B) shall include Small Unmanned Aircraft Systems.
- (6) "Temporary Flight Restriction" or "TFR" means aircraft flight restrictions issued pursuant to Title 14 of the Code of Federal Regulations section 91.137 (14 CFR 91.137).

Section 32.1602 Unmanned Aircraft Systems – Temporary Area Restrictions

(a) No Person shall launch, land or operate a UAS as follows:

(1) From within an area that is subject to a Temporary Area Restriction issued pursuant to San Diego County Code of Regulatory Ordinances Section 32.1501; or

(2) From within an area that is within three miles from the perimeter of an area that is subject to a Temporary Area Restriction issued pursuant to San Diego County Code of Regulatory Ordinances Section 32.1501; or

(3) When the Sheriff or Sheriff's designee has reasonably determined that the launching, landing or operation of the UAS is interfering with, or will interfere with, emergency operations.

(b) Subdivision (a) of this section shall only be enforced after the Sheriff or Sheriff's designee has advised the Person launching, landing or operating the UAS of the existence of any relevant conditions set forth in subdivision (a) and the Person is given a reasonable opportunity to return the UAS to the Person's location.

(c) Duly authorized news media representatives may launch, land and operate a UAS within the areas set forth in subdivision (a), paragraphs (1) and (2), unless the Sheriff or Sheriff's designee has reasonably determined that the launching, landing or operation of the UAS is interfering with, or will interfere with, emergency operations. If the Sheriff or Sheriff's designee has made such reasonable determination, the Sheriff may restrict the launching, landing and operation of UAS pursuant to this section to the extent necessary to prevent interference with emergency operations.

Section 32.1603 Unmanned Aircraft Systems -- Fires

(a) No person shall launch, land or operate a UAS as follows:

(1) From within three miles of a fire that is reasonably visible from the location at which the Person is launching, landing or operating the UAS; or

(2) When the Sheriff or Sheriff's designee, the Unit and County Fire Chief, or the Unit and County Fire Chief's designee, has reasonably determined that the launching, landing or operation of the UAS from the Person's location is interfering with, or will interfere with, emergency operations.

(3) If a Temporary Flight Restriction has been requested or implemented with respect to the fire to which this section is being applied, the request for, or implementation of, the TFR is deemed to function as the reasonable determination that operation of a UAS will interfere with emergency operations.

(b) Subdivision (a) shall only be enforced after the Sheriff or Sheriff's designee, the Unit and County Fire Chief, or the Unit and County Fire Chief's designee, has advised the Person launching, landing or operating the UAS of the existence of any relevant conditions set forth in subdivision (a) and the Person is given a reasonable opportunity to return the UAS to the Person's location.

(c) Duly authorized news media representatives may launch, land and operate a UAS within the area set forth in subdivision (a), paragraph (1), unless the Sheriff or Sheriff's designee, the Unit and County Fire Chief, or the Unit and County Fire Chief's designee, has reasonably determined that the launching, landing or operation of the UAS is interfering with, or will interfere with, emergency operations. If the Sheriff or Sheriff's designee, the Unit and County Fire Chief, or the Unit and County Fire Chief's designee, has made such reasonable determination, the Sheriff or Sheriff's designee, the Unit and County Fire Chief, or the Unit and County Fire Chief's designee, may restrict the launching, landing and operation of UAS pursuant to this section to the extent necessary to prevent interference with emergency operations.

Section 32.1604 Penalties; Severability

(a) It shall be unlawful for any Person to violate or fail to comply with this Chapter.

(b) Any Person violating the provisions of this Chapter shall be guilty of a misdemeanor pursuant to section 11.116 of this Code.

(c) Nothing in this Chapter is intended to relieve any Person of criminal liability pursuant to any other law.

(d) If any part of this section is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this section.

Section 4. By virtue of the urgency findings set forth herein, which constitute an emergency for the immediate preservation of the public peace, health and safety pursuant

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to Government Code Section 25123, this Ordinance shall become effective immediately upon its adoption.

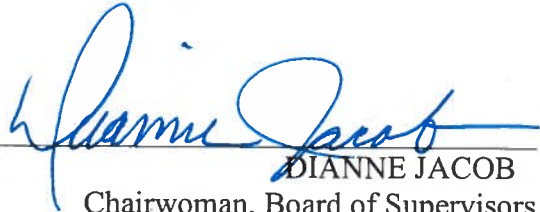
APPROVED AS TO FORM AND LEGALITY

THOMAS E. MONTGOMERY, COUNTY COUNSEL

By: William L. Pettingill, Chief Deputy

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PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 10th day of October, 2017.



DIANNE JACOB
Chairwoman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Gaspar, Horn
ABSENT: Roberts

ATTEST my hand and the seal of the Board of Supervisors this 10th day of October, 2017.

DAVID HALL
Clerk of the Board of Supervisors

By 
Diana Lopez, Deputy



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