

ORDINANCE 2021 - 16

AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, CREATING CHAPTER 217 OF THE BOROUGH CODE OF THE BOROUGH OF BAY HEAD, WHICH SHALL BE ENTITLED “UNMANNED AIRCRAFT”

WHEREAS, the Borough of Bay Head deems it appropriate, necessary, and proper for the protection of persons and property, and for the preservation of the public health, welfare, and safety of its inhabitants to adopt certain regulations pertaining to the use of drone technology and unmanned aircraft on government owned property; and

WHEREAS, drone technology includes “drones,” which are unmanned aircraft that can fly under the control of a remote pilot or via a global positions system guided autopilot mode, can fly at altitudes below the navigable airspace (generally 400’), and are equipped with surveillance technologies (e.g., high definition cameras, night vision cameras, and infrared scopes); and

WHEREAS, as a result of its declining cost, drone technology and unmanned aircraft have become increasingly available to private citizens for personal, recreational, and other potential uses; and

WHEREAS, drones and unmanned aircraft can be used to fly above public and private properties in a manner that is inherently dangerous to the public health, welfare, and safety as well as the privacy rights of the residents of the Borough.

NOW, THEREFORE, BE IT ORDAINED, by the governing body of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

SECTION 1. The Municipal Code of the Borough of Bay Head is hereby amended and supplemented so as to add Chapter 217, which shall be entitled “Unmanned aircraft” which shall read as follows:

§217-1. Definitions

DATA COLLECTION

The acquisition of information by use of one or more sensing devices.

DRONE

An unmanned aircraft that can fly under the control of a remote pilot or by a global positions system (“GPS”) guided autopilot mechanism, and that is equipped with any sensing device or capable of any data collection.

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SENSING DEVICE

A device capable of acquiring data from its surroundings. Sensing devices include, but are not limited to, cameras, microphones, thermal detectors, chemical detectors, radiation gauges, and wireless receivers in any frequency (including cellular, Wi-Fi, or other data frequencies).

UNMANNED AIRCRAFT

An unmanned vehicle or device of any size that is capable of remote control flight by any means device, is not capable of any data collection, and that does not possess any sensing devices.

§217-2. Requirements for use of Unmanned Aircraft

- A. Drone operators must follow all Federal and State Regulations pertaining to the operation of unmanned aircraft, including but not limited to:
 1. The requirement to keep the aircraft within the visual line of sight of a designated visual observer;
 2. The requirement to obtain a Remote Pilot Certificate from the FAA, if applicable; and
 3. Operations of unmanned aircraft at night, during twilight and over persons.
4. To fly an unmanned aircraft as a hobbyist in the State of New Jersey, users are required by FAA Regulations to take The Recreational UAS Test (TRUST) and to follow the FAA model aircraft rules.

§217-3. Impermissible use of Unmanned Aircraft

- A. Except as otherwise provided in §217-4, drones and unmanned aircraft are prohibited from being launched from, or landing on, any government or public buildings, property, or parks within the Borough unless prior written permission has been granted by the Borough Chief of Police for a special event or Borough sponsored event.
- B. It shall be considered a nuisance for a drone or unmanned aircraft to be used:
 1. For the purpose of conducting surveillance unless expressly permitted by court order;
 2. For the purpose of capturing a person's visual image, audio recording or physical impression in any place where that person would have a reasonable expectation of privacy;
 3. Over any emergency response efforts;
 4. With the intent to harass, annoy, or assault a person by flying within close proximity of their person.

§217-4. Exceptions

- A. This Chapter shall not prohibit the constitutional use of drones and unmanned aircraft by any law enforcement agency or emergency services organization of or servicing the Borough, the State of New Jersey, or the United States of America for lawful purposes and in a lawful manner.

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- B. This Chapter shall not prohibit any federal, state, county or municipal agency from the use of drones and unmanned aircraft for any lawful and authorized purpose pursuant to applicable regulation.
- C. This Chapter shall not prohibit the use of unmanned aircraft by any federal, state, county or municipal agency, including, but not limited to, law enforcement and emergency services agencies, for lawful purposes and in a lawful manner.

§217-5. Violations and penalties

- A. Unless otherwise specified herein, for a violation of any provision of this chapter, the maximum penalty, upon conviction thereof, shall be a fine not exceeding \$1,000 or imprisonment for up to 90 days or a period of community service not exceeding 90 days, or any combination thereof. Except as otherwise provided, each and every day in which a violation of any provision of this chapter exists shall constitute a separate violation.
- B. All fines and penalties under this chapter may be paid directly to the Municipal Court Administrator, unless otherwise indicated by the officer issuing the summons.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Bay Head held on the 4th day of October 2021, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the 1st day of November 2021, at 7:00 p.m. at the Bay Head Municipal Building, located at 83 Bridge Avenue, Bay Head, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

Patricia M. Applegate, RMC
Borough Clerk, Borough of Bay Head

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