



# City of South Bend Common Council

441 County-City Building • 227 W. Jefferson Blvd  
South Bend, Indiana 46601

(574) 235-9321  
Fax (574) 235-9173  
TDD (574) 235-5567  
<http://www.southbendin.gov>

Tim Scott  
President

Oliver Davis  
Vice-President

Gavin Ferlic  
Chairperson, Committee  
of the Whole

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First District

Regina Williams-Preston  
Second District

Sharon L. McBride  
Third District

Jo M. Broden  
Fourth District

Jake Teshka  
Fifth District

Oliver Davis  
Sixth District

Gavin Ferlic  
At Large

John Voorde  
At Large

Karen White  
At Large

September 18, 2018

South Bend Common Council  
4<sup>th</sup> Floor, County-City Building  
South Bend, IN 46601

Re: *Amendment adding Article 15, Chapter 14, Sections 14.157 to and including 14.159 regulating unmanned aircraft systems to the Municipal Code*

Dear Council Members:

We are filing the attached proposed amendment which adds rules and regulations for the use and operation of unmanned aircraft systems, commonly called drones, to Article 15, Chapter 14 of the Municipal Code. Although the Federal Aviation Administration has authority to regulate airspace, including the use of unmanned aircraft systems, laws traditionally related to State and Local police power, including land use, zoning, privacy, trespass and law enforcement operations remain within the jurisdiction of local and state governments.

The primary purpose of this amendment is the protection of privacy for South Bend residents. Other purposes include promoting public safety and aiding law enforcement. These purposes are served by specifically listing prohibited uses and exemptions.

The amendment also creates penalties for violations ranging from warning notices, to citations, to fines up to and including \$250.00 and impoundment of the UAS until the fine is paid.

We would like first reading on the proposed amendment for September 24, 2018, with second and third readings and public hearing scheduled for October 8, 2018.

Thank you for your consideration.

Tim Scott, Council President  
1<sup>st</sup> District Council Member

Filed in Clerk's Office

SEP 18 2018

KAREEMAH FOWLER  
CITY CLERK, SOUTH BEND, IN



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A handwritten signature in blue ink that reads "Karen L. White".

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Karen L. White, At Large Council Member

A handwritten signature in blue ink that reads "Sharon L. McBride".

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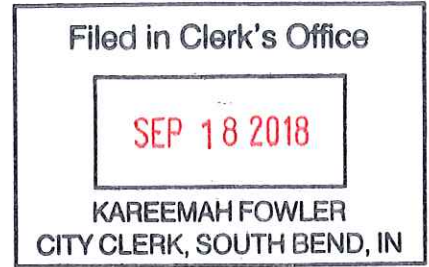
Sharon L. McBride, 3<sup>rd</sup> District Council  
Member

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Jake Teshka, 5<sup>th</sup> District Council Member

BILL NO. 52-18

ORDINANCE NO. \_\_\_\_\_



**AN ORDINANCE OF THE COMMON COUNCIL OF SOUTH BEND, INDIANA,  
ADDING ARTICLE 15, SECTIONS 14.157 TO AND INCLUDING 14.159 OF CHAPTER  
14, OF THE SOUTH BEND MUNICIPAL CODE REGULATING THE USE AND  
OPERATION OF UNMANNED AIRCRAFT SYSTEMS**

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**STATEMENT OF PURPOSE AND INTENT**

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Congress has vested the Federal Aviation Administration with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. Pursuant to this authority, the Federal Aviation Administration has promulgated rules for small, unmanned aircraft systems conducting non-recreational or non-hobby operations, which define permissible hours of flight, line-of-sight observation, altitude, operator certification, optional use of visual observers, aircraft registration and marking, and operational limits. To the extent that the Federal Aviation Administration has enacted these rules, it has preempted any similar State or Local regulation. Laws traditionally related to State and Local police power, including land use, zoning, privacy, trespass, and law enforcement operations, are generally not subject to Federal regulation. The intent of this ordinance is to establish responsible and safe use and operation of unmanned aircraft systems pursuant to the local police power of the City of South Bend.

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**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
THE CITY OF SOUTH BEND, INDIANA, as follows:**

**Section I.** Chapter 14 is hereby amended to include Section 14.157 to 14.159 to read as follows:

**Section 14.157: Definitions**

- a) "Unmanned aircraft systems" (UAS) means an aircraft of any weight operated without the possibility of direct human intervention from within or on the aircraft.

This definition includes any unmanned aerial devices commonly referred to as drones, remote controlled aircrafts, and mono-aircraft.

- b) “Drone” means any powered, aerial vehicle, that is either fixed wing or rotor-operated, that does not carry a human being, which uses aerodynamic forces to provide the vehicle with lift, that can fly autonomously or being piloted remotely, and that can be expendable or recoverable.
- c) “Image” means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sounds waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.
- d) “Imaging device” means a mechanical, digital, or electric viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.
- e) “Special event” means any event held in a public space, open space, plaza, street, park, stadium, or any open-air facility or closed-air facility that is open to the public, ticketed and/or non-ticketed audience, and is an event intended to attract people. A special event includes, but is not limited to, a sporting event, concert, festival, or demonstration.
- f) “Surveillance” means:
  - a. With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such person with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or,
  - b. With respect to privately owned real property, the observation of such property’s physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

**Section 14.158—Prohibited Uses**

- a) No person shall use an UAS equipped with an imaging device to record an image of privately owned real property or the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance of the individual property

captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of an UAS.

- b) No person shall operate an UAS over any person or groups of persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle.
- c) No person shall operate an UAS with the intent to photograph or videotape any resident in their home or on their property without prior written consent of that person or persons.
- d) No person shall operate an UAS over any open-air assembly unit, school, school yard, hospital, swimming pool, place of worship, or law enforcement building, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation.
- e) No person shall operate an UAS that is equipped with a firearm or any other weapon.
- f) No person shall operate an UAS with the intent to use such UAS, or anything attached to it, to cause harm to persons or property.
- g) No person shall operate an UAS with 0.08% or more BAC in that person's blood or while under the influence of alcohol, any drug, any intoxicant, or any combination thereof which renders that person incapable of safely operating such UAS.
- h) No person shall operate an UAS in a reckless or careless manner.
- i) No person shall operate an UAS with the intent to hunt or fish by means of killing, injuring, trapping, herding, gathering or catching animals or fish.
- j) No person shall operate an UAS with the intent to interfere with or harass a person who is hunting or fishing.
- k) No person shall operate an UAS that is equipped with hazardous materials.

#### **Exemptions**

- a) 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 small unmanned aircrafts in any city airspace, pursuant to Sections 331, 336 of the FAA Modernization and Reform Act of 2012 or certificate of waiver, certificate of authorization, or airworthiness certificate under §44704 of Title 49 of the United States Code, or other Federal Aviation Administration grant of authority for a specific flight operation or operations from conducting such operations in accordance with the authority granted by the Federal Aviation Administration.

- b) This section shall not prohibit the use of an UAS by any law enforcement or fire rescue agency for lawful purposes and operated in a lawful manner.
- c) The prohibitions contained in this section shall not apply to any UAS operated by or on behalf of the City of South Bend for purposes of monitoring or documenting a Special Event.

**Section 14.159—Penalties**

- a) Anyone violating any of the provisions of this Article may be subject to the following penalties:
  - 1) *Warning notice*: Issuance of a warning notice to a first-time violator stating that he or she is in violation and that failure to comply may result in impoundment of his or her UAS and a citation being issued for the violation.
  - 2) *Citations*. For a second or subsequent violation of this Article, a citation shall be issued to the violator imposing a fine of up to and including two hundred fifty dollars (\$250.00), as well as the UAS being impounded.
  - 3) The City shall maintain records of all UAS impounded by date, time, name and address of violator, the Code section violated, and a brief description of the item impounded. All such items impounded shall be tagged for proper identification purposes.
  - 4) The impounded UAS shall be given to the violator upon request and receipt of payment for all outstanding citations issued.
  - 5) Each subsequent violation shall be considered a separate offense for which a citation may be issued.

**SECTION II.** This Ordinance shall take effect upon passage by this Common Council, approval by the Mayor, and any publication required by law.

PASSED AND ADOPTED by the Common Council of the City of South Bend, Indiana this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Tim Scott, Council President  
South Bend Common Council

Attest:

\_\_\_\_\_  
Kareemah N. Fowler, City Clerk  
Office of the City Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_\_ o'clock \_\_\_\_ . m.

\_\_\_\_\_  
Kareemah N. Fowler, City Clerk  
Office of the City Clerk

Approved and signed by me on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_ o'clock \_\_\_\_ .m.

\_\_\_\_\_  
Pete Buttigieg, Mayor  
City of South Bend, Indiana