

ORDINANCE 2015-04

ORDINANCE AMENDING SECTION 36-2(b) OF THE WINDSOR MUNICIPAL CODE TO PROHIBIT THE UNLAWFUL USE OF DRONES

WHEREAS, the Town Board is authorized to prohibit conduct in the Town of Windsor that is also prohibited under chapters 941 to 948 of the Wisconsin Statutes; and,

WHEREAS, section 942.10 of the Wisconsin Statutes was recently enacted to protect the privacy of individuals from unlawful observation and recording by drones; and

WHEREAS, the Town Board deems it in the public interest to prohibit the unlawful use of drones in order to protect the public's right to privacy, as well as general safety, benefit and welfare of residents of and visitors to the Town of Windsor.

NOW, THEREFORE, the Town Board of the Town of Windsor, Dane County, Wisconsin, does ordain as follows:

1. Section 36-2(b) of the Windsor Municipal Code is hereby amended to include the following State Statute as incorporated into the Code:

942.10 Use of a Drone.

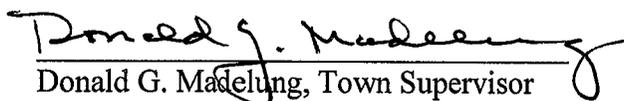
2. All other provisions of Section 36-2(b) of the Windsor Municipal Code remain in effect.

3. Effective Date. This ordinance shall take effect upon passage and publication as provided by law.

The above and foregoing Ordinance was duly adopted at a regular meeting of the Town Board of the Town of Windsor on the 18th day of June, 2015.

TOWN OF WINDSOR

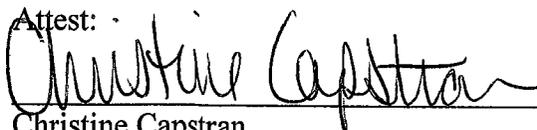

Robert E. Wipperfurth, Town Chairman


Donald G. Madelung, Town Supervisor


Bruce Stravinski, Town Supervisor


Alan Buchner, Town Supervisor


Monica M. Smith, Town Supervisor

Attest:

Christine Capstran
Clerk

Christine Capstran

From: Day, Steve <Day@danesherriff.com>
Sent: Wednesday, June 03, 2015 4:21 PM
To: 'rwipperfurth@windsorwi.gov'
Cc: Alan Buchner; Monica Smith; Don Madelung; Bruce Stravinski; Christine Capstran; Tina Butteris
Subject: new drone ordinance

Hi all,

Drones are becoming more and more prevalent. Police agencies, local government and even the FAA are struggling to adapt. What constitutes illegal use of a recreational drone? The FAA provides some guidelines. A drone cannot be flown within 5 miles of an airport without tower approval. The drone has to be flown line-of-sight. Meaning the operator has to maintain visual contact at all times. The drone cannot be flown after dark. This is at the federal level.

Recently there has been a significant spike in drone related calls in the Windsor/Deforest area. Many if not all can be traced to one individual. We are currently only able to issue a citation for disorderly conduct which by definition is tending to cause or provoke a disturbance. This can be issued only if there is a complainant who is disturbed and willing to testify if an issued citation of this nature goes to court. This person would have to testify as to why they were disturbed. If a deputy observes a drone violation, we have no recourse.

This specific individual is a resident of Windsor and has cameras on his drone. He has been seen looking into windows on residences with the drone as well as following individuals as they walk in the area. Generally, he is intentionally harassing neighbors and citizens of Windsor. Most are afraid of his erratic behavior and are not willing to be a named complainant. He also has overflown a police traffic stop on USH 51 and this raises serious concerns among law enforcement.

Portions of the town of Windsor fall within the 5 mile radius of the airport and I have been in contact with the region's expert on drones. He is willing to take a violator to federal court for violations described above. On a local level, having an ordinance for illegal use of drones provides us a tool to correct a behavior that might not fall under the disorderly conduct statute.

Thank you

Steve Day

1. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

2. The person's parent, guardian, or legal custodian consents to the capture of the representation.

(b) 1. Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

a. Captures a representation of a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, the locker room and exhibits or distributes the representation to another.

b. Transmits or broadcasts an image of a nude or partially nude person from a locker room while the person is nude or partially nude in the locker room.

2. This paragraph does not apply if the person consents to the exhibition or distribution of the representation or the transmission or broadcast of the image and one of the following applies:

a. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

b. The person's parent, guardian, or legal custodian consents to the exhibition, distribution, transmission, or broadcast.

History: 1995 a. 249; 2001 a. 16; 2001 a. 33 ss. 2 to 13; Stats. 2001 s. 942.09; 2001

a. 109; 2007 a. 118; 2013 a. 243.

Sub. (2) (a) [now sub. (2m) (a) 1.] requires that the person who is depicted nude is in a circumstance in which he or she has an assumption that he or she is secluded from the presence or view of others, and that assumption is a reasonable one under all the circumstances, according to an objective standard. *State v. Nelson*, 2006 WI App 124, 294 Wis. 2d 578, 718 N.W.2d 168, 05–2300.

A "legitimate expectation of privacy" for purposes of a search or seizure under the 4th amendment is not consistent with the context and purpose of this section. The 4th amendment embodies a balance between society's interest in law enforcement and the privacy interest asserted by the individual that is not relevant to this section. Construing "reasonable expectation of privacy" according to its common meaning does not render the statute unconstitutionally vague and provides sufficient notice of the conduct prohibited under sub. (2) (a) [now sub. (2m) (a) 1.]. *State v. Nelson*, 2006 WI App 124, 294 Wis. 2d 578, 718 N.W.2d 168, 05–2300.

Nelson did not purport to provide a definition of reasonable expectation of privacy covering all circumstances. The question for purposes of the privacy element is not whether the nude person had a reasonable expectation that the defendant would view him or her nude at the time of the recording, but whether the nude person had a reasonable expectation, under the circumstances, that he or she would not be recorded in the nude. *State v. Jahnke*, 2009 WI App 4, 316 Wis. 2d 324, 762 N.W.2d 696, 07–2130.

942.10 Use of a drone. Whoever uses a drone, as defined in s. 175.55 (1) (a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy is guilty of Class A misdemeanor. This section does not apply to a law enforcement officer authorized to use a drone pursuant to s. 175.55 (2).

History: 2013 a. 213.