

Drones: Hovering over a Town Near You

by Kathryn B. Rossmell



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Overview

- Federal
- State
- Local
- Moving Forward



FAA State and Local Regulation Fact Sheet

December 17, 2015

Unmanned aircraft systems (UAS) are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground.

- Rulemaking:
 - Safety Rules for UAS under 55lbs for non-recreational users
 - FAA requires drones to be registered
 - “EXCLUSIVE MEANS” for registration
 - “No state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace...”

FAA Recommended Consultation for Local Governments Ordinances That...

- Restrict Operations:
 - flight altitude, flight paths,
 - operational bans
 - Any restriction concerning navigable airspace
- Relate to Equipment or Training:
 - Likely preempted as inconsistent with federal regulatory framework

Examples of State and Local Regulations Not Subject to Federal Regulation



- Land Use
- Zoning
- Privacy
- Trespass
- Law Enforcement Operations

Plot Twist !

- May 19, 2017
- Taylor V. Huerta, Case No. 15-1495, DC Court of Appeals
- Decided FAA cannot regulate recreational drones because drones are “model aircraft”
 - 2012 FAA Modernization and Reform Act § 336(a) prohibits regulation of model aircraft
 - Previously considered part of basis for “fact sheet”
- Left intact FAA use restrictions for certain airspace (but because of technicality, not merit)



Florida Statutes: "Freedom From Unwanted Surveillance Act"

- §934.50, Fla. Stat.
- "Freedom from Unwarranted Surveillance Act"
- Drones cannot be used by law enforcement without a warrant
- Drones cannot be used as surveillance tool in a place where a person has a reasonable expectation of privacy
- Evidence collected in violation of Act is not admissible as evidence



Statutory Exceptions

- To counter a high risk of a terrorist attack
- If a warrant is obtained
- For certain commercial uses, but not where the drone operator is in the business of “obtaining information about the identity, habits, conduct, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.”
 - AKA – no surveillance
- For a property appraiser assessing ad valorem taxation value
- For certain uses by an electric, water, or natural gas utility

Statutory Remedies



- Civil action, even against law enforcement
- Compensatory damages, including attorneys' fees
 - May include a multiplier if case is tried to a verdict
- Punitive Damages
- All other legally available remedies (statutory remedies are cumulative)

Breaking News!

- Effective July 1, 2017
- Unmanned Aircraft Systems Act
 - preempts local government ordinances regulating drones...
 - Nuisance, harassment, reckless endangerment
 - Voyeurism
 - Property Damage



Unmanned Aircraft Systems Act

- Prohibits political subdivisions from regulating
 - Design, manufacture, testing, maintenance
 - Operation (including airspace, altitude, flight paths, or equipment/technology requirements)
 - Licensing, registration, certification
- No exception for airports
- Restrictions on use over “critical infrastructure” BUT..
 - Airports not listed as “critical infrastructure”
 - Certain exceptions, including drone in transit for commercial purposes, so long as in compliance with FAA
- Prohibits use of weaponized drones

Airport Concerns

- Training
 - FAA requires commercial operators to obtain remote pilot certificate
- Registration
 - Now unclear for recreational users
- Insurance
- Flight Path Interference
 - FAA requires notification when flying within 5 miles of airport, must give way to manned aircraft



Issues to Watch:

- Recreational Regulation

- FAA Registration Rule now void for recreational uses
- FAA can't regulate "model aircraft" (recreational)
- Florida has no registration rule
- Florida has preempted local governments from regulating
- Predictions:
 - FAA may redefined "model aircraft" to exclude drones
 - Florida may require registration
 - Florida may lift preemption

- Drone Use by Sex Offenders

- Previous bills have been introduced, but not passed, prohibiting use of drones by sex offenders

- Package Delivery

- Amazon and others are experimenting
- Florida opening doors to automated delivery
 - CS/CS/SB 832 lifts restrictions on "personal delivery devices" used on sidewalks and crosswalks

- Airport Control of Drone Use

What can local governments do?

- Look to next year's legislative session:
 - Adjustments to Preemption Law
 - Expansion of Airport Authority
- Create/enforce ordinances prohibiting otherwise illegal use of drones



Stay tuned!

Questions?

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