



## STAFF REPORT

**Meeting Date:** June 17, 2014

**To:** Honorable Mayor & City Council

**From:** Lieutenant Lincoln Hoshino

**Subject:** Request by Councilmember Krasne for Discussion of Developing Local Regulations for Use of Unmanned Aerial Vehicles

**Attachments:** FAA 4910-13; FAA Advisory Circular AC 91-57; City of Rancho Mirage 10-1; Law Enforcement Intelligence Units Unmanned Aerial Vehicles – Issues for State and Local Public Safety Agencies. Beverly Hills Legislation Summary

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### INTRODUCTION

Councilmember Krasne is asking the City Council to consider introducing a local privacy protection ordinance for use of drones over the City when they are not within the FAA regulations.

An Unmanned Aerial System (UAS) or “Drone” is a type of aircraft which has no onboard crew or passengers. UASs include both autonomous drones (controlled by GPS) and remotely piloted vehicles (RPVs). A UAS is capable of controlled, sustained level flight and is powered by a jet, reciprocating or electric engine. Due to falling costs of UAS technology including vehicles and camera equipment, they have become readily available and affordable to the general public. Private ownership and operation of a UAS/drone is now possible with costs starting as low as \$100. UAS/drones may be equipped with high definition, infrared, and night vision cameras.

### DISCUSSION

Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015. Current FAA policy prohibits the use of UAS/Drones for commercial purposes. That being said, a recent court decision in *Huerta v. Pirker*, on March 6, 2014, a Federal Judge at a National Transportation Safety Board (NTSB) hearing ruled that the FAA ban on commercial UAS/Drones is advisory and not a law thus unenforceable.

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Throughout the United States in 2013, 43 states introduced 130 bills and resolutions addressing UAS/drone issues. At the end of 2013, 13 states had enacted UAS/drone laws and 11 states had adopted 16 resolutions.

The State of California currently has Assembly Bill 1327 introduced in February 2013 and Senate Bill 15 introduced in December of 2012. Both bills regulate the use and operation of publicly and privately operated UAS/drones. Both the Assembly Bill and the Senate Bill are currently working through their respective committees. Assemblyman Gorell, is the author of AB1327. Based on information from Assemblyman Gorell's office their bill is moving forward, but they do not have a time line as to when it might be ready to be signed into law. Senator Padilla is the author of SB15. Senator Padilla's office made a similar statement regarding their bill.

Currently there is no specific law in the state of California that covers the use of misuse of a UAS/drone. The City of Rancho Mirage is considering the implementation of an ordinance and a vote by their city council had been tabled pending State and Federal legislation. We were unable to locate any other California city with a UAS/drone ordinance.

The Police Department has seen UASs deployed by civilian operators within the City during one protests and footage was discovered on You Tube taken during the 2014 Los Angeles Marathon as it passed thru Beverly Hills.

<https://www.youtube.com/watch?v=wNKldnEMafs>.

The Police Department is not aware of any complaints in regards to any UAS/drones in Beverly Hills.

### **FISCAL IMPACT**

Unknown

### **RECOMMENDATION**

Staff seeks direction from the Council on whether or not it wishes Staff and the City Attorney's office to work on preparation of an ordinance for future consideration.



David Snowden

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Approved By

# **Attachment 1**

**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**Docket No. FAA-2006-25714**

**Unmanned Aircraft Operations in the National Airspace System**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of policy; opportunity for feedback.

**SUMMARY:** This notice clarifies the FAA's current policy concerning operations of unmanned aircraft in the National Airspace System.

**FOR FURTHER INFORMATION CONTACT:** Kenneth D. Davis, Manager, Unmanned Aircraft Program Office, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385-4636, email: *kenneth.d.davis@faa.gov*.

**Background**

Simply stated, an unmanned aircraft is a device that is used, or is intended to be used, for flight in the air with no onboard pilot. These devices may be as simple as a remotely controlled model aircraft used for recreational purposes or as complex as surveillance aircraft flying over hostile areas in warfare. They may be controlled either manually or through an autopilot using a data link to connect the pilot to their aircraft. They may perform a variety of public services: surveillance, collection of air samples to determine levels of pollution, or rescue and recovery missions in crisis situations. They range in size from wingspans of six inches to 246 feet; and can weigh from approximately four ounces to

over 25,600 pounds. The one thing they have in common is that their numbers and uses are growing dramatically. In the United States alone, approximately 50 companies, universities, and government organizations are developing and producing some 155 unmanned aircraft designs. Regulatory standards need to be developed to enable current technology for unmanned aircraft to comply with Title 14 Code of Federal Regulations (CFR).

The Federal Aviation Administration's current policy is based on whether the unmanned aircraft is used as a public aircraft, civil aircraft or as a model aircraft.

#### Unmanned Aircraft Systems Operating as Public Aircraft

The most common public use of unmanned aircraft today in the United States is by the Department of Defense. U.S. operations in Iraq, Afghanistan and elsewhere have fueled a huge increase in unmanned aircraft demand. In Iraq alone, more than 700 unmanned aircraft are in use for surveillance and weapons delivery.

Other agencies have also found public uses for unmanned aircraft. For example, the Customs and Border Protection uses them to patrol along the US/Mexican border. In the future, unmanned aircraft could be used to provide first responder reports of damage due to weather or other catastrophic causes.

In response to this growing demand for public use unmanned aircraft operations, the FAA developed guidance in a Memorandum titled "Unmanned Aircraft Systems Operations in the U.S. National Airspace System – Interim Operational Approval Guidance" (UAS Policy 05-01). In this document, the FAA set out guidance for public use of unmanned aircraft by defining a process for evaluating applications for Certificate(s) of Waiver or Authorization (COA's) for unmanned aircraft to operate in the National Airspace System. The concern was not only that unmanned aircraft operations might interfere with

commercial and general aviation aircraft operations, but that they could also pose a safety problem for other airborne vehicles, and persons or property on the ground. The FAA guidance supports unmanned aircraft flight activity that can be conducted at an acceptable level of safety. In order to ensure this level of safety, the operator is required to establish the Unmanned Aircraft System's (UAS) airworthiness either from FAA certification, a DOD airworthiness statement, or by other approved means. Applicants also have to demonstrate that a collision with another aircraft or other airspace user is extremely improbable as well as complying with appropriate cloud and terrain clearances as required. Key to the concept are the roles of pilot-in-command (PIC) and observer. The PIC concept is essential to the safe operation of manned aircraft. The FAA's UAS guidance applies this PIC concept to unmanned aircraft and includes minimum qualifications and currency requirements. The PIC is simply the person in control of, and responsible for, the UAS. The role of the observer is to observe the activity of the unmanned aircraft and surrounding airspace, either through line-of-sight on the ground or in the air by means of a chase aircraft. In general, this means the pilot or observer must be, in most cases, within 1 mile laterally and 3,000 feet vertically of the unmanned aircraft. Direct communication between the PIC and the observer must be maintained at all times. Unmanned aircraft flight above 18,000 feet must be conducted under Instrument Flight Rules, on an IFR flight plan, must obtain ATC clearance, be equipped with at least a Mode C transponder (preferably Mode S), operating navigation lights and / or collision avoidance lights and maintain communication between the PIC and Air Traffic Control (ATC). Unmanned aircraft flights below 18,000 feet have similar requirements, except that if operators choose to operate on other than an IFR flight plan, they may be required to pre-coordinate with ATC.

The FAA has issued more than 50 COA's over the past 2 years and anticipates issuing a record number of COA's this year.

For more information, Memorandum on UAS Policy (05-01) and other policy guidance is available at the FAA Website: <http://www.faa.gov/uas>.

#### Unmanned Aircraft Systems Operating as Civil Aircraft

Just as unmanned aircraft have a variety of uses in the public sector, their application in commercial or civil use is equally diverse. This is a quickly growing and important industry. Under FAA policy, operators who wish to fly an unmanned aircraft for civil use must obtain an FAA airworthiness certificate the same as any other type aircraft. The FAA is currently only issuing special airworthiness certificates in the experimental category. Experimental certificates are issued with accompanying operational limitations (14 CFR § 91.319) that are appropriate to the applicant's operation. The FAA has issued five experimental certificates for unmanned aircraft systems for the purposes of research and development, marketing surveys, or crew training. UAS issued experimental certificates may not be used for compensation or hire.

The applicable regulations for an experimental certificate are found in 14 CFR §§21.191, 21.193, and 21.195. In general, the applicant must state the intended use for the UAS and provide sufficient information to satisfy the FAA that the aircraft can be operated safely. The time or number of flights must be specified along with a description of the areas over which the aircraft would operate. The application must also include drawings or detailed photographs of the aircraft. An on-site review of the system and demonstration of the area of operation may be required. Additional information on how to apply for an

experimental airworthiness certificate is available from Richard Posey, AIR-200, (202) 267-9538; email: [richard.posey@faa.gov](mailto:richard.posey@faa.gov).

### Recreational/Sport Use of Model Airplanes

In 1981, in recognition of the safety issues raised by the operation of model aircraft, the FAA published Advisory Circular (AC) 91-57, Model Aircraft Operating Standards for the purpose of providing guidance to persons interested in flying model aircraft as a hobby or for recreational use. This guidance encourages good judgment on the part of operators so that persons on the ground or other aircraft in flight will not be endangered. The AC contains among other things, guidance for site selection. Users are advised to avoid noise sensitive areas such as parks, schools, hospitals, and churches. Hobbyists are advised not to fly in the vicinity of spectators until they are confident that the model aircraft has been flight tested and proven airworthy. Model aircraft should be flown below 400 feet above the surface to avoid other aircraft in flight. The FAA expects that hobbyists will operate these recreational model aircraft within visual line-of-sight. While the AC 91-57 was developed for model aircraft, some operators have used the AC as the basis for commercial flight operations.

### **Policy Statement**

The current FAA policy for UAS operations is that no person may operate a UAS in the National Airspace System without specific authority. For UAS operating as public aircraft the authority is the COA, for UAS operating as civil aircraft the authority is special airworthiness certificates, and for model aircraft the authority is AC 91-57.

The FAA recognizes that people and companies other than modelers might be flying UAS with the mistaken understanding that they are legally operating under the authority of

AC 91-57. AC 91-57 only applies to modelers, and thus specifically excludes its use by persons or companies for business purposes.

The FAA has undertaken a safety review that will examine the feasibility of creating a different category of unmanned “vehicles” that may be defined by the operator’s visual line of sight and are also small and slow enough to adequately mitigate hazards to other aircraft and persons on the ground. The end product of this analysis may be a new flight authorization instrument similar to AC 91-57, but focused on operations which do not qualify as sport and recreation, but also may not require a certificate of airworthiness. They will, however, require compliance with applicable FAA regulations and guidance developed for this category.

Feedback regarding current FAA policy for Unmanned Aircraft Systems can be submitted at [www.faa.gov/uas](http://www.faa.gov/uas). (Scroll down to the bottom of the page and find Contact UAPO. Click into this link.)

Issued in Washington, DC on February 6, 2007

/s/ Nick Sabatini

Nicholas Sabatini  
Associate Administrator for Aviation Safety

DATE June 9, 1981

# ADVISORY CIRCULAR



DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration  
Washington, D.C.

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**Subject:** MODEL AIRCRAFT OPERATING STANDARDS

1. PURPOSE. This advisory circular outlines, and encourages voluntary compliance with, safety standards for model aircraft operators.

2. BACKGROUND. Modelers, generally, are concerned about safety and do exercise good judgement when flying model aircraft. However, model aircraft can at times pose a hazard to full-scale aircraft in flight and to persons and property on the surface. Compliance with the following standards will help reduce the potential for that hazard and create a good neighbor environment with affected communities and airspace users.

3. OPERATING STANDARDS.

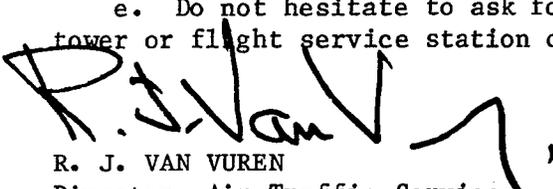
a. Select an operating site that is of sufficient distance from populated areas. The selected site should be away from noise sensitive areas such as parks, schools, hospitals, churches, etc.

b. Do not operate model aircraft in the presence of spectators until the aircraft is successfully flight tested and proven airworthy.

c. Do not fly model aircraft higher than 400 feet above the surface. When flying aircraft within 3 miles of an airport, notify the airport operator, or when an air traffic facility is located at the airport, notify the control tower, or flight service station.

d. Give right of way to, and avoid flying in the proximity of, full-scale aircraft. Use observers to help if possible.

e. Do not hesitate to ask for assistance from any airport traffic control tower or flight service station concerning compliance with these standards.

  
R. J. VAN VUREN  
Director, Air Traffic Service

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Initiated by: AAT-220

**CITY OF RANCHO MIRAGE**



**STAFF REPORT**

**TO:** Hon. Mayor Scott Hines  
Members of the City Council

**DATE:** April 4, 2013

**FROM:** Randal K. Bynder, City Manager  
Steven B. Quintanilla, City Attorney

**SUBJECT:** Drone Prohibition Ordinance

**SPECIFIC REQUEST OR RECOMMENDATION:**

That the City Council adopt the attached ordinance which will prohibit the flying of drones in residentially zoned areas of the City with some exceptions.

**Background:**

Drones, which are unmanned aircraft that can fly under the control of a remote pilot or via a geographic positions system (GPS) guided autopilot mechanism, have become increasingly available to private citizens for personal and recreational uses due to their declining costs. Drones can fly at altitudes below the navigable airspace (generally at 400 feet) which is under the jurisdiction, regulation and control of the Federal Aviation Administration.

Some drones are equipped with high definition cameras, night vision cameras and infrared-see-through scopes. Drones can be used to fly above private residences and to hover outside somebody's window or in their backyards without the knowledge of the resident who has a reasonable expectation of privacy in his or her home and in his or her backyard.

There are no existing state or federal regulations regarding who may purchase a drone which presents a safety risk to residents in that drones may be purchased and operated by sex offenders, and other persons with certain criminal backgrounds, such as but not limited to domestic violence, theft, burglary, breaking and entering, trespass,

**City Council Action:**

Approved as Requested: \_\_\_\_\_  
Approved as Amended: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Other: \_\_\_\_\_

Referred to: \_\_\_\_\_  
For: \_\_\_\_\_  
Cont. to Agenda of: \_\_\_\_\_  
Hearing Set: \_\_\_\_\_

AGENDA ITEM

assault and battery.

In light of the foregoing concerns, the proposed ordinance would prohibit the flying of drones in any airspace below 400 feet within or over any residentially zoned area in the city, unless otherwise exempt under the ordinance. For instance, the proposed ordinance will exempt the use of drones in residential areas by any law enforcement agency of the city, state or federal government for lawful purposes and in a lawful manner. In addition, drones will be permitted to make visual recordings of a single residence, with the owner's written consent, provided the owner and/or operator of the subject drone obtains a validly issued drone permit from the city. This is intended to accommodate the practice of some realtors who use drones to advertise properties for sale or lease.

Any person found to be in violation of the provisions of the proposed ordinance will be guilty of an infraction which is punishable by: (a) a fine in an amount not to exceed one hundred dollars for a first violation; (b) a fine in an amount not to exceed two hundred dollars for a second violation of the same provision within a twelve month period commencing on the date of the first violation; and (c) a fine in an amount not to exceed five hundred dollars for the third violation of the same provision within a twelve month period commencing on the date of the first violation. A fourth violation and subsequent violations of the same provision within a twelve month period from the date of the first violation shall be deemed a misdemeanor.

**Attachment:**

Ordinance

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO MIRAGE AMENDING DIVISION III "OFFENSES AGAINST PUBLIC PEACE" OF TITLE 9 "PUBLIC PEACE, MORALS AND WELFARE" OF THE RANCHO MIRAGE MUNICIPAL CODE TO PROHIBIT THE FLYING OF DRONES IN RESIDENTIALLY ZONED AREAS OF THE CITY

WHEREAS, drones, which are unmanned aircraft that can fly under the control of a remote pilot or via a geographic positions system (GPS) guided autopilot mode, have become increasingly available to private citizens for personal and recreational uses due to their declining costs; and

WHEREAS, drones can fly at altitudes below the navigable airspace (generally at 400 feet) which is under the jurisdiction, regulation and control of the Federal Aviation Administration (FAA); and

WHEREAS, some drones are equipped with high definition cameras, night vision cameras and infrared-see-through scopes; and

WHEREAS, some drones can be used to fly above private residences and to hover outside somebody's window or in their backyards without the knowledge of the resident who has a reasonable expectation of privacy in his or her home and in his or her backyard; and

WHEREAS, there are no existing regulations regarding who may purchase a drone which presents a safety risk to residents in that drones may be purchased and operated by sex offenders, and other persons with certain criminal backgrounds, such as but not limited to domestic violence, theft, burglary, breaking and entering, trespass, assault and battery.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO MIRAGE DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

The recitals set forth above are true and correct.

Section 2. Amendment to Division III "Offenses Against

Public Peace"

Division III "Offenses Against Public Peace" of Title 9 "Public Peace, Morals and Welfare" shall be amended as follows:

Chapter 9.30 DRONES

9.26.10 Definitions.

"Drone" shall mean an unmanned aircraft that can fly under the control of a remote pilot or by a geographic positions system (GPS) guided autopilot mechanism.

9.26.20 Prohibition.

Drones are prohibited from flying in any airspace below 400 feet within or over any residentially zoned area in the city, unless otherwise exempt under this chapter

9.26.30 Exemptions.

(a) This chapter shall not prohibit the use of drones by any law enforcement agency of the city, state or federal government for lawful purposes and in a lawful manner.

(b) Use of drones may be used to make visual recordings of a single residence, with the owner's written consent, provided the owner and/or operator of the subject drone obtains a validly issued drone permit from the city.

9.26.40 Violations.

Any person found to be in violation of the provisions of this chapter shall be guilty of an infraction as set forth in chapter 14.100.

Section 3. CITY ATTORNEY REVIEW

The City Attorney prepared and framed this ordinance pursuant to Section 1.04.010 of the Municipal Code and finds that the City Council has the authority to adopt this ordinance, that the ordinance is constitutionally valid and that the ordinance is consistent with the general powers and purposes of the City as set forth in Section 1.04.031 of the Municipal Code.

**Section 4. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

**Section 5. REPEAL OF CONFLICTING PROVISIONS**

All the provisions of the Rancho Mirage Municipal Code as heretofore adopted by the City of Rancho Mirage that are in conflict with the provisions of this ordinance are hereby repealed.

**Section 6. AMENDING OF MUNICIPAL CODE**

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Municipal Code and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

**Section 7. EFFECTIVE DATE**

This ordinance shall take effect thirty (30) calendar days after its second reading by the City Council.

**Section 8. CEQA FILING**

The City Council hereby finds that under Title 14 of the California Code of Regulations section 15061(b)(3), this Ordinance is exempt from the requirements of CEQA since the prohibition against flying drones in residentially zoned areas of the city would not have the potential for causing a significant effect on the environment. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Riverside in accordance with CEQA Guidelines

**Section 9. CERTIFICATION**

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to

law.

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The foregoing Ordinance was approved and adopted at a meeting of the City Council held on \_\_\_\_\_, 2013 by the following vote:

Ayes:  
Noes:  
Abstain:  
Absent:

\_\_\_\_\_  
Scott M. Hines, Mayor

ATTEST:

\_\_\_\_\_  
Cindy Scott, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven B. Quintanilla  
City Attorney

June 2014

An International Law Enforcement Intelligence Network  
"Founded in 1956"



Association of  
Law Enforcement Intelligence Units  
Your Voice at the National Level

PERMISSIONS

*Unmanned Aerial Vehicles: Issues for State and Local Public Safety Agencies is printed with permission from John Gordnier.*

## **Acknowledgment**

The LEIU Executive Board is acknowledging the significant contribution of Mr. John Gordnier to this product. At the request of the Executive Board, John voluntarily undertook researching, drafting, and finalizing this document with input from members of the Executive Board. John has been a long-time friend and advisor to the LEIU Executive Board, many of its members, and to other law enforcement entities around the nation. He has advised us on issues ranging from changes in the Code of Federal Regulations (relating to criminal intelligence) to our published criminal intelligence file guidelines. He also wrote our report on "Intelligence Unit Guidelines for First Amendment Demonstrations" and was an author on legal issues in a joint publication entitled "Criminal Intelligence for the 21<sup>st</sup> Century". Many of you may have also attended his workshops on legal issues in criminal intelligence at our annual conferences.

John received his BA degree from the University of Washington in 1966. His JD was earned at the University of Wyoming in 1969. In January 1970 he was sworn in as a member of the California bar. From 1970 until 1972 John worked as a Deputy District Attorney in the County of San Bernardino. In October 1972 he became a Deputy Attorney General in the Criminal Law Division of the California Attorney General's Office. During his time in the Criminal Law Division he tried cases involving public officials, served as the head of the Political Reform Act Enforcement Unit, and was in charge of the Attorney General's Legislative/Lobbyist Task Force. When the Special Prosecutions Unit was created to handle organized crime cases in 1979, John was one of the attorneys assigned to a team consisting of an attorney and two special agents. In 1983 he was named the Senior Assistant Attorney General in charge of the Special Prosecutions Unit, a position he held until the Unit was disbanded in 1991. During his tenure in the Special Prosecutions Unit, John not only prosecuted cases and supervised prosecutions by the unit he also was responsible for the creation and enactment of laws penalizing money laundering, allowing for asset forfeiture, and permitting prosecution under a state RICO provision. From 1991 to 1998 John was a Senior Assistant Attorney General in the Trials and Special Projects Unit. In this capacity he served as the legislative liaison for the Criminal Law Division, prosecuted certain cases such as the Mark Furman perjury case, implemented the Attorney General's response to the Medical Marijuana initiative and successfully defended California's Assault Weapons Law. From 1998 until his retirement in 2007, John was assigned to act as the attorney for the California Department of Justice's intelligence systems, serve as the legal advisor to the CalGANG intelligence system, and teach intelligence law for both basic level and executive level courses sponsored by the Attorney General's Advanced Training Center. Since retiring from public service, John has acted as a consultant and instructor on criminal intelligence law.

Please join the LEIU Executive Board in expressing our thanks to John for his significant support, wise counsel, and professional and personal assistance. It is through friends like John that allow us to develop products such as this.

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## I. Introduction

“Unmanned Aerial Vehicle” [UAV] has become the preferred term to use when discussing what are more commonly known as “drones”. The reason for use of this more neutral term is significant. The experience of several law enforcement agencies which have obtained and put these devices into service has been significant public outcry; in one case leading to the resignation of the Chief of Police.

The public associates the term “drone” with the very sophisticated surveillance and armed UAVs the use of which in combat zones has been highly publicized.

Although Congress has provided the Federal Aeronautics Administration with authority to develop regulations governing the domestic use of UAVs<sup>1</sup> the public concerns led Congress and nearly all states to consider legislation governing use of UAVs<sup>2</sup>

This document will deal first with the practical steps that a public safety agency contemplating acquisition of a UAV should take to achieve public understanding of and support for the use of UAVs in that jurisdiction.

The second area of concern is the legal issues that UAV use will bring into play. Unfortunately at present there is no case law that has directly considered the constitutional aspects of UAV use. Cases which have been decided by the courts that involve traditional aerial surveillance and privacy provide some basis for projecting what results in UAV cases might be, but provide no definitive guidelines<sup>3</sup>.

One case, *State of New Mexico v. Norman Davis* [N.M. Ct. App. Jan. 14, 2014], has indirectly shown one direction that state courts might take. Although *Davis* involved a helicopter which flew over Davis’ greenhouse and observed marijuana being grown the court observed, in dictum, that “Indeed, it is likely that ultra-quiet drones will soon be used commercially and, possibly, for domestic surveillance.” The court then went on to hold that regardless two United States Supreme Court decisions [*California v. Ciraolo* 476 U.S. 207 (1986) and *Florida v. Riley* 488 U.S. 445 (1989)] which would support the conclusion that there was no Fourth Amendment violation there was a violation of the New Mexico constitutional provision protecting the privacy of that state’s citizens. It is clear that states could employ similar state constitutional provisions to provide protection from drone surveillance to its citizens. The *Davis* case may be overturned by the state supreme court, but its reasoning should not be ignored.

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<sup>1</sup> “The FAA Modernization and Reform Act of 2012”.

<sup>2</sup> A synopsis of these legislative actions taken appears in Appendix 1.

<sup>3</sup> The best summary of the legal issues surrounding UAVs is in a Congressional Research Service report, “Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses.” [CRS/R 42701, (2013)]. The report concluded that existing law may or may not be controlling.

Because the legal framework has yet to be fully developed, this paper will focus on suggestions for procedures and policies that can be adopted to address the legitimate concerns about the balance between constitutional protections and the public safety advantages that can be realized through UAV use.

## II. RECOMMENDED STEPS FOR IMPLEMENTING UAV USE

### Step One:

Ascertain whether your governing body has passed a law regulating UAV use. If your agency is located in one of the jurisdictions<sup>4</sup> which has passed a law regulating use [see Appendix I] review the law and incorporate the requirements into your policy governing UAV use.

If your governing body is considering, but has not yet passed legislation [see Appendix I] governing UAV use become involved in the legislative process. In this connection it would be beneficial to work with your legal counsel to be able to address the inevitable constitutional objections that will be raised. It will also be beneficial to have a proposed policy [see part III, *infra*] prepared which demonstrates consideration of the privacy concerns.

### Step Two:

Determine the specific uses which your agency intends to make of UAVs and prepare fact based analyses that support the conclusion that UAVs will: (1) do the task more effectively than existing methods; (2) do the task in a fiscally sound way; (3) provide greater public and officer safety; and (4) involve no greater intrusion on constitutional rights than existing methods which have been approved by judicial decisions.

Develop the policies and procedures that will govern the use of the UAVs by your agency. Seek input from the public, especially the civil liberties community in your jurisdiction, in the development of the policies and procedures. Involve the mediums of communication in your jurisdiction in the process.

Present the summary of intended uses along with the proposed policies and procedures to your governing body for approval before obtaining a UAV. Unless disclosure of intelligence otherwise protected from public disclosure under the laws of your jurisdiction would be necessary to the presentation, make this presentation at a public hearing. Publicize the presentation to encourage maximum public participation.

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<sup>4</sup> Remember that it is necessary to consider local – city and county – ordinances as well as state laws. It is likely that many local jurisdictions will enact controlling laws.

**Step Three:**

Select a UAV that has only the capabilities necessary to accomplish the uses that have been approved by your governing body. If the selected UAV has the capability to accomplish unapproved uses, be prepared to show how those uses will be disabled or controlled. Submit the specifications (including capabilities) of the UAV to your governing body for purchase approval. Provide for public disclosure of the capabilities for which approval is sought.

In this connection it will be necessary to demonstrate that the UAV selected has the necessary protections against being “hijacked” by a competing control signal.

**Step Four:**

After the delivery of the UAV invite representatives of the governing body, the public, local civil liberties groups and the local mediums of communication to a demonstration of the capabilities and limitations of the UAV.

**Step Five:**

Prepare an annual report that details the use of the UAV and quantifies the savings and enhancements to public safety which result. The report should include “success stories” which support the effectiveness of UAV use over traditional methodology.

In the event that UAV use has been challenged in the local judicial system include the results of the challenges in the annual report. If a challenge has resulted in an unfavorable decision that has become final, show that the policy has been altered to comply with that decision.

**Step Six:**

If additional uses are appropriate repeat the process before initiating those uses.

### **III. SAMPLE MODEL POLICY**

**Section 1: Definitions:**

- A. Model Aircraft - Any radio or otherwise remotely controlled aircraft, rocket, or other aerial vehicle used only for sport or recreational uses.
- B. Public Safety Agency - Any local, state, or regional agency or entity that has a duty to enforce the law, respond to or plan for response to emergency situations.

- C. Public Safety Purpose - Any flight that:
  1. has been approved by a court of competent jurisdiction;
  2. is for a legitimate public safety or routine law enforcement purpose;
  3. is necessary to assist in locating a fugitive, the victim of an abduction or kidnapping, providing for officer or public safety or assisting in managing or preparing to manage the response to an emergency caused by any natural or manmade disaster or threat of harm to the public;
  4. has been approved by the UAV supervisor for training, demonstration or UAV maintenance or testing purposes.
  
- D. Routine Law Enforcement Purpose - Any law enforcement activity that does not require judicial approval under the statutory or decisional law of the jurisdiction.
  
- E. Unmanned Aerial Vehicle [UAV] - Any powered aerial vehicle which:
  1. does not carry a human operator;
  2. uses aerodynamic forces to provide vehicle lift;
  3. can be programmed to fly autonomously or can be piloted remotely;
  4. may be expendable or recoverable; and
  5. can serve as a platform for devices or systems which are capable of:
    - a. photographing persons, objects or mapping surface or geological formations and storing or transmitting the captured images;
    - b. tracking or detecting persons or objects using infra-red, thermal or any similar technology and storing or transmitting the captured information;
    - c. engaging in the real time video recording of the movements of persons or objects and storing or transmitting the captured information; and
    - d. detecting and capturing aural, digital or other forms of communication and storing or transmitting the captured communications.
  
- F. Unmanned Aerial Vehicle System [UAVS] - The personnel who:
  1. operate the UAV itself;
  2. maintain the UAV and any systems with which it is equipped;
  3. monitor, capture, display, download, store or otherwise manipulate the data collected and or transmitted by the UAV while it is in operation;
  4. supervise the personnel involved in the operation of the UAV; and
  5. who approve or seek approval of a UAV operation.

**Section 2: UAV Minimum Specifications:**

- A. Any UAV acquired by a public safety agency shall be equipped with a device or devices which are capable of capturing individual flight times and individual flight paths information.
  
- B. Any UAV acquired by a public safety agency shall not be capable of being armed.

- C. Any UAV acquired by a public safety agency shall be equipped with the technology necessary to prevent the UAV from being “hijacked” by a competing control signal.
- D. Any UAV acquired by a public safety agency shall comply with any other mandatory specifications required by the Federal Aviation Administration (FAA).

### Section 3: Certification and Training:

- A. No public safety agency shall acquire or operate a UAV without having first obtained the necessary Certificate(s) of Authorization or waivers from the FAA.
- B. UAVS shall be operated only by personnel who have received appropriate training regarding the UAV being utilized, training in the policies and procedures of the agency and general training in the controlling legal principles dealing with search, seizure and privacy.

### Section 4: Operating Policy and Procedures

- A. The Chief of Police, Sheriff or other public safety agency chief executive shall designate an individual or individuals who shall serve as the UAV supervisor(s).
- B. No UAV flight shall occur without the prior approval of the UAV supervisor or, if the UAV supervisor is unavailable, the Chief of Police, Sheriff or other public safety agency chief executive.
- C. Except in emergency situations, requests for a UAV flight will be in writing stating the public safety purpose furthered by the requested flight. In an emergency situation the written request may be filed within a reasonable time, not to exceed seventy-two hours, after the emergency situation has been resolved.
- D. Unless a UAV request has been designated as a record exempt from public disclosure under the law of the jurisdiction in which the flight occurs, the request shall be a public record. Such records shall be retained for at least one year before being purged. If such records, however designated, are related to a criminal investigation they shall be retained until that investigation is completed or until any charges filed are finally resolved.
- E. The data recorded by the UAV showing the time and path of the flight shall be downloaded, assigned a discrete file number and retained for at least one year before being purged. This data shall be a public record unless it has been designated as a record exempt from public disclosure under the law of the jurisdiction in which the flight occurs. If such records, however designated, are related to a criminal investigation they shall be retained until that investigation is completed or until any charges filed are finally resolved.

- F. Data from each flight shall be recorded on a form which captures:
1. the name of the requesting party or a copy of the court order authorizing the flight;
  2. the specific public safety purpose stated in support of the flight;
  3. the name of the UAV supervisor who approved the flight;
  4. the number of the file containing the downloaded information related to flight time and flight path; and
  5. the names of the persons who composed the UAVS involved in the specific flight.

This data shall be retained for at least one year before being purged. If such records, however designated, are related to a criminal investigation they shall be retained until that investigation is completed or until any charges filed are finally resolved.

- G. Any flight described in sections 1.C.2, 1.C.3 and 1.D of this model policy shall not require judicial approval. All other flights undertaken by a law enforcement agency as part of a criminal investigation shall be undertaken only with judicial approval based on a showing of probable cause.

#### **Section 5: Data Retention**

- A. Any data collected by a UAV in the course of a flight which is not relevant to a criminal investigation, is not relevant to an emergency management or mapping purpose described in Section 1.C.3 or Section 1.D.5 shall be destroyed within seventy-two hours of the termination of the flight on which they were collected.
- B. Unless otherwise exempted from public disclosure by the terms of this policy, all data collected by a UAV and retained by a public safety agency for a legitimate public safety purpose shall be open for public inspection.

#### **Section 6: Annual Reports**

- A. Each public safety agency utilizing UAVs shall publish an annual report which discloses:
1. the number of flights;
  2. the total time the UAV was used for all flights;
  3. the total cost of the UAV flights including the cost of personnel involved as the UAVS as well as the cost of maintaining the UAV; and
  4. the number of flights which resulted in the collection of data which was retained and the use which was made of that data.

## APPENDIX I

### Federal Legislation:

At present there are four bills pending in Congress that address UAV use. Two of these bills - HR 972 and SB 1016 - deal with the domestic use of UAVs by federal agencies. The remaining two - HR 1262 and HR 637 - would impact state and local use of UAVs.

### Enacted State Legislation:

Thirteen states have enacted legislation regarding UAVs.

Two of these states - North Dakota [SB 2018] and Alaska [HCR 6] - did not regulate use through legislation; instead they directed state government to compete to become one of the national testing centers. At present the only test area currently recognized by the FAA is located in New Mexico.

Nine states have regulated UAV use through legislation:

1. Florida [SB 92]
2. Hawaii [SB 783 and SB1221]
3. Idaho [SB 1134]
4. Illinois [SB1587]
5. Montana [SB 196 and SB 150(1)]
6. Oregon [HB 2710 and SB 71]
7. Tennessee [SB 796]
8. Texas [HB 912]
9. Virginia [HB 2012]

Arkansas [HB 1904] enacted legislation that created local governing bodies that have authority to determine what regulation, if any, the locality considers appropriate.

Arizona [HB 2269] created a committee to study the issue of UAV use. The committee's report is due by December 31, 2013.

### Failed or Postponed State Legislation:

Ten states considered but did not pass legislation during 2013:

- Maine [LB 236] enacted a law regulating UAV use. The bill was vetoed and the veto was not overridden.
- Alabama [SB 317, consideration postponed], Indiana [proposal failed to have enough support for consideration], Maryland [proposal died in committee].
- New Hampshire, New Mexico, North Dakota, Oklahoma, Washington and Wyoming all had measures which were introduced but "died" during the year without passage.

Pending State Legislation:

Fourteen states have legislation that remains “alive” but is in some stage of consideration. These states are:

1. California [AB 1327 and SB 15]
2. Georgia [SB 200]
3. Kansas [HB 2394]
4. Kentucky has introduced a bill that cannot be considered until January, 2014.
5. Massachusetts [HB 1357 and SB1664]
6. Michigan [HB 4455]
7. Missouri [HB 46]
8. Nebraska [LB 412]
9. New Jersey [A 3157 and A 3923]
10. New York [AO 6244 and SO 4537]
11. North Carolina [HB 312]
12. Pennsylvania [HB 452 and HB 961]
13. Rhode Island [HB 5790 and SB 411]
14. South Carolina [H 3415, H 3514, and S 395]

States Which Did Not Consider Legislation:

Only Colorado, South Dakota and Utah did not consider legislation during 2013.

# Drones Legislation for Beverly Hills

Bill ID/Topic	Location	Summary	Position
<p><u>AB 737</u> <u>Fox D</u></p> <p>Space flight liability.</p>	<p>SENATE 2 YEAR 7/12/2013 - Failed Deadline pursuant to Rule 61(a)(10)(SEN). (Last location was JUD. on 6/13/2013)</p>	<p>The Space Flight Liability and Immunity Act requires a space flight entity, as defined, to collect a signed warning statement from each participant in space flight activities. The warning statement is required to inform the participant that there is limited civil liability for bodily injury sustained as a result of the inherent risks associated with space flight activities. The act limits the liability of a space flight entity that complies with these provisions. The act also provides that limited liability under these provisions does not limit or prevent the liability of a space flight entity that commits an act of gross negligence or willful or wanton disregard for the safety of the participant, that intentionally causes a participant injury, or that has actual knowledge or reasonably should have known of a dangerous condition, as provided. This bill would include a manufacturer or supplier of components, services, or vehicles that have been reviewed by the United States Federal Aviation Administration as part of issuing a license, permit, or other authorization pursuant to specified provisions of federal law relating to commercial space launch activities as a space flight entity with limited liability for any participant injury. This bill would additionally provide that limited liability under these provisions does not limit or prevent the liability of a space flight entity that manufactures or supplies a product with a defect. This bill would prohibit a space flight entity's liability from being limited unless the space flight entity presents to and files with the Secretary of State a certification of insurance, as specified. This bill would repeal the Space Flight Liability and Immunity Act on July 1, 2021.</p> <p><b>Last Amended on 6/4/2013</b></p>	
<p><u>AB 1326</u> <u>Gorell R</u></p> <p>Sales and use taxes: exemptions: unmanned aerial vehicle manufacturing: income taxes: credits: hiring.</p>	<p>ASSEMBLY DEAD 2/3/2014 - From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.</p>	<p>The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law.</p> <p>This bill would, for taxable years beginning on or after January 1, 2014, and before January 1, 2024, provide an exemption from those taxes for the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property, as defined, purchased for use in unmanned aerial vehicle manufacturing by a qualified person, as defined. The bill would also exempt from those taxes the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased for use by a contractor, as specified, for a qualified person. The bill would require the purchaser to furnish the retailer with an exemption certificate, as specified. This bill contains other related provisions and other existing laws.</p> <p><b>Last Amended on 4/29/2013</b></p>	

# Drones Legislation for Beverly Hills

Bill ID/Topic	Location	Summary	Position
<p><u>AB 1327</u> <u>Gorell R</u></p> <p>Unmanned aircraft systems.</p>	<p>SENATE PUB. S. 5/5/2014 - From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.</p> <p>5/13/2014 9:30 a.m. - Room 3191 SENATE PUBLIC SAFETY, HANCOCK, Chair</p>	<p>Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems, commonly known as drones, into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015. This bill would generally prohibit public agencies from using unmanned aircraft systems, or contracting for the use of unmanned aircraft systems, as defined, with certain exceptions applicable to law enforcement agencies and in certain other cases. This bill contains other related provisions and other existing laws.</p> <p><b>Last Amended on 5/5/2014</b></p>	
<p><u>AB 1524</u> <u>Waldron R</u></p> <p>Unmanned aircraft: identification requirements.</p>	<p>ASSEMBLY TRANS. 4/28/2014 - In committee: Set, second hearing. Hearing canceled at the request of author.</p>	<p>Existing federal law, the Federal Aviation Administration Modernization and of Reform Act of 2012, provides for the integration of civil unmanned aircraft systems, commonly known as drones, into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015. Existing federal law also prohibits a person from operating a United States registered aircraft unless that aircraft displays specified nationality and registration marks. This bill would require, beginning January 1, 2015, a person or public or private entity that owns or operates an unmanned aircraft, as defined, to place specified identifying information or digitally store identifying information on that unmanned aircraft. The bill would exempt model aircraft, as defined, from that requirement. The bill would make a person or entity that violates that provision liable for a civil fine not to exceed \$2,500. The bill would authorize the Attorney General, a district attorney, county counsel, or a city attorney to bring an action to recover that fine, as specified.</p> <p><b>Last Amended on 4/9/2014</b></p>	
<p><u>AB 1997</u> <u>Gorell R</u></p> <p>Sales and use taxes: exemptions: unmanned aerial vehicle manufacturing: income taxes: credits: hiring.</p>	<p>ASSEMBLY REV. &amp; TAX 4/2/2014 - Re-referred to Com. on REV. &amp; TAX.</p>	<p>The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and provides various exemptions from the taxes imposed by that law.</p> <p>This bill, on and after January 1, 2015, would instead provide that the exemption also applies to local sales and use taxes and those specified state taxes with respect to qualified tangible personal property purchased by a qualified person that is engaged in aircraft manufacturing of unmanned aerial vehicles. This bill contains other related provisions and other existing laws.</p> <p><b>Last Amended on 4/1/2014</b></p>	

# Drones Legislation for Beverly Hills

Bill ID/Topic	Location	Summary	Position
<p><u>AB 2306</u> <u>Chau D</u></p> <p>Constructive invasion of privacy: liability.</p>	<p>ASSEMBLY CONSENT CALENDAR 5/6/2014 - Action From JUD.: Do pass.To CONSENT CALENDAR.</p> <p>5/6/2014 8:30 a.m. - State Capitol, Room 4202 ASSEMBLY JUDICIARY, WIECKOWSKI, Chair</p>	<p>Under existing law, except as specified, a person is liable for constructive invasion of privacy when a person attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression, through the use of a visual or auditory enhancing device, of another person engaging in a personal or familial activity under circumstances in which the other person had a reasonable expectation of privacy. Existing law subjects a person who commits a constructive invasion of privacy to specified damages and civil fines. This bill would expand a person's potential liability for constructive invasion of privacy, by removing the limitation that the person use a visual or auditory enhancing device, and would instead make the person liable when using any device to engage in the above-described unlawful activity. <b>Last Amended on 3/28/2014</b></p>	
<p><u>AJR 6</u> <u>Fox D</u></p> <p>Unmanned aircraft systems.</p>	<p>ASSEMBLY CHAPTERED 8/15/2013 - Chaptered by the Secretary of State, Chapter Number 78, Statutes of 2013</p>	<p>Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015. This measure would request the Federal Aviation Administration to consider California as one of the 6 planned test sites for unmanned aircraft systems and integration of those systems into the next generation air transportation system.</p>	
<p><u>SB 15</u> <u>Padilla D</u></p> <p>Aviation: unmanned aircraft systems.</p>	<p>ASSEMBLY 2 YEAR 8/30/2013 - Failed Deadline pursuant to Rule 61(a)(11). (Last location was PUB. S. on 8/27/2013)</p>	<p>Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015. This bill would, under the above-referenced civil and criminal provisions, provide that engaging in the prohibited activities through the use of an unmanned aircraft system is included within the prohibitions. With respect to the criminal provisions, the bill would impose a state-mandated local program by changing the definition of a crime. This bill contains other related provisions and other existing laws. <b>Last Amended on 8/6/2013</b></p>	
<p><u>SCR 16</u> <u>Knight R</u></p> <p>California Aerospace Month.</p>	<p>SENATE CHAPTERED 4/8/2013 - Chaptered by Secretary of State - Res. Chapter 13, Statutes of 2013.</p>	<p>This measure would recognize the contributions of the aerospace industry to the history, economy, security, and educational system of California, its communities, and its citizens by proclaiming the month of March 2013 as California Aerospace Month.</p> <p><b>Last Amended on 4/1/2013</b></p>	
<p><u>SCR 100</u> <u>Knight R</u></p> <p>California Aerospace Week.</p>	<p>ASSEMBLY DESK 3/24/2014 - In Assembly. Held at Desk.</p>	<p>This measure would recognize the contributions of the aerospace industry to the history, economy, security, and educational system of California, its communities, and its citizens by proclaiming the week of March 24, 2014, through March 28, 2014, as California Aerospace Week.</p>	