



AGENDA REPORT

Meeting Date: October 7, 2014
Item Number: F-2
To: Honorable Mayor & City Council
From: Lt. Lincoln Hoshino
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS
ADDING SECTION 5-6-604 TO THE BEVERLY HILLS
MUNICIPAL CODE TO PROHIBIT THE USE OF
UNMANNED AIRCRAFT TO RECORD OR TRANSMIT
VISUAL IMAGES OR AUDIO RECORDINGS OF
PERSONS OR PRIVATE PROPERTY LOCATED IN
THE CITY OF BEVERLY HILLS

Attachments:

1. Ordinance
2. Letter from Gov. Jerry Brown vetoing AB 1327
3. Assembly Bill 2306 passed 9-30-14

RECOMMENDATION

Staff recommends that the City Council move to approve an Ordinance for the City of Beverly Hills adding section 5-6-604 to the Beverly Hills Municipal code to prohibit the use of unmanned aircraft that transmit or record visual images and/or audio recordings of persons or private property located in the City of Beverly Hills.

INTRODUCTION

Per Council Member Krasne's request, at a recent study session the Police Department presented a report regarding the use of drones over the City of Beverly Hills. At that time, the City Council expressed concerns about the effect of drone usage on individual privacy. The Council directed staff to prepare an ordinance for the Council's consideration to prohibit the use of drones in the City. The Police Department has worked with the Office of Emergency Management, Fire Department and the City Attorney's Office to prepare a draft ordinance

prohibiting the use of “unmanned aircraft” to record or transmit visual images or audio recordings of persons or property within the City of Beverly Hills under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy.

DISCUSSION

Federal Law

The Federal Aviation Administration (“FAA”) generally regulates the use of national airspace. For the purpose of regulation, the FAA classifies unmanned aircraft systems (“UAS”) into three categories: (1) civil UAS, (2) public UAS, and (3) model aircraft.

Under the FAA’s existing regulations, a UAS may not be used for civil operation – i.e., by private citizens or companies – until a “Special Airworthiness Certificate” has been obtained from the FAA. Similarly, a UAS may not be used by a public agency until the agency obtains a “Certificate of Waiver or Authorization” from the FAA for a specific activity. Recreational use of model aircraft historically has been covered by FAA Advisory Circular 91-57, which generally limits operations for hobby and recreation to below 400 feet, away from airports and air traffic, and within sight of the operator.

In 2012, Congress adopted the FAA Modernization and Reform Act of 2012 (the “Act”), which requires that the FAA adopt regulations for the use of civil unmanned aircraft systems by September 2015. The Act also requires that the FAA, prior to the adoption of such formal regulations, determine whether certain unmanned aircraft systems operate safely in the national airspace. In addition, the Act outlines a process by which the FAA shall coordinate with government agencies to simplify the process for issuing certificates for the use of UAS by public agencies.

With respect to model aircraft, the Act states that FAA regulations shall not apply to model aircraft if the aircraft meets certain criteria. In order to be exempt from the FAA regulations, the model aircraft must conform to the following:

- (1) the aircraft is flown strictly for hobby or recreational use;
- (2) the aircraft is operated in accordance with a community- based set of safety guidelines and within the programming of a nationwide community-based organization;
- (3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

(4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and

(5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

These provisions regarding model aircraft only apply to the use of unmanned aircraft for hobby or recreational purposes. In June 2014, the FAA published a Federal Register notice requesting comments on its interpretation of the statutory special rules for model aircraft. The deadline for comments regarding the FAA's "notice of interpretation with request for comment" is September 23, 2014. We anticipate that the FAA will issue a final rule in the next few months regarding the use of model aircraft. In addition, the FAA is expected to clarify its regulations with respect to other types of unmanned aircraft in the next year.

State Law

The California Legislature is currently considering a number of pending bills regarding the use of unmanned aircraft. The two most important bills are Assembly Bill 1327 and Assembly Bill 2306, which were both recently passed, however AB 1327 was vetoed by Governor Jerry Brown on September 28th. (Gov. Brown wrote that while he believes some law enforcement drone use should require a warrant, the exceptions in the proposed bill were too narrow and exceeded privacy protections offered by the state and federal government in other contexts.)

1. Assembly Bill 1327 – Use of Drones by Public Agencies (Bill was passed by the Legislature, however vetoed by Gov. Jerry Brown)

Assembly Bill 1327 would have added provisions to the California Penal Code regulating a public agency's use of unmanned aircraft. The bill would have regulates when a law enforcement agency may use unmanned aircraft and prescribes procedures and timelines for the retention and destruction of images and data obtained through the use of unmanned aircraft. AB 1327 allows a law enforcement agency to use unmanned aircraft without obtaining a warrant in the following circumstances:

- (1) In emergency situations if there is an imminent threat to life or of great bodily harm, including, but not limited to, fires, hostage crises, "hot pursuit" situations if reasonably necessary to prevent harm to law enforcement officers or others, and search and rescue operations on land or water.

- (2) To assess the necessity of first responders in situations relating to traffic accidents.
- (3) (A) To inspect state parks and wilderness areas for illegal vegetation or fires.

(B) For purposes of this paragraph, “wilderness areas” means public lands without permanent improvements or human habitation.
- (4) To determine the appropriate response to an imminent or existing environmental emergency or disaster, including, but not limited to, oils spills or chemical spills.

Under AB 1327, unmanned aircraft may be used by public agencies *other than* law enforcement agencies to “achieve the core mission of the agency” so long as the purpose is not related to the “gathering of criminal intelligence.” The agency would be required to provide reasonable notice to the public regarding the agency’s use of UAS – which may be a “one-time announcement regarding the agency’s intent to deploy unmanned aircraft system technology and a description of the technology’s capabilities.”

AB 1327 also limits the allowed use of data and images collected by a public agency’s use of unmanned aircraft. With certain exceptions, images, footage, and data obtained through the use of a drone must be destroyed within one year. As currently drafted, AB 1327 expressly authorizes local agencies to adopt more restrictive policies regarding the use of unmanned aircraft.

2. Assembly Bill 2306 – Expanding the Tort of Constructive Invasion of Privacy to Include the Use of Drones (Passed on September 30, 2014)

Assembly Bill 2306 amended California Civil Code Section 1708.8, which creates a civil tort cause of action related to the invasion of privacy. Under existing Section 1708.8, a person is liable for constructive invasion of privacy when that 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 of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

AB 2306 amended the language underlined above to refer to “any device” so as to encompass the use of an unmanned aircraft in capturing visual images,

recordings, or impressions. Now that AB 2306 is adopted, the tort of constructive invasion of privacy extends to include attempts to capture visual images, sound recordings or other physical impressions through use of drones if all other requirements are satisfied.

Draft Ordinance

The draft Ordinance prohibits the use of unmanned aircraft in the City to record or transmit any visual image or audio recording of any person or private real property located in the City under circumstances where the subject person or owner of the subject real property has a reasonable expectation of privacy. As currently drafted, the Ordinance exempts model aircraft so long as they do not transmit or record visual images or audio recordings of any person or real property in the City. The draft Ordinance also exempts the use of unmanned aircraft to record or transmit visual images where the person who is the subject of the recording, or the owner of the private real property that is the subject of the recording, authorizes such use. In addition, the draft Ordinance would not prohibit the use of unmanned aircraft by law enforcement or public safety agencies where the agency either obtains a warrant or uses the unmanned aircraft to provide fire or police protection services in a life-threatening emergency, exigent circumstances or for surveying conditions during a duly declared state of emergency.

FISCAL IMPACT

The fiscal impact is unknown at this time.



David Snowden

Approved By

Attachment 1

ORDINANCE NO. 14-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS ADDING SECTION 5-6-604 TO THE BEVERLY HILLS MUNICIPAL CODE TO PROHIBIT THE USE OF UNMANNED AIRCRAFT TO RECORD OR TRANSMIT VISUAL IMAGES OR AUDIO RECORDINGS OF PERSONS OR PRIVATE PROPERTY LOCATED IN THE CITY OF BEVERLY HILLS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS
AS FOLLOWS:

Section 1. Section 5-6-604 is hereby added to Article 6 of Chapter 6 of Title 5 of the Beverly Hills Municipal Code to read as follows:

"5-6-604: PROHIBITION AGAINST USING AN UNMANNED AIRCRAFT TO RECORD OR TRANSMIT VISUAL OR AUDIO RECORDINGS:

- A. No person shall use an unmanned aircraft to record or transmit any visual image or audio recording of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).
- B. This section shall not prohibit the use of any model aircraft, which is flown in compliance with Section 336 of the FAA Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the City.
- C. This section shall not prohibit the use of any unmanned aircraft to transmit or record any visual image or audio recording if the subject person or the owner of the subject real property authorizes the recording.
- D. This section shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies:
 - 1. If a warrant is issued authorizing the use of an unmanned aircraft;
or

2. For the purpose of providing emergency management, fire, or police protection services in response to exigent circumstances, a life-threatening emergency, or for surveying the condition of persons or property during a duly declared state of emergency; or
 3. Under circumstances where a warrant would not otherwise be required by law.
- E. For the purpose of this section, an “unmanned aircraft” is a device that flies and is operated without the possibility of direct human intervention from within or on the aircraft.”

Section 2. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the prohibition would not have the potential for causing a significant effect on the environment.

Section 3. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 4. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and

his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 5. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

LILI BOSSE
Mayor
City of Beverly Hills, California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY C. KOLIN
City Manager

Attachment 2



OFFICE OF THE GOVERNOR

SEP 28 2014

To the Members of the California State Assembly:

I am returning Assembly Bill 1327 without my signature.

This bill prohibits law enforcement from using a drone without obtaining a search warrant, except in limited circumstances.

There are undoubtedly circumstances where a warrant is appropriate. The bill's exceptions, however, appear to be too narrow and could impose requirements beyond what is required by either the 4th Amendment or the privacy provisions in the California Constitution.

Sincerely,

A handwritten signature in black ink that reads "Edmund G. Brown Jr." with a large, stylized flourish at the end.

Edmund G. Brown Jr.



Attachment 3

BILL NUMBER: AB 2306 CHAPTERED
BILL TEXT

CHAPTER 858
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2014
APPROVED BY GOVERNOR SEPTEMBER 30, 2014
PASSED THE SENATE AUGUST 27, 2014
PASSED THE ASSEMBLY AUGUST 28, 2014
AMENDED IN SENATE AUGUST 22, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014

INTRODUCED BY Assembly Members Chau and Waldron
(Coauthor: Senator Jackson)

FEBRUARY 21, 2014

An act to amend Section 1708.8 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2306, Chau. Constructive invasion of privacy: liability.

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.

This bill would incorporate additional changes to Section 1708.8 of the Civil Code proposed by AB 1256 that would become operative if this bill and AB 1256 are both enacted and this bill is enacted last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1708.8 of the Civil Code is amended to read:

1708.8. (a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise committed a trespass in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or

other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.

(c) An assault or false imprisonment committed with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is subject to subdivisions (d), (e), and (h).

(d) A person who commits any act described in subdivision (a), (b), or (c) is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section. This person may also be liable for punitive damages, subject to proof according to Section 3294. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(e) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate any provision of subdivision (a), (b), or (c) is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate this section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to subdivision (b) of Section 3294. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(f) (1) The transmission, publication, broadcast, sale, offer for sale, or other use of any visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) shall not constitute a violation of this section unless the person, in the first transaction following the taking or capture of the visual image, sound recording, or other physical impression, publicly transmitted, published, broadcast, sold, or offered for sale the visual image, sound recording, or other physical impression with actual knowledge that it was taken or captured in violation of subdivision (a), (b), or (c), and provided compensation, consideration, or remuneration, monetary or otherwise, for the rights to the unlawfully obtained visual image, sound recording, or other physical impression.

(2) For the purposes of paragraph (1), "actual knowledge" means actual awareness, understanding, and recognition, obtained prior to the time at which the person purchased or acquired the visual image, sound recording, or other physical impression, that the visual image, sound recording, or other physical impression was taken or captured in violation of subdivision (a), (b), or (c). The plaintiff shall establish actual knowledge by clear and convincing evidence.

(3) Any person that publicly transmits, publishes, broadcasts, sells, or offers for sale, in any form, medium, format, or work, a visual image, sound recording, or other physical impression that was previously publicly transmitted, published, broadcast, sold, or offered for sale by another person, is exempt from liability under

this section.

(4) If a person's first public transmission, publication, broadcast, or sale or offer for sale of a visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) does not constitute a violation of this section, that person's subsequent public transmission, publication, broadcast, sale, or offer for sale, in any form, medium, format, or work, of the visual image, sound recording, or other physical impression, does not constitute a violation of this section.

(5) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in California in violation of subdivision (a), (b), or (c) after January 1, 2010, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of California.

(6) Nothing in this subdivision shall be construed to impair or limit a special motion to strike pursuant to Section 425.16, 425.17, or 425.18 of the Code of Civil Procedure.

(7) This section shall not be construed to limit all other rights or remedies of the plaintiff in law or equity, including, but not limited to, the publication of private facts.

(g) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity or other misconduct, the suspected violation of any administrative rule or regulation, a suspected fraudulent conduct, or any activity involving a violation of law or business practices or conduct of public officials adversely affecting the public welfare, health, or safety.

(h) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a), (b), or (c).

(i) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(j) It is not a defense to a violation of this section that no image, recording, or physical impression was captured or sold.

(k) For the purposes of this section, "for a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(l) For the purposes of this section, "personal and familial activity" includes, but is not limited to, intimate details of the plaintiff's personal life, interactions with the plaintiff's family or significant others, or other aspects of the plaintiff's private affairs or concerns. "Personal and familial activity" does not include illegal or otherwise criminal activity as delineated in subdivision (g). However, "personal and familial activity" shall include the activities of victims of crime in circumstances under which subdivision (a), (b), or (c) would apply.

(m) (1) A proceeding to recover the civil fines specified in subdivision (d) or (e) may be brought in any court of competent jurisdiction by a county counsel or city attorney.

(2) Fines collected pursuant to this subdivision shall be allocated, as follows:

(A) One-half shall be allocated to the prosecuting agency.

(B) One-half shall be deposited in the Arts and Entertainment Fund, which is hereby created in the State Treasury.

(3) Funds in the Arts and Entertainment Fund created pursuant to paragraph (2) may be expended by the California Arts Council, upon appropriation by the Legislature, to issue grants pursuant to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter 9 (commencing with Section 8750) of Division 1 of Title 2 of the Government Code).

(4) The rights and remedies provided in this subdivision are cumulative and in addition to any other rights and remedies provided by law.

(n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 1.5. Section 1708.8 of the Civil Code is amended to read:

1708.8. (a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise committed a trespass in order to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.

(c) An assault or false imprisonment committed with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is subject to subdivisions (d), (e), and (h).

(d) A person who commits any act described in subdivision (a), (b), or (c) is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section. This person may also be liable for punitive damages, subject to proof according to Section 3294. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(e) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate any provision of subdivision (a), (b), or (c) is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate this section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to subdivision (b) of Section

3294. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

(f) (1) The transmission, publication, broadcast, sale, offer for sale, or other use of any visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) shall not constitute a violation of this section unless the person, in the first transaction following the taking or capture of the visual image, sound recording, or other physical impression, publicly transmitted, published, broadcast, sold, or offered for sale the visual image, sound recording, or other physical impression with actual knowledge that it was taken or captured in violation of subdivision (a), (b), or (c), and provided compensation, consideration, or remuneration, monetary or otherwise, for the rights to the unlawfully obtained visual image, sound recording, or other physical impression.

(2) For the purposes of paragraph (1), "actual knowledge" means actual awareness, understanding, and recognition, obtained prior to the time at which the person purchased or acquired the visual image, sound recording, or other physical impression, that the visual image, sound recording, or other physical impression was taken or captured in violation of subdivision (a), (b), or (c). The plaintiff shall establish actual knowledge by clear and convincing evidence.

(3) Any person that publicly transmits, publishes, broadcasts, sells, or offers for sale, in any form, medium, format, or work, a visual image, sound recording, or other physical impression that was previously publicly transmitted, published, broadcast, sold, or offered for sale by another person, is exempt from liability under this section.

(4) If a person's first public transmission, publication, broadcast, or sale or offer for sale of a visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) does not constitute a violation of this section, that person's subsequent public transmission, publication, broadcast, sale, or offer for sale, in any form, medium, format, or work, of the visual image, sound recording, or other physical impression, does not constitute a violation of this section.

(5) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in California in violation of subdivision (a), (b), or (c) after January 1, 2010, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of California.

(6) Nothing in this subdivision shall be construed to impair or limit a special motion to strike pursuant to Section 425.16, 425.17, or 425.18 of the Code of Civil Procedure.

(7) This section shall not be construed to limit all other rights or remedies of the plaintiff in law or equity, including, but not limited to, the publication of private facts.

(g) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity or other misconduct, the suspected violation of any administrative rule or regulation, a suspected fraudulent conduct, or any activity involving a violation of law or business practices or conduct of public officials adversely

affecting the public welfare, health, or safety.

(h) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a), (b), or (c).

(i) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(j) It is not a defense to a violation of this section that no image, recording, or physical impression was captured or sold.

(k) For the purposes of this section, "for a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(l) (1) For the purposes of this section, "private, personal, and familial activity" includes, but is not limited to:

(A) Intimate details of the plaintiff's personal life under circumstances in which the plaintiff has a reasonable expectation of privacy.

(B) Interaction with the plaintiff's family or significant others under circumstances in which the plaintiff has a reasonable expectation of privacy.

(C) If and only after the defendant has been convicted of violating Section 626.8 of the Penal Code, any activity that occurs when minors are present at any location set forth in subdivision (a) of Section 626.8 of the Penal Code.

(D) Any activity that occurs on a residential property under circumstances in which the plaintiff has a reasonable expectation of privacy.

(E) Other aspects of the plaintiff's private affairs or concerns under circumstances in which the plaintiff has a reasonable expectation of privacy.

(2) "Private, personal, and familial activity" does not include illegal or otherwise criminal activity as delineated in subdivision (g). However, "private, personal, and familial activity" shall include the activities of victims of crime in circumstances under which subdivision (a), (b), or (c) would apply.

(m) (1) A proceeding to recover the civil fines specified in subdivision (d) or (e) may be brought in any court of competent jurisdiction by a county counsel or city attorney.

(2) Fines collected pursuant to this subdivision shall be allocated, as follows:

(A) One-half shall be allocated to the prosecuting agency.

(B) One-half shall be deposited in the Arts and Entertainment Fund, which is hereby created in the State Treasury.

(3) Funds in the Arts and Entertainment Fund created pursuant to paragraph (2) may be expended by the California Arts Council, upon appropriation by the Legislature, to issue grants pursuant to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter 9 (commencing with Section 8750) of Division 1 of Title 2 of the Government Code).

(4) The rights and remedies provided in this subdivision are cumulative and in addition to any other rights and remedies provided by law.

(n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1708.8 of the Civil Code proposed by both this bill and AB 1256. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 1708.8 of the Civil Code, and (3) this bill is enacted after AB 1256, in which case Section 1 of this bill shall not become operative.