Local Authority to Address UAS Impacts

John Putnam, Kaplan Kirsch & Rockwell LLP
Daniel Reimer, Denver International Airport
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Today’s Flight Plan

• Safety and local interests
• Federal regulation
• Local regulation
• Local use
• Predictions
Local Uses of UAS

• City use
• EMS
• Property management
• Resource management
• Code enforcement
• Utilities

Photo credit: http://increasinghumanpotential.org
Why Do Cities Care About Others’ Use of UAS?

• Economic development and recreation interest
• Safety
  • Airport operations
  • Large crowds
  • Interference with fire, police
  • General
• Privacy
• Protection of critical operations
  • Parks
  • Jails
  • Utilities
• Proprietary interests
UAS Safety Concerns:
Concerns, but Not Guns or Cars....

Photo credit: The Durango Herald
Video credit: Virginia Tech
Figure 240. Summary of collision severity levels on commercial transport jet

Why we can no longer have nice things....
National Transportation Safety Board
Aviation Incident Final Report

Location:  Hoffman Island, NY
Date & Time:  09/21/2017, 1920 EDT
Aircraft:  DJI Phantom
Defining Event:  Midair collision
Flight Conducted Under:  Part 107: Small UAS

Incident Number:  DCA17IA202A
Registration:  None
Aircraft Damage:  Destroyed
Injuries:  1 None

Analysis

The United States Army UH-60M helicopter was operating under visual flight rules within Class G airspace about 300 ft above mean sea level (msl) when it collided with a privately owned and operated DJI Phantom 4 small unmanned aircraft system (sUAS). The helicopter sustained minor damage and landed uneventfully; the sUAS was destroyed. Although the pilot flying the helicopter saw the sUAS before impact and immediately applied flight control inputs, there was insufficient time to avoid the collision.
FAA’s General Authority

- Sovereignty of airspace
- Aircraft and flight
  - No careless or reckless flight (14 C.F.R. § 91.13)
  - Altitudes (14 C.F.R. § 91.119)
- Preempts wide range of local rules
FAA Regulation Focuses on Use and User

Photo credit: Lakemaid Beer
FAA’s Part 107

- Commercial and public use

- Parameters
  - Less than 55lbs
  - Visual line of sight (VLOS)
  - Daylight hours or civil twilight with lighting
  - Below 100mph
  - Below 400 AGL or 400 feet of structure
  - Licensed remote aircraft operator

- Waivers available
FAA Recreational Drone Regulations

• Congressional exemption in 2012
  • Community standards

• FAA registration rule (Dec. 2015)

• D.C. Circuit invalidated last Spring
  • Taylor v. Huerta

• Congress reinstated registration requirement
# FAA Airport/Air Traffic Notification Requirements

<table>
<thead>
<tr>
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<th>Commercial (Part 107)</th>
<th>Public (Part 107)</th>
<th>Model UAS</th>
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<tbody>
<tr>
<td>Air Traffic</td>
<td>Air Traffic must AUTHORIZE near major airports; no airport</td>
<td>Air Traffic must AUTHORIZE near major airports; no</td>
<td>Must NOTIFY Air Traffic and airport within 5 miles</td>
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FAA: Events/Overflights

- Restricted/prohibited flight areas
- Major sporting events
- Prohibited over people who are not “directly participating”, except in:
  - Covered structure
  - Stationary vehicle
Types of Local Regulations

• Bans or moratoria

• Safety
  • Careless/reckless operation
  • Location regulation (airports, sensitive locations, parks, height)
  • Weaponizing
  • Interference with civic functions (firefighting, police, etc.)

• Protection of privacy from government
  • Ban
  • Requirement for warrant
  • Limits on use
  • Data retention

• Protection of privacy/property rights (private parties) from private parties
  • Height limits
  • Use of images
  • Trespass
  • Prior permission
Colorado Examples

- Vail
  - Prohibits UAS in critical areas

- Cherry Hills Village
  - Recreational focus
  - Registration
  - Careless/reckless use
  - Over City/private property
  - Harassment

- Telluride
  - Reckless/careless use
  - Harassment of wildlife
  - Trespass if no prior permission

- Boulder County and City
  - Open Space

- Deer Trail
Preemption Considerations

• Pervasive federal control of aircraft and flight
  • Also radio communications

• Local authority over land use, trespass, general health and safety

• Airspace
  • Line between private and public airspace
    • Property interest of landowner
    • U.S. sovereign airspace
1000 feet (FAR floor: congested)

500 feet (FAR floor: uncongested)

400 feet: Part 107 ceiling

200 feet (Pollack)

83 feet (Causby)
FAA Position on Preemption

• No express statement in Part 107

• FAA Fact Sheet on State and Local Regulation of UAS (December 2015)
  • Some provisions preempted
  • State/local law may be appropriate for:
    • Privacy
    • Trespass/property rights
    • Intellectual property

- Challenge to local ordinance
- Registration requirements upon owners of all pilotless aircraft
- Ban on the use of a pilotless aircraft below an altitude of 400 feet over private property without express permission of the owner of the private property
- Ban on use over City property without prior permission.
- Ban on use "beyond the visual line of sight of the Operator"

- No field preemption
- Must consider conflict preemption
- The following measures conflicted with federal regulation
  - Registration
  - Requirement for prior permission for flight below 400 feet over private property
  - Requirement for prior permission over Newton property
  - Line-of-sight rules
UAS-Specific v. General Rules

• Land use, protection from trespass, and general safety rules not preempted

• Non-aviation-specific provisions
  • Operating in park (Park Regs 14.3)
  • Trespass (e.g., C.R.S. 18-4-502-04)
  • Careless/reckless behavior (e.g., C.R.S. 18-3-208; Sec. 38-93)
UAS-Specific v. General Rules (continued)

- Peeping Tom/Stalking (e.g., Sec. 38-88)
- Interference with fire, police, etc. (e.g., Sec. 38-31)
- Use of weapons (e.g., 38-117, -121)
- Do these optimally cover UAS contexts?
- Enforcement of federal standards?
Heightened Preemption Risks

- Regulation of flight differently than FAA
- Restrictions on use in navigable airspace
  - Unlimited ceiling of prior permission
- Restriction of federally-permitted operations
- Regulation of aircraft
- UAS-specific rule
On the Horizon

- FAA Reauthorization (August???)
  - 21st Century AIRR Act (House)
  - FAA Reauthorization Act (Senate)
  - Drone Federalism Act

- FAA Airspace Pilot Program

- FAA Drone Advisory Committee

- Court Decisions
Enforcement Needs/Issues

- Legal authority to cite
- Training for police, code enforcement
- Public education
- Tools
  - Communications
  - Other (radar, etc.)
- Coordination (Airport, FAA, land managers, other jurisdictions)
- Prosecution (DA, PACE, civil actions)
- Willingness to litigate
- Major Challenges
  - ID of user
  - Uncertainty about authority
Local Government Risk Management Considerations

- Own and operate or lease services?
- Scope of insurance
- Mutual aid agreement provisions
- Internal policies regarding use
- Safety
- Data retention
- Use of video/images
- Training and compliance
- 4th Amendment considerations
- Trespass
Questions?

John Putnam  
jputnam@kaplankirsch.com  
www.kaplankirsch.com  
303.825.7000

Dan Reimer  
dan.reimer@flydenver.com  
www.flydenver.com  
303.342.2565