DRONES IN YOUR COMMUNITY: THE LOCAL GOVERNMENT ANGLE

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Advancing Excellence in the practice of Local Government Law

Introduction



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Introduction

Public interest – municipalities and counties:

- Regulating the use of UAS within their jurisdictions
- Using UAS to protect public safety and welfare

Definitions

Aircraft – 49 USC 40102(a)(6): any contrivance invented, used, or designed to navigate, or fly in, the air

Unmanned aircraft – FMRA Sec. 331(8)

Model aircraft – depending on use, UAS may be considered a model aircraft. FMRA Sec. 336

Statutory Authority

FAA Modernization and Reform Act of 2012, Pub. L. 112-95, Feb. 14, 2012

- Safely accelerate integration of UAS into the National Airspace System by Sept. 30, 2015
- Establish test ranges to develop UAS technology
- Case-by-case approval of public and commercial operations

Current Regulation - General

49 U.S.C. 40103 – FAA general safety mandate to protect National Airspace System

- Protect persons and property on ground
- Prevent collisions between aircraft and other aircraft or objects

49 U.S.C. 44701(a) – Safe flight of civil aircraft in air commerce

- Regulations
- Minimum standards

Current Regulation - General

14 C.F.R. 91.13 - No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

14 C.F.R. 91.119 – Minimum altitudes for safe flight

- Floor of navigable airspace
- 500’ for uncongested areas
- 1000’ for congested areas
- Necessary for takeoff and landing

Guidance and Regulations - UAS

Proposed Rule: Operation and Certification of Small Unmanned Aircraft Systems, 80 Fed. Reg. 9544 (Feb. 23, 2015)

Non-binding guidance documents:

- AC 91-57A (Sept. 2, 2015) – Model Aircraft Operating Standards
- Policy notice, Unmanned Aircraft Operations in the National Airspace System, 72 Fed Reg 6689 (Feb. 13, 2007)
- Interim Operational Approval Guidance 08-01, Unmanned Aircraft Systems Operations in the U.S. National Airspace System, March 13, 2008

Regulation Depends on Use

Public	Commercial (Civil)	Model/Private
		
COA – Certificate of Waiver or Authorization	Section 333 Exemption or Experimental Exemption **and** COA	Generally No Prior Authorization

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Commercial Operators

UAS operations permitted on case-by-case basis as exceptions to existing law

- FMRA Sec. 333 exemptions – interim authorization of commercial operations until final rule established

  AND

- COA:
  - FAA "blanket" COA – March 2015
  - OR individual COA

Municipal Considerations - Airports

Must airports allow UAS as an "aeronautical activity"?

- Operation of UAS does not depend on or require airports
- Airports must accommodate aeronautical activities
- Airport rules and regulations
- General strategy currently is to separate UAS from other users of NAS



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Municipal Considerations - Airports



No air traffic control standards for UAS yet

Current FAA strategy is to segregate UAS operations from other NAS users

IF permitting UAS operations on airport property:

- Carefully evaluate and enforce rules and regulations; minimum standards
- Insurance
- Rigorous contractual criteria – FAA authorization as condition

Municipal Considerations – Law Enforcement

FAA Law Enforcement Guidance for Suspected Unauthorized UAS Operations, Jan. 8, 2015

- Seeks assistance of local law enforcement agencies to prevent unlawful UAS operations: deter, detect and investigate – report to FAA
- Very unusual – federal agency seeking help from local law enforcement to investigate federal civil regulations and policies
- Reduce reckless operations:
  - Model aircraft
  - UAS



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http://increasinghumanpotential.org

Challenges

Technical

- Sense and avoid
- Reliable data links between ground and UAS
- General criteria for design, certification
- Radio frequencies

Regulatory

- Air traffic procedures
- Pilot qualification
- Safety data reporting and hazard analysis
- Proliferation of unauthorized, inexperienced users



Resources

- FAA website: https://www.faa.gov/uas/
- TRB Airport Cooperative Research Program, Report 144: *Unmanned Aircraft Systems (UAS) at Airports – A Primer*, available at: http://www.trb.org/Publications/Blurbs/173263.aspx

What's Ahead

- FAA rulemaking - sUAS
- Continued commercial/technical innovation
- Rapidly increasing use
- Future rulemaking re: larger UAS



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Questions?

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