

One Small Step for Unmanned Aerial Vehicles, One Giant Leap for Municipalities?

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As described in the cover article of this issue of *Municipal Lawyer*, the federal government has been largely precluded by Congress from regulating the recreational use of Unmanned Aerial Vehicles or drones. But is certainly not without a significant role.

In September, shortly before the much-anticipated visit of Pope Francis to the United States, the Federal Aviation Administration (FAA) announced that the three cities the Pope would visit—Washington DC, Philadelphia and New York—were all "No Drone Zones" from September 22 through 27.[1] While that announcement was somewhat duplicative, in that drones of any sort have been prohibited for some time in the District of Columbia, it illustrated the continuing interplay between the FAA and municipal authority.

In the commercial and governmental arena, the FAA's voice continues to reverberate in municipalities, as evidenced most recently by its proposed $1.9 million fine against SkyPan International, a provider of "bird's eye" views to commercial purchasers. The FAA alleges that SkyPan made repeated unauthorized forays in the airspace over Chicago and New York City, acting "recklessly" and endangering property and people below.[2]

In late November, the FAA issued a press release specifically oriented to recreational use, cautioning the public that every operator of a drone is potentially a "pilot" in public airspace:

> You're heading to the stores on Black Friday to buy that shiny new camera-equipped drone you've been yearning for. You can't wait to get into the sky and let loose your inner high-flying aerial photographer, right?
> Did you know you're also going to become a pilot?
> When you fly your drone anywhere in the nation's airspace, you automatically become part of the U.S. aviation system. Under the law, your drone is an aircraft. So while the rules for drones may be different, you have the responsibility to operate safely, just as a Cessna or 747 pilot does.[3]

That proclamation came on the heels of the federal government's much more impactful pronouncement one month earlier—that it would be requiring the registration of most drones. On October 19, 2015, U.S. Transportation Secretary Anthony Foxx and FAA Administrator Michael Huerta announced the creation of a task force to develop recommendations for a registration process for Unmanned Aircraft Systems (UAS).

The task force included "25 to 30 diverse representatives from the UAS and manned aviation industries, the federal government, and other stakeholders" and was to provide advice about exempting some UAS from registration due to "low safety risk, including toys and certain other small UAS," as well as exploring options for "a streamlined system that would make registration less burdensome for commercial UAS operators."[4]

Citing a rapid rise in reported sightings of drones in public airspace,[5] many which occurred thousands of feet in the air, as well as above major sporting events and emergency operations, FAA Administrator Huerta stated "These reports signal a troubling trend. Registration will help make sure that operators know the rules and remain accountable to the public for flying their unmanned aircraft responsibly. When they don't fly safely, they'll know there will be consequences."[6]

In addition to governmental representatives, stakeholder groups included The Association for Unmanned Vehicle Systems International, the Academy of Model Aircraft, the Air Line Pilots Association, the American Association of Airport Executives, the Helicopter Association International, PrecisionHawk, AirMap/ Small UAV Coalition, and the Consumer Electronics Association. The FAA announced receipt of the task force report on November 20.

On December 14, 2015—in the nick of time, as some would phrase it, to require Yuletide compliance by hundreds of thousands of incipient drone owners—the FAA released its Interim Final Rule (IFR) regarding UAV registration requirements. The action was noteworthy not only for its substance, discussed below, but also for its rapidity. As the FAA discusses in a 211-page exegesis in the Code of Federal Regulations,[7] time pressures required that the normal choreography of agency rulemaking be drastically curtailed. First, the notice and comment period had to be reduced:

> Therefore, the FAA has determined that it is impracticable and contrary to the public interest in ensuring the safety of the NAS [National Airspace System] and people and property on the ground to proceed with further notice and comment on aircraft registration requirements for small unmanned aircraft before implementing the streamlined registry system established by this rule. As more small unmanned aircraft enter the NAS, the risk of unsafe operations will increase without a means by which to identify these small unmanned aircraft in the event of an incident or accident. The public interest served by the notice and comment process is outweighed by the significant increase in risk that the public will face with the immediate proliferation of new small unmanned aircraft that will be introduced into the NAS in the weeks ahead.[8]

Similarly, the normal hiatus between rulemaking and publication would have

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to be trimmed, given current circumstances. The Administrative Procedures Act requires agencies to delay the effective date of regulations for 30 days after publication unless the agency finds "good cause" to make the regulations effective sooner. Here, the FAA posited that "good cause exists for making this regulation effective less than 30 days from the date of publication," in part due to "the immediate and ongoing safety risk identified in the discussion above regarding good cause for foregoing notice and comment."[9]

The speed in codifying the IFR appears to have been matched by equally rapid technical implementation. Although the system has yet to endure the coming deluge over the next few months weeks, it is promoted as an effective online registry, allowing rapid and cost-efficient usage—and far superior to the paper-only drone registration process the FAA had utilized until now. The cost to build the new online tool and the time spent by users to input data is estimated at $56 million, while the expense to society and the government if all million-plus recreational drone users were to slog through the current paper input system is estimated by the FAA at nearly $383 million, demonstrating a clear societal benefit.[10]

More than 4,700 comments were received by the Task Force from various segments of the drone community between October 19 and early November. While some commenters requested a lower cap on the permissible weight of drones, warning of the potential for significant damage from unmanned overhead flying machines weighing as much as small children, others pushed to allow even greater weight. For example, DJI, the world's largest producer of recreational UAVs, requested that the 55 pound maximum refer to the drone itself not including fuel or payload.[11] The FAA declined, holding to its position that the 55 pound limit applies to the total weight of the UAV "at liftoff"—which includes any additional elements.

Additional comments related to the possibility of exemption from registration based on size and capability. Model airplane enthusiasts cited the fact that most of their craft are very light, have a short range and generally cannot be reliably flown unless in direct line of sight from their operators. Others argued for exemption based on more practical parameters, given that manned aircraft are presumed to be capable



of withstanding a mid-air collision with a medium-sized bird:

> Some individuals based their recommendations on a comparison between the risks to aircraft from bird strikes and the risks from collisions with unmanned aircraft. One commenter said that any aircraft over the weight of a mallard duck should be registered… Another individual commenter said a threshold weight of 2 pounds is 'entirely reasonable' because crows weigh between 0.7 and 2.6 pounds.[12]

Despite the presumed ornithological accuracy of these arguments, the FAA adopted the Task Force recommendation to exclude only the smallest of UAVs: those under 250 grams, or about .55 pounds, which should exempt many of the least expensive, "toy" drones.

The FAA declined to tackle the issue of drone-related privacy concerns, leaving that task to the National Telecommunications and Information Administration, which is "leading a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private use of UAS in the NAS."[13]

The elements of the registration requirement are relatively straightforward and are summarized in the FAA' UAS Registration Q&A."[14] As noted above, registration is mandatory for all drones that weigh more than 250 grams and will be used outdoors. The IFR creates a small incentive to purchase a UAV without further ado: anyone buying a drone prior to December 21, 2015 has two months (until February 19, 2016) to register the UAV. New owners—those who take possession of a drone on December 21, 2015 or thereafter-must register it before their first flight outdoors.

Although all registrants may use the FAA's legacy paper-based registration process, only registrants 13 years of age or older may use the new streamlined, web-based system (www.faa.gov/uas/registration). The fee for registration is a modest $5, but in an effort to promote compliance over the holiday season, the FAA is waiving registration fees for the first 30 days, until January 20, 2016.

Registration lasts three years.

Registrants will need to provide their name, home address and e-mail address. Upon completion of the registration process, the web application will generate a Certificate of Aircraft Registration and Proof of Ownership that will include a unique identification number for the drone owner. That number must be marked somewhere on the drone (which can include inside a battery compartment or other enclosure, so long as it is easily opened).[15] Users may apply the same single registration number to all drones used recreationally.

FAA management is optimistic. "We expect hundreds of thousands of model unmanned aircraft will be purchased this holiday season," said FAA Administrator Huerta. "Registration gives us the opportunity to educate these new airspace users before they fly so they know the airspace rules and understand they are accountable to the public for flying responsibly."[16]

The online registration system does not yet support registration of small drones used for any purpose other than hobby or recreation – for example, commercial use. The FAA is developing enhancements that will allow such online registrations by spring of 2016.

While hardly a panacea, the FAA's move to require a national drone registry should be a valuable piece of the architecture that municipalities will require to enforce their own UAV regulations. Obviously, those intent on using drones for malevolent purposes can hardly be expected to register them on a federal database. But as indicated in Chicago's ground-breaking recreational drone measures reproduced in the "Ordinances" section of this issue of *Municipal Lawyer*, registration—coupled with tagging to allow easy identification of the drone—is at the heart of effective regulation. In that regard, the federal government's initiative —if it facilitates local access to registration data—could be a major step forward in

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Code Enforcement, Cont'd from page 15

Summary of Code Enforcement Receivership (or Similar) Laws Under the 9 States Surveyed

1. All 9 states require some level of violation of a health, safety, or welfare code or regulation.
—Pennsylvania is more specific than most.
2. In all 9 states, a petition may be brought by the municipality.
—Massachusetts allows the Attorney General to also file.
—Illinois, Missouri, Ohio, and Pennsylvania allow a non-profit or other community housing corporation to file.
—New Jersey, Ohio, and Pennsylvania allow other interested parties to file.
3. First Priority Lien.
Illinois, Massachusetts, Texas, Ohio, and California.
—In Michigan, the court may establish the receiver's lien as a senior lien, except as to tax and assessment liens and recorded mortgages of first priority.
—Missouri allows receiver's liens to be superior to all other liens except for taxes, assessments, receiver's certificates, and mortgages recorded prior to October 13, 1969.
—New Jersey has an order of priority with costs and expenses of sale first in line, then other governmental liens, then repayment of principal and interest on any borrowing or indebtedness incurred by the municipality to fund the receivership.
—Pennsylvania has on order of priority with court costs first, then state tax or municipal liens, then principal and interest on any rehabilitation indebtedness. Rehabilitation costs are 6th out of 9 places in order of priority.
4. Some states have specific rules regarding properties in foreclosure.
—In Pennsylvania and Missouri, no receivership may be allowed if property is in foreclosure.

Benefits, Drawbacks, and Conclusion

Code enforcement receiverships can be a useful tool for communities that are grappling with vacant, abandoned, or dilapidated structures. In many cases, a receivership enjoys certain advantages over other forms of abatement actions, such as criminal prosecution and civil injunctive relief. Receivership can be a speedier remedy than a civil injunction and more certain, since a third party (the receiver) assumes control over the property and is motivated to move forward with the repair work quickly. Receivership can also avoid the unnecessary use of law enforcement staff (who often view code enforcement as a low priority) and a criminal justice system that is often impacted. A receivership is self-funding and does not constitute the drain on public finances that other remedies can.

Yet code enforcement receiverships are, like any other approach, not suitable in every instance. Structures that are severely damaged may not be repairable and must be demolished; although a receiver usually has the power to abate through demolition, it is often quicker and less expensive for the municipality to demolish. Perhaps the most frequently-encountered hurdle is extraordinarily low resale values for homes that require an extraordinarily high level of repair. In those cases, unless the property is generating significant income, the receiver may not be able to obtain financing for the repairs. In some of these types of cases, a receiver can approach the rehabilitation from a different angle. However, in a few cases, some remedy other than receivership must be employed.

In sum, code enforcement receiverships can and are used to great effect in situations where more traditional enforcement avenues have proven to be a dead end. Once the court confirms the receiver's appointment, the municipality's day- to-day involvement is greatly diminished. In those jurisdictions that allow it, the municipality can recover its attorneys' fees and administrative enforcement costs. Most importantly, a successfully-implemented code enforcement receivership can serve as a catalyst to encourage other stakeholders to invest in and improve the community in which they live and work.

Notes

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municipal control over recreational drone use.

Notes

1. "Cities Hosting the Papal Visit are No Drone Zones" http://www.faa.gov/news/press_releases/news_story.cfm?newsId=19474 (last accessed Nov. 29, 2015).
2. https://www.washingtonpost.com/local/trafficandcommuting/faa-wants-to-fine-skypan-19-million-for-reckless-drone-operations/2015/10/06/2050ca2e-6c34-11e5-aa5b-f78a98956699_story.html (last accessed Nov. 30, 2015).
3. "FAA-Fly Safe with Your Drone" http://www.faa.gov/news/updates/?newsId=84326 (last accessed Nov. 30, 2015).
4. "U.S. Transportation Secretary Anthony Foxx Announces Unmanned Aircraft Registration Requirement" http://www.faa.gov/news/press_releases/news_story.cfm?newsId=19594 (last accessed Nov. 12, 2015).
5. On August 21, 2015, the FAA released a report documenting more than 650 drone sightings in public airspace during 2015, far eclipsing the prior year's numbers. "FAA Releases Pilot UAS Reports" http://www.faa.gov/news/updates/?newsId=83544 (last accessed Nov. 19, 2014).
6. "U.S. Transportation Secretary Anthony Foxx Announces Unmanned Aircraft Registration Requirement" http://www.faa.gov/news/press_releases/news_story.cfm?newsId=19594 (last accessed Nov. 12, 2015).
7. http://www.faa.gov/news/updates/media/20151213_IFR.pdf (last accessed Dec. 15, 2015).
8. *Id.* at 19.
9. *Id.* at 20.
10. *Id.* at 9.
11. *Id.* at 44.
12. *Id.* at 52.
13. Id. at 70.
14. http://www.faa.gov/uas/registration/faqs/#cov (last accessed Dec. 16, 2015).
15. *Id.*
16. http://www.faa.gov/news/press_releases/news_story.cfm?newsId=19856 (last accessed Dec. 15, 2015).

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