

OFFICE OF THE CITY ATTORNEY



PHONE: (305) 809-3770
FAX: (305) 809-3771

THE CITY OF KEY WEST

POST OFFICE BOX 1409
KEY WEST, FL 33041-1409
WWW.KEYWESTCITY.COM

AMENDED EXECUTIVE SUMMARY

To: The City Commission for the City of Key West
From: Ron Ramsingh, Assistant City Attorney
Date: August 18, 2014 revised 8/25/14, 9/29/14, 10/6/14 & **12/18/14**
RE: The creation of a new ordinance to regulate the use of drones over the City of Key West

Action statement:

This measure proposes to create a local ordinance that prohibits the use of Unmanned Aerial Vehicles (drones) in, or over the City of Key West, unless otherwise permitted by the Federal Aviation Administration (FAA). This proposal is consistent with the current federal regulations concerning the use of drones.

Background:

Currently, the FAA requires that an operator of a drone possess a Certificate of Appropriateness or a Letter of Exemption in order to lawfully operate in the United States. These exceptions are generally made for educational, research or governmental agencies and institutions. A third way that one may use a drone is if an operator is part of a local hobbyist recreational club that is recognized by a nationwide, community-based organization such as the Academy of Model Aeronautics (AMA). Some of the requirements to create a local organization recognized by the AMA include that the model aircraft be used in only a hobby or recreational capacity, weigh less than 55 pounds, flown within the visual line of sight of the operator, and the flight area clear of

any potential hazards (including operation over individuals or buildings), among other conditions. Currently, there are no hobbyist organizations in Key West.

The Federal Aviation Administration (FAA) is currently in the lengthy process of addressing the use of unmanned aircraft that are used for recreational and commercial purposes in response to the meteoric rise in the use of drones. This increase is largely due to the increasing availability of drones to the general public tempered by increased affordability and battery technology. The United States Congress has given the FAA until September 30, 2015 to propose new rules to integrate drones into the national airspace. While the typical drone is a multi-rotor rig that is electric powered and carries a high resolution camera, there are also drones with highly sophisticated electronics including night vision and First Person View (FPV) that exponentially increases the range and capabilities of these aircraft beyond the typical backyard model flyers from years ago. The FAA's current regulations generally address such extended range aircraft, and offer limited exemptions for research purposes since the technology was previously limited to the military. Most recently in September 2014, the FAA has issued an operator exemption to a film maker, where typically, again, they have only been issued to governmental and research organizations in very limited numbers. This indicates that the FAA is marching towards integration by the September 2015 deadline, but has fallen short of lifting its outright ban. Additionally, The National Transportation Safety Board (NTSB) issued an opinion on March 6, 2014 in FAA & Michael Huerta vs. Pirker in favor of the FAA wherein the NTSB agreed with the FAA that a fixed wing drone did in fact meet the definition of a drone according to the FAA regulations.

This ordinance proposes to enact local regulation that is consistent with federal law until such time as the U.S. Congress otherwise acts on the issue. The FAA has even reported to Reuters that they are relying on local and state regulation to enforce reckless operation of drones until new federal regulations can be implemented; albeit with effective dates at least a year away. The Reuters article is attached for your review.

There have been several meetings that have been attended by the various stakeholders in Key West as well as representatives from the Monroe County airport, the U.S. Navy, as well as the

Mosquito Control District. What these meetings have served to accomplish is solely to veer further away from the very simple federal mandate that drones are *not* permitted to be operated in the national airspace *unless* one of the aforementioned certificates are possessed by an operator¹. Any regulation that the City of Key West implements that has the effect of otherwise allowing activity that the state or federal government prohibits is an impermissible local ordinance.

There has been at least two documented incidents in Key West where a drone was being operated over a crowd and either malfunctioned or was being operated carelessly that resulted in the drone striking a bystander. The first was at the East Martello Tower during the 4th of July fireworks show in 2014. The second was at the Westin Resort pier during a wedding ceremony, also in 2014. Additionally, there have been other recent reports of reckless drone operations and those reports are attached herein. From a practical perspective, although the federal government has regulations regarding drones, they have no *real* enforceability. The FAA does not have an enforcement branch that has the ability to immediately stop reckless or unauthorized drone operations the way a municipal police department would, and which this ordinance would allow for. Therefore, practically speaking, because there is no “real” risk right now of penalty from the federal government, drone usage is so open and prevalent.

Options:

1. To approve the proposed ordinance which will outright disallow the operation of drones in or over Key West, consistent with the current federal regulations, unless otherwise permitted by the FAA;
2. To defeat the proposed ordinance. The current token federal prohibitions will remain in effect, although from a practical perspective, not enforceable.

¹ During previous meetings with the stakeholders, a proposal was made by Mr. Horton from the airport that drones be allowed to operate under 70 feet or the nearest, highest object. However, the undersigned reported to the City Commission in October 2014 that such a regulation would run afoul of federal law since the FAA does not allow commercially operated drones to be flown without a Letter of Exemption.

Recommendation: To approve the proposed ordinance thereby creating a ban on the operation of drones in and over the City of Key West, unless otherwise permitted by the FAA, consistent with current federal regulations on the subject.



Drone downer: Will new FAA rules ground recreational fliers?

BY ALWYN SCOTT

NEW YORK | Sat Dec 13, 2014 9:27am EST

Tweet

Share 5

Share this

Email

Print



A small drone helicopter operated by a paparazzi records singer Beyonce Knowles-Carter (not seen) as she rides the Cyclone rollercoaster while filming a music video on Coney Island in New York in this August 29, 2013 file photo. CREDIT: REUTERS/CARLO ALLEGRI/FILES

RELATED VIDEO



FAA's holiday gift for drones: regulations

FACTBOX

Factbox: Lockheed's Skunk Works behind many U.S. military aircraft

RELATED NEWS

Drone risks require more regulation, IATA chief says

YOUR MONEY-You may already be too late for hottest holiday toys

Amazon warns U.S. FAA it could move more drone research abroad

ANALYSIS & OPINION

(Reuters) - Americans shopping for toy remote-controlled airplanes or helicopters may find, sometime in the near future, that they come with unexpected accessories: A raft of new regulations.

The Federal Aviation Administration, by the end of the month, is expected to propose new rules governing small unmanned aircraft systems, the first major overhaul of its drone policy.

The agency is closely guarding details, saying only that the rules will cover a wide range of users flying aircraft or drones weighing 55 pounds or less.

But legal and policy experts who have advised the FAA and lobbied on drone regulations said they predict the new regulations will include restrictions on hundreds of thousands of people who fly quad-copters or toy planes in parks or backyards.

The focus on toy aircraft is a new twist. Such regulations have been in the works for years, largely because of pressure from

TRENDING ON REUTERS

- Over 120 Pakistanis, mostly children, killed in Taliban high school attack | 1
- Saudi Arabia is playing chicken with its oil 2
- Oil sinks, Russian moves fail to quell nerves | 3
- Russian rouble suffers steepest drop in 16 years | 4
- Hostage taking in Sydney cafe sparks fears of Islamist-linked attack | 5



PICTURES OF THE YEAR



Our most compelling images from the past year and the stories behind them. **Slideshow**

Pictures of the year: Environment

Best of the year in Sports

Fashion pictures of the year

Pictures of the year: Space

Our best entertainment photos from 2014

Orion, Dragons and Dream Chasers: What's behind spaceship design?

businesses wanting to use drones for tasks such as aerial photography.

RELATED TOPICS

U.S. »

Politics »

Experts said that based on existing drone guidelines, the new FAA rules, expected to take at least a year to kick in, will likely require, among other things, recreational fliers to either join a community-based model aircraft

organization - or obtain authorization from the FAA. The rules also could place other restrictions on people who fly drones recklessly, the experts said. If the rules omit discussion of recreational fliers, the experts added, that could sow confusion on what type of flying is allowed.

"There's basically going to be two options," said Richard Hanson, director of government affairs at the Academy of Model Aeronautics, who has lobbied Congress and advised the FAA on drone regulations. "You either participate in a community-based organization or you have to follow the rules as if you are commercial operator."

RISKY FLIERS

Bona-fide hobbyists have gotten little attention, largely because Congress in 2012 exempted them from new FAA rules - provided they adhere to, among other things, the safety code of a community-based organization, such as AMA, which has more than 170,000 members.

But that carve-out doesn't apply to an estimated 300,000 people in the U.S. who have bought toy aircraft and are largely unaware of hobbyist association safety codes.

These casual fliers, including people who get a toy drone as a holiday gift, are blamed for dangerous flights near airports, stadiums and military bases. The FAA recently documented more than 190 close calls, including instances of drones flying within 50 feet of jetliners landing in New York and elsewhere.

"Unfortunately, there are lots of people who've bought these things at the local store or online who don't know anything about the AMA or its safety guidelines," said Ted Ellett, a former FAA chief counsel and head of the unmanned aircraft systems group at law firm Hogan Lovells in Washington, D.C.

In the absence of rules, the FAA has largely relied on local and state police to prosecute risky drone fliers.

GOING SOFT?

Experts say it makes little sense for the FAA to be softer on hobbyists than on commercial fliers, who have an interest in flying responsibly to avoid lawsuits and protect their brands.

"Drone technology is far surpassing the flying skills of the people who have them," said Paul Fraidenburgh, an aviation lawyer at Buchalter Nemer in Irvine, California. "The fact that someone is receiving money makes me feel safer about their operation."

Ellett, the former FAA chief counsel, said the FAA should issue clear definitions for flights that are exempt from the new rules - and those that are not. Otherwise, he added, confusion will be the order of the day.

The AMA has lobbied for the hobbyist exemption, arguing its members have an 80-year history of safe piloting, even with planes that are fitted with jet engines and can zoom at 200 miles an hour, the AMA's Hanson said. Those enthusiasts are not the toy-flying amateurs who order a quad-copter from Amazon.com Inc that experts expect the FAA's new rule to address.

Hanson served on an FAA advisory group that recommended light regulation for drones weighing a pound or two but would ratchet up requirements for flying aircraft of greater size and power. He said his understanding of current FAA policy suggests the agency won't provide that kind of stepped regulation.

Follow Reuters

Facebook

Twitter

RSS

YouTube

Sponsored Financial Content

See if you're on track with your retirement savings *Wells Fargo*

Your Cable Company Doesn't Want You To Know This *Motley Fool*

5 Credit Cards with No Interest to Help You Get out of Debt *Next Advisor*

Tech and industrial stocks appear well-positioned for Q3 of 2014. *Fidelity Investments*

Download Our 2014 eBook to Learn How To Generate Yield on Investments *Covestor*

SPONSORED TOPICS

1. Top 10 Luxury Cars
2. Best Retirement Communities
3. 7 Best Dividend Stocks
4. Top 10 Retirement Plans
5. Businesses to Start From Home
6. Top 5 Stocks to Buy

Parrot
MINIDRONES

Kamping Sumo - \$159

Rolling Spider - \$99

I WANT THEM.

Piloting App on
iOS & Android

The AMA's safety code covers items the FAA has said should apply to hobbyists: not flying carelessly or recklessly, avoiding prohibited areas, staying below 400 feet, keeping clear of manned aircraft and not "flying directly over unprotected people." The AMA's \$58 annual membership fee includes \$2.5 million in liability insurance.

The FAA said at a congressional hearing on Wednesday it is trying to educate recreational fliers about safe flight, recognizing that final rules are at least a year away. In the same vein, Amazon has linked its online "drone store" to the AMA, the FAA and other sites with safety information.

(Reporting by Alwyn Scott, editing by Hank Gilman)

FILED UNDER: [U.S. POLITICS](#)

Recommend 27 people recommend this. Sign Up to see what your friends recommend.

- [Tweet this](#)
- [Link this](#)
- [Share this](#)
- [Digg this](#)
- [Email](#)
- [Print](#)
- [Reprints](#)

Sponsored Financial Content

- Estimate how much you'll need for retirement with My Retirement Plan® *Wells Fargo*
- REVEALED: Apple's Next Smart Device *Motley Fool*
- Tech and industrial stocks appear well-positioned for Q3 of 2014. *Fidelity Investments*
- Hedge Funds Revealing What You Never Knew Before *MFA*
- China Country Guide, brought to you by HSBC *HSBC Global Connections*

Sponsored Topics

- Best Cars to Own
- Best Rated SUVs
- Cheap Cellphone Plans
- Top 10 Best Vacuum Cleaners
- Best Refrigerator 2014
- High Speed Internet Offers
- How Start a Business From Scratch
- Top 10 Luxury Cars
- Best Income Funds
- Recommended Stocks to Buy

[Back to top](#)

Reuters.com [Business](#) | [Markets](#) | [World](#) | [Politics](#) | [Technology](#) | [Opinion](#) | [Money](#) | [Pictures](#) | [Videos](#) | [Site Index](#)

More from Reuters [Reuters News Agency](#) | [Brand Attribution Guidelines](#) | [Delivery Options](#)

Support & Contact [Support](#) | [Corrections](#)

Connect with Reuters [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [RSS](#) | [Podcast](#) | [Newsletters](#) | [Mobile](#)

About [Privacy Policy](#) | [Terms of Use](#) | [Advertise With Us](#) | [AdChoices](#) | [Copyright](#)

Thomson Reuters is the world's leading source of critical legal information for businesses and professionals.

[Thomsonreuters.com](#)

[About Thomson Reuters](#)

[Investor Relations](#)

[Careers](#)

Our flagship financial information platform incorporating Reuters Insider

An ultra-low latency infrastructure for electronic trading and data distribution

A connected approach to governance, risk and compliance

Our next generation legal research platform

Our global tax workstation

Drone sightings near airports, aircraft up dramatically

By Joan Lowy Associated Press

POSTED 11/12/2014 08:19:37 AM PST | UPDATED: ABOUT A MONTH AGO

2 COMMENTS

WASHINGTON — More than a million small drone aircraft have been sold in the past few years, and a growing number of them are turning up in the skies near airports and airliners, posing a risk of collision. Reports of drone sightings near other planes, helicopters and airfields are reaching the government almost daily, say federal and industry officials.

It's a sharp increase from just two years ago when such reports were still unusual.

Many of the reports are filed with the Federal Aviation Administration by airline pilots. But other pilots, airport officials and local authorities often file reports as well, said the officials, who agreed to discuss the matter only on the condition that they not be named because they weren't authorized to speak publicly. Michael Toscano, president of a drone industry trade group, said FAA officials also have verified the increase to him.

While many of the reports are unconfirmed, raising the possibility that pilots may have mistaken a bird or another plane in the distance for a drone, the officials said other reports appear to be credible.

The reports underscore the difficulty the FAA faces trying to control drones, which could cause a crash if one collided with a plane or was sucked into an engine. Small drones usually aren't visible on radar to air traffic controllers, particularly if they're made of plastic or other composites.

The agency's near-total ban on their use has been ignored by operators ranging from real estate agents to farmers who use them to monitor crops. Rules to allow broader use of commercial drones are expected to be proposed before year's end.

Advertisement



"It should not be a matter of luck that keeps an airplane and a drone apart," said Rory Kay, a training captain at a major airline and a former Air Line Pilots Association safety committee chairman. "So far we've been lucky."

Sen. Dianne Feinstein, D-Calif., said the "reckless operation of drones, whether near airports or anywhere else, is a serious threat to public safety."

"We shouldn't wait for a major disaster to take action to protect the airspace," she told the AP.

The FAA requires that drone and model aircraft operators keep flights to under 400 feet in altitude, keep the aircraft within sight of the operator and stay at least 5 miles away from an airport. Small drones are often indistinguishable from model aircraft, which have grown in sophistication.

Commercial operators and government officials from police to research scientists must obtain FAA certificates of authorization to fly drones. Exceptions are made for some government drones such as those the military flies in great swaths of airspace in reserved, remote areas. Customs and Border Protection flies high-altitude drones along the U.S. borders with Mexico and Canada.

Jim Williams, who heads the FAA drone office, caused a stir earlier this year when he told a drone industry conference that an airliner nearly collided with a drone over Tallahassee, Florida, in March. The pilot of the 50-seat Canadair Regional Jet reported the camouflage-painted drone was at an altitude of about 2,300 feet, 5 miles northeast of the airport. The FAA hasn't been able to find the drone or identify its operator.

Some other recent incidents:

--The pilots of a regional airliner flying at about 10,000 feet reported seeing at least one drone pass less than 500 feet above the plane, moving slowly to the south toward Allegheny County Airport near Pittsburgh. The drone was described as black and gray with a thin body, about 5 feet to 6 feet long.

--Air traffic controllers in Burbank, California, received a report from a helicopter pilot of a camera-equipped drone flying near the giant Hollywood sign.

--Controllers at central Florida's approach control facility received a report from the pilots of an Airbus A319 airliner that they had sighted a drone below the plane at about 11,000 feet and 15 miles west of Orlando. The drone was described as having a red vertical stabilizer and blue body. It wasn't picked up on radar.

--The pilots of a regional airliner reported spotting a drone 500 feet to 1,000 feet off the plane's right side during a landing approach to runway 4 of the Greenville-Spartanburg International Airport in South Carolina. The drone was described as the size of a large bird.

The FAA seeks to follow up on some of the reports to educate operators about safety, the agency said in a statement, adding that some rogue operators have been threatened with fines.

Toscano, of the drone trade group, said that with more than a million small drones sold worldwide in the past few years it is inevitable that some will misuse them because they don't understand the safety risks or simply don't care.

"As unfortunate as it would be that we have an incident, it's not going to shut down the industry," Toscano said.

Drone flown 20ft from landing Heathrow jet

The moment a device believed to have been a drone came within 20ft (6m) of a plane landing at Heathrow Airport has been described in a **report by an air safety body**.

The Airbus A320 was at 700ft (213m) when its pilot saw a small black object near the aircraft, the UK Airprox (aircraft proximity) Board (UKAB) said.

The report does not identify the airline or where the plane was arriving from.

The drone operator could not be traced.

'Critical phase'

The object "passed about 20ft over the wing" and appeared to be a small radio-controlled helicopter, the report said.

It did not strike the plane and the pilot was able to make a normal landing, at 14:16 BST on July 22.

"It was a distraction during a critical phase of flight," the report added.

Air traffic controllers were told of the incident and the aircraft behind were notified.

The UKAB said: "Despite extensive tracing action and the proactive assistance of local model flying club members, it was not possible to trace the operator of the model aircraft in question."

It said in summary: "The board members were satisfied that the A320 crew had seen a model helicopter and were of the unanimous opinion that the operator of the model had chosen to fly it in an entirely inappropriate location.

"That the dangers associated with flying such a model in close proximity to a commercial air transport aircraft in the final stages of landing were not self-evident was a cause for considerable concern."

A Heathrow spokesman said the "unauthorised use of unmanned aerial vehicles in proximity to an airfield is both irresponsible and illegal".

He said that Heathrow pursued prosecution for violation of airspace.

In October, Birmingham University warned the use of drones in the UK would rise over the next 20 years, raising "significant safety, security, and privacy concerns".

The airline pilots' association Balpa has **demanding better protection** for the public against the risks.

Holland & Knight

ALERT

FAA Approves Use of Drones on Movie Sets

September 25, 2014

Christine N. Walz
Joel E. Roberson

HIGHLIGHTS:

- » On Sept. 25, the Federal Aviation Administration (FAA) approved the limited use of unmanned aerial systems (UAS), commonly referred to as drones, for film production on some movie sets.
- » The FAA's decision to approve the use of UAS is a concrete step by the FAA to integrate commercial and civil UAS into the national airspace.

On Sept. 25, the Federal Aviation Administration (FAA) approved the limited use of unmanned aerial systems (UAS), commonly referred to as drones, for film production on some movie sets.

Current FAA regulations prohibit any use of UAS for commercial or business purposes. However, the FAA is authorized to grant exemptions from this general prohibition where UAS may operate safely in the national airspace.

The FAA's announcement that UAS may be used on some movie sets came in response to petitions filed by seven film and video production companies in May 2014. The FAA approved six of the seven exemption petitions, which were made as part of an effort coordinated by the Motion Picture Association of America to use UAS on closed movie sets.

The petitions proposed a cautious approach to the use of UAS, specifically setting forth 18 self-imposed limitations.

For example, the petitioners agreed to the following:

- » The maximum total flight time for each operational flight will be 30 minutes. Flights will be terminated at 25 percent battery power reserve, should that occur prior to the 30-minute limit.
- » Each UAS pilot will be an FAA-licensed airman with at least a private pilot's certificate and third-class medical certificate. The observer will hold at least a third-class medical certificate.
- » The operator will obtain the consent of all persons involved in the filming and ensure that only consenting persons will be allowed within 100 feet of the flight operation. The UAS operator will submit a written Plan of Activities to the relevant Flight Standards District Offices.

In addition to the self-imposed restrictions proposed by the film and video companies, the FAA requirements include the following:

- » The aircraft must be inspected before each flight.
- » The use of UAS is restricted to daytime use only.
- » Reporting requirements have been imposed for any UAS accidents or incidents.

The FAA's decision to approve the use of UAS is a concrete step by the FAA to integrate commercial and civil UAS into the national airspace. The full announcement can be read on the official FAA website.

Holland & Knight lawyers have the knowledge and experience to answer your questions about the development of and policies relating to the use of civilian drones in the United States.

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

Authors



Christine Walz is an associate in Holland & Knight's Washington, D.C., office and a member of the firm's Litigation Section and National Media Practice Team. Ms. Walz assists media clients with First Amendment issues, including defamation and access to public information. She also has experience defending real estate developers against claims brought under the Fair Housing Act and Americans with Disabilities Act. Prior to joining Holland & Knight, Ms. Walz worked on Capitol Hill as a legislative assistant for then-Congressman Sherrod Brown and as an intern at the Department of Justice and the White House, where she helped to coordinate communications between the White House and federal agencies.

202.469.5113 | christine.walz@hklaw.com



Joel E. Roberson is an associate practicing in the firm's Public Policy & Regulation Practice Group. Mr. Roberson's practice focuses on public policy development, legislative advocacy and regulatory compliance with expertise in data privacy, Food and Drug Administration (FDA) law and specialty materials. He has significant experience in bipartisan coalition building, strategy development, crisis communications, and high-stakes negotiation on behalf of Fortune 500 companies, not-for-profit organizations, educational institutions and trade associations.

202.663.7264 | joel.roberson@hklaw.com