

LOCAL AUTHORITY TO ADDRESS UAS IMPACTS

Before the City and County of Denver
Safety, Housing, Education, &
Homelessness Committee

John Putnam
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KAPLAN KIRSCH ROCKWELL

Why Do Cities Care About Others' Use of UAS?

- Safety
 - Airport operations
 - Large crowds
 - Interference with fire, police
 - General
 - Weapons
- Privacy/Quiet Enjoyment
 - Trespass
 - Peeping Tom
 - Noise/irritation
- Protection of city operations
 - Parks
 - Jails
 - Utilities
- Proprietary interests



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

Public



Part 107 or
Certificate of
Waiver or
Authorization
(COA)

Commercial (Civil)



Part 107 or
Section 333

Recreational/Model



Section 336 Limit
on Regulation; or
Part 107

FAA Recreational Drone Regulations

- Congressional exemption in 2012
- FAA registration rule (Dec. 2015)
- D.C. Circuit invalidated last month
 - *Taylor v. Huerta*
- FAA rescinding registration and refunding
- Future uncertain
- Vacuum for local activity?

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

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)

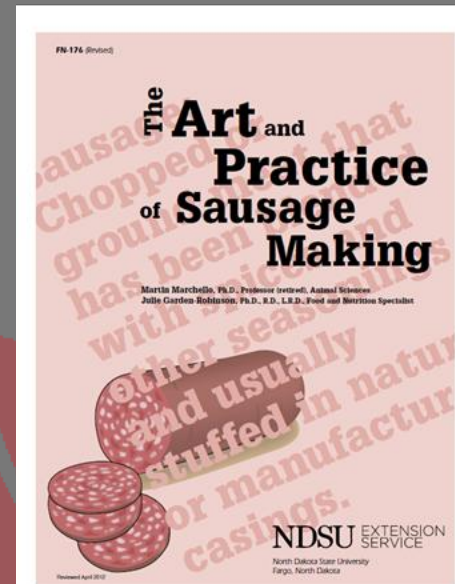
- Peeping Tom/Stalking (e.g., Sec. 38-88)
 - Interference with fire, police, etc. (e.g., Sec. 38-31)
 - Use of weapons (e.g., Sec. 38-117, -121)
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- Do these optimally cover UAS contexts?
 - Enforcement of federal standards?

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
 - Senate: FAA Reauthorization Act of 2017
 - House: 21st Century AIRR Act
 - Reauthorization expires 9/30/17
- Other bills
- 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

Questions?

John Putnam
jputnam@kaplankirsch.com
www.kaplankirsch.com
(303)-825-7000

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