

November 20, 2015

Via email

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Honorable Members of the City Council
New York City, NY

Re: New York City Proposed Bill 589-A to Regulate Unmanned Aerial Vehicles

Dear City Council Members:

The Small UAV Coalition¹ opposes Proposed Int. No. 589-A in its current form.²

¹ Members of the Small UAV Coalition include 3D Robotics, AGI, AirMap, Amazon Prime Air, Botlink, DJI Innovations, Drone Deploy, Flirtey, Google [X] Project Wing, GoPro, Intel, Kespri, Parrot, PrecisionHawk, Strat-Aero, Verifly, Verizon Ventures, and ZeroTech.

² This letter supplements the November 19, 2015 Coalition letter to the City Council opposing Proposed Int. No. 601-A and Proposed Int. 0614-2015.

The Coalition opposes the proposed amendments to the Administrative Code that would regulate commercial operations of UAVs in New York City, sections 19-9201 through 19-2207, inclusive, and sections 19-9231 through 19-9236, inclusive.³ These provisions intrude upon the authority Congress has vested exclusively in the Federal Aviation Administration (FAA), and conflict with the FAA regulations. Thus, these provisions, if enacted, would be preempted by Federal law under the Supremacy Clause of the United States Constitution.

The bill would require: (1) UAV operators to obtain a “UAV operator license” (19-9202); (2) each UAV to be inspected and “approved” by the City each year (19-9205); and (3) UAV operators to obtain a permit from the City before each flight (19-9232).

A strong and consistent line of judicial decisions holds that State and local regulations that concern matters entrusted to the FAA are preempted. *See, e.g., French v. Pan Am Express*, 869 F.2d 1 (1st Cir. 1989)(Rhode Island law requiring drug testing of pilots preempted)(“The intricate web of statutory provisions afford no room for the imposition of state-law criteria vis-à-vis pilot suitability.”). The FAA’s statutory authority to regulate operator certification, its authority to inspect and certificate aircraft (including UAVs), and its authority to certificate air carriers all derive from the broad authority under the Federal Aviation Act, as supplemented by the UAV-specific provisions of the FAA Modernization and Reform Act of 2012.

The bill would also impose operational restrictions that in some but not all respects are similar to current restrictions imposed by the FAA in section 333 exemptions and restrictions proposed in the FAA’s small UAS Notice of Proposed Rulemaking. As we noted with respect to Proposed Int. 601-A, the bill may have been drafted to follow FAA rules and/or guidance, but differs from existing and proposed FAA rules and guidance in several respects. In any event, whether or not a city ordinance faithfully adopts a Federal law or rule, the city ordinance is preempted under Federal law where Congress has charged a Federal agency to regulate to conduct addressed by the city ordinance.

The FAA has plenary control over the navigable airspace and thus its safety regulations “occupy the field.” Therefore, it does not matter that there may not be a “conflict” between Federal and local law. Accordingly, the proposed operational restrictions regarding UAV speed, weight, and line of sight are also subject to preemption under the Federal Aviation Act.

In fact, this bill would significantly conflict with Federal law. The bill would make a municipal crime conduct that may be currently prohibited by the FAA but may subsequently be permitted, whether by a rule change, an exemption or waiver, or a change to the Federal Aviation Act. What may now be prohibited or restricted may in a short time be permitted or changed.

For these reasons, we urge you not to adopt the commercial UAV provisions in this bill.

³ The Coalition takes no position on the provisions of this bill that would regulate the City’s use of unmanned aerial vehicles (UAVs).

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**SMALL UAV
COALITION**
*A Partnership for
Safety & Innovation*

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Greg S Walden". The signature is written in a cursive style with a large, prominent "G" and "W".

Michael Drobotac
Executive Director

Gregory S. Walden
Aviation Counsel