

November 19, 2015

Via email

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Honorable Members of the City Council
New York City, NY

Re: New York City Proposed Bills to Regulate Unmanned Aerial Vehicles

Dear City Council Members:

The Small UAV Coalition¹ opposes Proposed Int. No. 601-A and Proposed Int. 0614-2015 in their current form. The former bill would essentially make certain operations of unmanned aerial vehicles (UAVs) a municipal crime. The latter bill would require UAVs to be registered with the

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, Kespry, Parrot, PrecisionHawk, Strat-Aero, Verifly, Verizon Ventures, and ZeroTech.

City of New York and carry insurance; failing to meet these requirements could result in a civil penalty and a seizure of the UAV. Both of these bills, as currently written, are preempted by Federal law in several respects.

Proposed Int. No. 601-A – Restrictions on UAV Operations

The bill would prohibit the landing or taking off of a UAV “at any place within the limits of the city other than places of landing designated by the department of transportation or the port of New York authority.” It would be a misdemeanor offense to operate a UAV in any area of the city not specifically designated by the commissioner of parks and recreation.

The bill would prohibit the operation of a UAV under the influence or “in a careless or reckless manner so as to endanger life or property of another[.]” and would make it a misdemeanor to operate an aircraft contrary to any FAA regulation.

The bill would also prohibit UAV operations (1) within 5 miles of an airport unless notice is provided to the air traffic control tower and airport operator “in accordance with” section 336 of the FAA Modernization and Reform Act of 2012, which created a special rule for model aircraft; (2) over 400 feet AGL; (3) beyond the visual line of sight; (4) in bad weather; and (5) at night. In these respects, 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, 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.

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. The FAA has proposed a set of rules governing operation of small unmanned aerial vehicles (UAVs), which is expected by June 2016. Also, the FAA has granted over 2,200 exemptions for commercial use of small UAVs under section 333 of the FAA Modernization and Reform Act of 2012 to those applicants who provide a full description of their intended operations as well as measures undertaken to ensure they are conducted safely and responsibly. Thus, what may now be prohibited or restricted may in a short time be permitted or changed. For instance, the FAA has proposed to authorize small UAV operations below 500 feet Above Ground Level (AGL); the bill would limit operations in the city to 400 feet AGL.

The bill’s provision relating to operations near airports, while similar to a condition the FAA imposes in section 333 exemptions, is inconsistent with FAA proposed section 107.41 (operations in certain airspace). The bill does not define “airport,” and does not address a UAV operated in the city within 5 miles of an airport outside of the city, as well as a UAV operated



outside of the city but within 5 miles of an airport in the city. These are several reasons why the issue of operations near airports is best left to the FAA.

The bill's limitation on landing areas appears to be confined to designated parks (see proposed section 18-145). This limitation may be intended to afford hobbyists and modelers park space in which to operate UAVs, but it would effectively ban UAV operations for commercial purposes. In doing so, it would flatly conflict with current FAA exemption authority and would likely conflict with the FAA's small UAS rule when it becomes final. Another part of the bill would exempt UAVs that "take off or land in a location where a UAV may be avigated legally, so long as such takeoff or landing does not pose an unreasonable risk of harm to persons or property." It is not clear whether a UAV takeoff or landing is "legal" only if it occurs in a designated park. The bill also does not define "unreasonable risk." The bill thus raises a significant concern under the Due Process Clauses of the 5th and 14th Amendments to the United States Constitution whether a person has fair notice of the law.

The FAA does not preempt State and local laws concerning the operation of aircraft under the influence of alcohol or drugs where those laws "impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property." See 14 CFR 120.205(b) (alcohol); 14 C.F.R. 120.121 (drugs). The bill is not so limited and thus is preempted to the extent it criminalizes conduct within the FAA's preemptive reach. With respect to the "careless or reckless" prohibition in the bill, this is a provision taken verbatim from 14 CFR 91.13(a). The Coalition believes the FAA has sufficient enforcement authority to take action against UAV operators who violate the Federal Aviation Regulations, including those who operate UAVs careless or recklessly. If additional authority is desired, it is up to Congress, or the FAA under its delegated authority, to act, and not up to a State or municipal government.

Proposed Int. 0614-2015 – Registration and Insurance

With respect to the bill that would require registration of UAVs, the registration of aircraft is governed by the Federal Aviation Act and FAA rules. Commercial operators are now required to register UAVs with the existing FAA Aircraft Registry. The FAA recently created a task force to develop recommendations for an electronic registration system for both commercial and recreational UAVs. The task force will submit recommendations to the FAA Administrator by November 20 and FAA reportedly intends to promulgate an interim final rule before the end of 2015. We submit that, at a minimum, it is premature for the City to institute a registration system when a Federal registration system is expected to be established in the near term. And once the FAA establishes an electronic registration system, any State or municipal registration system is likely to be preempted under the Supremacy Clause of the United States Constitution.

The bill would exempt "toy aircraft;" however, the bill does not define this term. Proposed Int. No. 601-A defines toy aircraft very narrowly; it is not coterminous with the concept of a "model aircraft" under Federal law.

The bill would also exempt "UAVs that are air carriers." Aircraft are not air carriers. Aircraft operators are air carriers, and so we believe the intent of this exemption is to carve out UAVs operated by DOT-certificated air carriers as defined in 49 U.S.C. 40102(a)(2).

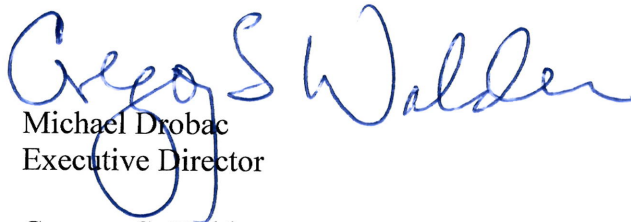
This exemption appears to recognize Federal preemption under both the Federal Aviation Act and the Airline Deregulation Act. But neither the FAA nor the Department of Transportation has yet to determine whether to subject commercial operators of small UAVs to the economic or safety certification process. The FAA has proposed in its small UAS Notice of Proposed Rulemaking to prohibit air carrier operations, but has sought public comment on this issue. That rulemaking remains pending.

Even if the bill were revised to exempt UAVs operated by air carriers and for recreational purposes, the registration system would still conflict with the FAA's soon to be established electronic registration system. The Coalition believes the current and forthcoming Federal regulatory framework is and will be sufficient to address the concerns underlying these bills. An additional, as well as varying, layer of rules, no matter how well-intentioned, will serve only as a deterrent to an industry that has enormous potential to generate local revenues, create jobs, drive innovation, and reduce the risk of accidents as well as local transportation's carbon footprint.

For these reasons, we urge you not to adopt either bill.

Thank you for your consideration.

Sincerely,



Michael Drobac
Executive Director

Gregory S. Walden
Aviation Counsel