SMALL UAV COALITION
A Partnership for Safety & Innovation

December 9, 2015

*Via email*

Honorable Mayor Tomas P. Regalado
Commissioner Wilfredo Gort
Commissioner Ken Russell
Commissioner Frank Carollo
Commissioner Francis Suarez
Commissioner Keon Hardemon
City Attorney Victoria Mendez
City of Miami
Miami, Florida

Re: Draft Miami City Ordinance – File No. 15-01513 to Regulate Unmanned Aerial Vehicles

Dear Mayor, Commissioners, and City Attorney:

The Small UAV Coalition[1] opposes the above-captioned proposed City Ordinance that would create Chapter 37-12 to regulate UAV operations in the City and make violations of such regulations a misdemeanor. We understand this proposed ordinance is set to be considered on second reading on December 10. In many respects this draft ordinance, if adopted as currently written, would be preempted by Federal law.

General comments

The motive for this ordinance appears to be a concern over "the limitation in the FAA's enforcement capabilities." The Coalition believes the FAA has sufficient enforcement authority and resources to take action against UAV operators who violate the Federal Aviation Regulations, including those who operate UAVs carelessly 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 to do so.

Section 37-12 states that the ordinance "is not intended to preempt FAA rules, but rather to operate in conjunction with those rules . . . ." Under the Supremacy Clause of the United States Constitution, Article VI, clause 2, Federal law is the supreme law of the land. As a bedrock principle of constitutional law, a city aviation ordinance may not preempt FAA rules, whether or not it intends to do so. Nor may a city ordinance intrude into an area vested by Congress to a Federal department or agency.

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[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, Verizon Ventures, and ZeroTech.

The FAA has plenary control over the navigable airspace and has promulgated a comprehensive set of safety regulations that leave no room for supplementation by state or local law. Therefore, it does not matter that there may not be a "conflict" between Federal and local law.

In fact, this proposed ordinance would significantly conflict with Federal law. This proposed ordinance would make a municipal crime some conduct that is not currently prohibited by the FAA and other conduct that is prohibited 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.

Specific comments

Proposed 37-12(c)(1) establishes a required distance of 2,640 feet from any "sporting and/or large venue special event." "Large venue special event" is defined to include any "open space" event "that is intended to attract people." There is no floor for the number of people attracted. There is also no definition of "any sporting event." This provision conflicts with the FAA's standard condition in exemptions it has granted under section 333 of the FAA Modernization and Reform Act of 2012, which requires a commercial operator to remain at least 500 feet away from persons or structures not involved in the operation. By contrast the proposed ordinance would impose a distance five times the Federal standard. In the FAA's proposed rule for small unmanned aircraft systems (sUAS NPRM), section 107.39 would prohibit UAV operations over a person not directly involved with that operation, although in the preamble to the sUAS NPRM, the FAA suggests it may allow a micro UAS (weighing no more than 4.4 lbs. including payload) to fly over people not involved in the UAS operation. Further, the FAA can issue and has issued Notices to Airmen (NOTAMs) establishing temporary flight restrictions over a large sporting events. Thus, because the FAA regulates the operations of small UAVs in these circumstances, a state or city may not do so.

"In all other areas of the City," proposed 37-12(c)(2)(A) would limit the UAV to 5 pounds, and would prohibit the UAV to be equipped with "detachable cargo" or "releasable payload." Proposed 37-12(c)(2)(B) would allow UAVs over that weight limit if the operator is a registered member of the Academy of Model Aeronautics (AMA) and complies with AMA "rules." This provision conflicts with Federal law in several respects. Most notably, the FAA has not imposed a UAV weight limit in section 333 exemptions. In its sUAS NPRM, section 107.3 would define small UAS as a UAV that weighs less than 55 pounds including payload.

The FAA does not require membership in the AMA as a condition of operating commercially and the sUAS NPRM contains no such requirement for commercial operations. Operations of "model aircraft" are governed by section 336 of the FAA Modernization and Reform Act of 2012 and proposed to be codified in new section 14 CFR 101.41. AMA has published a "National Model Aircraft Safety Code" but that document is not a rule; and neither section 336 nor the sUAS NPRM requires compliance with the AMA document by name.

The prohibition on a UAV being equipped with detachable cargo or releasable payload impermissibly intrudes on the FAA's regulation of UAS operations. The FAA's sUAS NPRM, at

subsection 107.23(b), prohibits a UAS operator from allowing an object to be dropped from a UAV "if such action endangers the life or property of another." Thus, the draft ordinance conflicts with the FAA's proposed rule.[2]

Proposed 37-12(d)(1) would require UAS operators to obtain a permit and to register the UAS. Permitting of aircraft operators, including UAS operators, is the province of the FAA. In its sUAS NPRM, Subpart C, the FAA proposes to issue an unmanned aircraft operator certificate with small UAS rating.

With respect to registration of UAS, 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 submitted its recommendations to the FAA Administrator on November 21 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 permitting and registration system when a Federal registration system is expected to established in the near term, and when the FAA is expected to issue a final sUAS rule in 2016. In any event, once the FAA establishes an electronic registration system, any State or municipal registration system is likely to be preempted under the Supremacy Clause.

Proposed 37-12(d)(1)(F) would limit a permit's validity to "the date specified therein." Authority the FAA has provided in section 333 exemptions is valid for two years, and may be extended at that time. When the FAA publishes its sUAS final rule, expected next year, operations authorized under that rule will be allowed indefinitely. The FAA has issued date-specific Certificates of Authorization (COAs) but only upon request; many COAs are not limited to a particular date or dates. Thus, this provision conflicts with Federal law.

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, 4 (1st Cir. 1989)(Rhode Island law requiring drug testing of pilots preempted)("The intricate web of statutory provisions affords no room for the imposition of state-law criteria vis-à-vis pilot suitability."); *Abdullah v. American Airlines,* 181 F.3d 363, 367 (3d Cir. 1999)("We hold that federal law establishes the applicable standards of care in the field of air safety, generally, thus preempting the entire field from state and territorial regulation."). The FAA's statutory authority to regulate operator certification and its authority to certificate air carriers 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.

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[2] In its sUAS NPRM, the FAA proposes in section 101.1 to exclude "air carrier" operations and "an aircraft conducting an external load operation." The FAA may revise these exclusions in consideration of public comments, as the latter exclusion appears inconsistent with proposed subsection 107.23(b). Regardless of what the FAA provides in its final rule, it is the FAA and not a state or city that has regulatory authority of such operations.

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In sum, the Coalition believes the current and forthcoming Federal regulatory framework is and will be sufficient to address the concerns underlying this draft ordinance. 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 produce substantial energy savings and environmental benefits.

For these reasons, we urge you not to adopt this ordinance.

Thank you for your consideration.

Sincerely,

Gregory S. Walden
Aviation Counsel