

Agenda Report

March 20, 2017

TO: Honorable Mayor and City Council
THROUGH: Public Safety Committee (March 15, 2017)
FROM: Drone Policy Internal Working Group
SUBJECT: POLICY CONSIDERATION FOR UNMANNED AIRCRAFT SYSTEMS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the proposed action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061 (b)(3); and the "general rule" that CEQA only applies to projects which have the potential for causing a significant effect on the environment.
2. Direct the City Attorney to prepare an ordinance and return within 60 days regulating the operation of drones, above or near critical infrastructure, and over permitted special events.

EXECUTIVE SUMMARY:

Unmanned aircraft systems ("UAS" commonly referred to as "drones") are increasingly popular with hobbyists and commercial enterprises. The applications of this new technology are being integrated into existing industries, with new ideas surfacing every day. However, the federal government has been slow to enact regulations that integrate drone users safely and responsibly into the navigable airspace.

In March 2016, staff provided the Public Safety Committee with an overview of issues and public safety considerations related to drones. At that time, the Public Safety Committee directed that staff return once the Federal Aviation Administration (FAA) released its safe integration plan for drones. In addition, the Public Safety Committee provided instruction to staff to engage in conversation and in consultation with the City Attorney's Office to develop a list of possible options for the Council to consider.

This staff report provides an update on federal regulation and state law concerning the operation of drones. In addition to providing examples of other municipal ordinances, staff from the Police Department and City Manager's Office, in consultation with the City Attorney's office, has focused on three areas in which staff is recommending the drafting of an ordinance to address those drone issues most critical to the City of Pasadena: (1) careless and reckless operation, (2) operation during special events, and (3) critical infrastructure.

BACKGROUND:

Update on Federal Regulations: In June 2016, the FAA amended its regulations to regulate commercial drones while minimizing the risk to other aircraft and people on the ground. Operational limitations include: flying commercial drones under 400 feet, during the day, at or below 100 mph; requirement to yield to other aircraft; and prohibiting flying over people or from a moving vehicle. The FAA's regulations also establish minimum requirements for remote pilots in command including a certification/TSA vetting process and minimum age requirements.

Prior to the release of its regulations earlier this year, the FAA launched a public awareness campaign to educate prospective users on how to fly drones safely and responsibly. The public awareness campaign has a dedicated website (knowbeforeyoufly.com) which includes a public education toolkit and information on how to download the Pocket Drone Plan, an iOS app that checks for wind speed and direction, visibility, weather conditions, and controlled airspace boundaries to help drone operators make informed decisions.

While hobbyists and recreational users are not required to pass a certification or TSA vetting process, they, along with all drone users, are required to register their drones with the FAA before taking to the skies. The "Before You Fly" campaign encourages drone operators to follow community-based safety guidelines as developed by organizations such as the Academy of Model Aeronautics (AMA), maintain a visual line of sight of drones, remain at least 25 feet from individuals and vulnerable property, and steer clear of critical infrastructure, etc. Failure to meet these requirements could expose a hobby or recreational operator to an FAA civil penalty of \$1100 per regulation violated per flight.

The FAA's MicroUAS Task Force is expected to release the next round of regulations later this year. It is anticipated that the next set of regulations will propose rules for unmanned aircraft operations over people. In the meantime, the FAA has "soft-launched" a "No Drone Zone" campaign to discourage people from attempting to fly drones during major public events.

Update on State & Municipal Ordinances: The FAA is vested with the authority to regulate the navigable airspace. As such, there is concern for fractionalized control of the navigable airspace when municipalities enact ordinances regulating UAS. The FAA

has indicated that there is some leeway for state and local regulation, and below are examples of approaches in other jurisdictions.

State Law: To date, there have been several state bills introduced by the California State legislature which were vetoed by Governor Brown. The various bills prohibited or criminalized conduct by drone operators in novel ways that Governor Brown felt were already proscribed by the legal system. One bill that was approved, AB 856, was signed into law in 2015 and creates a civil cause for action for physical invasion of privacy by knowingly entering into the airspace above the land of another person without permission.

Municipal Ordinances: In addition to attempts to legislate at the state level, a few cities in California and elsewhere have adopted ordinances to regulate the use of drones within their jurisdictions. These ordinances either serve to address public safety considerations (see Beverly Hills example), or supplement existing laws (Los Angeles & Santa Clara). A few examples include:

- The City of Beverly Hills adopted an ordinance in October, 2014, to prohibit the use of unmanned aircraft “to record or transmit any visual image or audio recording of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy...”
- The City of Santa Clara adopted an ordinance in August, 2015, which prohibits flying drones over Levi’s Stadium and within one half mile of the stadium, over Santa Clara University sporting facilities when in use, and over large special events in public parks and public facilities.
- The City of Los Angeles adopted an ordinance in September, 2015, which included operating restrictions such as prohibiting model aircraft from interfering with manned aircraft, operating beyond the visual line of sight of the operator, nighttime operation, flight above 400 feet of the earth’s surface, and flying closer than 25 feet any individual other than the operator or person involved with the flight, except during take-off or landing.
- The City of West Hollywood adopted a similar ordinance as Los Angeles in December, 2015. In addition to similar operating restrictions as Los Angeles, the West Hollywood Ordinance requires registration of all drones operating within its jurisdiction, prohibits flying within airspace above city parks, police and fire stations, above public or private school grounds, and interfering with any emergency responder activity.
- The City of Menlo Park adopted an ordinance in August, 2016, which prohibited the take-off and landing of drones in city parks except when in use by emergency services. The ordinance will leave it open for people to fly drones at designated

park areas, but those areas do not currently exist. In addition, residents and businesses would still be able to launch drones on private property.

Opportunities for Local Regulation:

As stated, the FAA is vested with the authority to regulate the navigable airspace. Notwithstanding that authority, the agency has released a fact sheet for use by states and cities to inform their development of local regulations. The FAA's fact sheet also has requested that states and cities seeking to pass certain drone ordinances consult with the FAA during their ordinance development, and staff has consulted with the FAA in developing this Agenda Report. In staff's view, the following public safety considerations represent areas to consider for local regulation, with the understanding the applicable laws and regulations are continuing to develop in this area.

Careless & Reckless Operation:

As it pertains to the safety of non-participants, flights over public streets or sidewalks, staff is recommending that Council consider an ordinance related to preventing careless and reckless operation by drone pilots.

Special Events:

Staff is recommending that Council consider limiting drone flights over permitted special events only to events where the property owner and the event organizer have granted permission, and the event organizer has demonstrated compliance with FAA regulations and committed to collaborate its drone activities with the Police Department's Air Operations Section.

Critical Infrastructure:

Given the disruption drones have caused in other cities by crashing into power lines, a ban of drones in the airspace above or near critical infrastructure to protect public safety and general welfare is an area that staff is recommending Council consider regulation. In defining critical infrastructure, staff recommends that the list include the Glenarm Power Plant, police and fire stations, City Hall, City Yards, water storage and electric transmission facilities, transit operations facility, and over light rail.

Conclusion:

It is recommended that drones be regulated in the City, but with a recognition that the law is developing in this area. The public safety considerations cited above represent areas in which staff feels that Pasadena could benefit from regulation. With a carefully tailored ordinance related to responsible drone operations coupled with a public education campaign, Pasadena has an opportunity to protect public safety, promote operator accountability, and continue to foster an innovative commercial environment. Given that federal policy, and possibly State law, surrounding drones may change in the near term, it may be necessary to revisit any approved ordinance in the future to respond to changes in law or created by this evolving technology.

COUNCIL POLICY CONSIDERATION:

This action supports the City Council's strategic goal to: (1) Improve, maintain, and enhance public facilities and infrastructure and (2) ensure public safety.

ENVIRONMENTAL ANALYSIS:

The action proposed herein, drafting of an ordinance to regulate public safety with regard to drone operations, is exempt from review pursuant to the California Environmental Quality Act by State CEQA Guidelines Section 15061(b)(3), the "general rule" that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Since it can be seen with certainty that there is no possibility that the safety regulations discussed above may have a significant effect on the environment, no further environmental review is required.

FISCAL IMPACT:

The actual fiscal impact associated with enforcement of the proposed regulations is currently unknown, but is not expected to be significant.

Respectfully submitted,



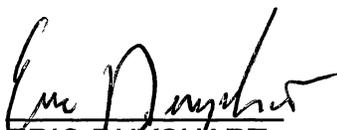
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