

January 27, 2017 - Newton, Massachusetts

Honorable Councilors

Re: Opposition to items in
197-15(2) Ordinance Proposal
Sec. 20-64 Pilotless Aircraft Operation

Dear Councilors,

It is regrettable, but not unexpected, that the City finds itself the defendant in a Federal lawsuit regarding Ordinance Sec. 20-64, Pilotless Aircraft Operation. This could have been avoided had the City consulted with the FAA during the drafting process, as urged several times by myself, the Academy of Model Aeronautics, and others.

I have not yet submitted the roster of the NNHS Aviation Club because I'm not comfortable making public a list of the group, particularly since most of the members are minors. Even if the group were comprised of adults, I don't think the First Amendment would allow the government to require a list of its members.

Please excuse my limited understanding of the legal issues involved. As I understand it, local governments may enact ordinances that do not surpass, interfere, or are otherwise not in conflict with FAA regulations.

- Drone operators are required to register with the FAA. The local ordinance extends the definition of aircraft that must be registered by eliminating the minimum weight limit.
- Everybody's privacy must be protected. There are many laws protecting the privacy of citizens, including peeping Tom laws, the Massachusetts wiretapping law, etc. Yet the registration database would include sensitive information, including information on children. At the very least, nothing in the ordinance addresses the privacy concerns of drone owners.
- Existing privacy laws in general do not specify the technology used. By not implementing similar laws protecting against invasion of privacy by use of telephoto lenses, cell phone cameras, etc, the appearance is that the privacy concerns in the ordinance are a pretense for the real goal of eliminating, or at least severely restricting, drones.
- Any assertion that local governments may impose operational restrictions over airspace, including that below 400 feet, is false. Requiring permission from public and private property owners would impose restrictions on the national airspace that exceed those imposed by the FAA.
- Only the FAA may declare a Temporary Flight Restriction (TFR). The city cannot grant authority to the police department to declare a TFR.
- FAA regulations permit operation beyond line of sight (LOS) and night flying by exemption. By not recognizing these exemptions, the ordinance surpasses federal regulations. The ordinance does not distinguish between the operator and the pilot in command, imposing further restrictions on LOS operation beyond FAA regulations.

Many of the clauses in the ordinance are in agreement with FAA regulations, and are therefore reasonable. However, they are also redundant, and must be kept current as federal regulations are updated. It seems like a lot of work for the city, and also an avenue for further legal challenges should the local ordinance fail to comply with any updated FAA regulations.

Drone operation, privacy, nuisance issues, etc, are all covered by existing local and federal laws. Any additional regulation attempted by this ordinance subjects the City to legal challenges such as the current case. As a hobbyist, of course I am opposed to the ordinance, which seems to be crafted to prevent the use of drones in the city. As a citizen, I'm disappointed at the prospect that my tax dollars may be spent to defend it.

With all due respect, the safest and most cost-effective path for the City is to withdraw the ordinance. Prosecute any drone owners who invade privacy, violate noise ordinances, operate recklessly, or in a manner not permissible under FAA regulations using existing laws and regulations.

Best regards,

Howard Samuels