

# 2015 Annual Seminar on Municipal Law

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Cheyenne Mountain Resort

## *Hovering Over Your City: Municipal Use and Regulation of Drones*

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- **DIA Takes Aim at Drone Use Around Airport**
- **Officer Arrested for Drone Spying on Neighbor**
- **Police Helicopter Takes Evasive Action to Avoid Drone**
- **11-Month-Old Injured in Drone Crash**
- **Drones Interfere with Wildfire Fight**
- **FAA Expects 1 Million Drones Under Trees This Christmas**

# Municipal Interests in UAS

- City use
  - Police and fire
  - Property management
  - Resource management
  - Code enforcement
  - Utilities
- Liability and risk
- Regulation of drone use
  - General safety
  - Airport safety
  - Privacy
  - Proprietary interests



Photo credit:  
<http://increasinghumanpotential.org>

# Federal Control of Aircraft and Airspace

49 U.S.C. § 40103 –National Airspace System

- Protect persons and property
- Prevent collisions
  - Between aircraft
  - With other objects

49 U.S.C. § 44701(a) – Safe flight of civil aircraft in air  
commerce

- Regulations
- Minimum standards

# Critical FAA Regulations

## 14 C.F.R. § 91.119 – Minimum altitudes for safe flight

- Floor of navigable airspace
- 500 feet for uncongested areas
- 1,000 feet for congested areas
- Necessary for takeoff and landing

## 14 C.F.R. § 91.13 –

“No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

# Are UAS Aircraft?

- 49 USC 40102(a)(6) and 14 C.F.R 1.1:
  - Aircraft are “contrivances or devices” that are “invented, used, or designed to navigate, or fly in, the air.”

# *Huerta v. Pirker*, NTSB Docket No. CP-217



# UAS Authority Depends on Use

Public



COA – Certificate  
of Waiver or  
Authorization

Commercial (Civil)



Section 333  
Exemption or  
Experimental  
Exemption and  
COA

Private/Model



Generally No  
Prior  
Authorization



# FAA Modernization and Reform Act of 2012

Pub. L. 112-95, Feb. 14, 2012

- Safely accelerate integration of UAS into the National Airspace System by Sept. 30, 2015
- Case-by-case approval of public operations
- Reduced burden for model/hobby UAS

# Guidance and Regulations

## Non-binding guidance documents:

- AC 91-57 Revision (Sept. 10, 2015) – Model Aircraft Operating Standards
- Policy notice, Unmanned Aircraft Operations in the National Airspace System, 72 Fed Reg 6689 (Feb. 13, 2007)
- Interim Operational Approval Guidance 08-01, Unmanned Aircraft Systems Operations in the U.S. National Airspace System, March 13, 2008

## Proposed Regulations:

- Operation and Certification of Small Unmanned Aircraft Systems, 80 Fed. Reg. 9544 (Feb. 23, 2015)

# Certificate of Authorization (COA)

For UAS operation by public bodies – public aircraft:

- Case-by case evaluation by FAA
- Authorizes use of particular vehicle in particular location for specific use
- Operator must have pilot's certificate
- Typical conditions:
  - Visual flight rules – line of sight
  - Visual observer in addition to operator
  - Daytime operations only
  - Operations only under 400' AGL
  - Avoid airports
  - Restricted airspace

# Some Risk Management Considerations

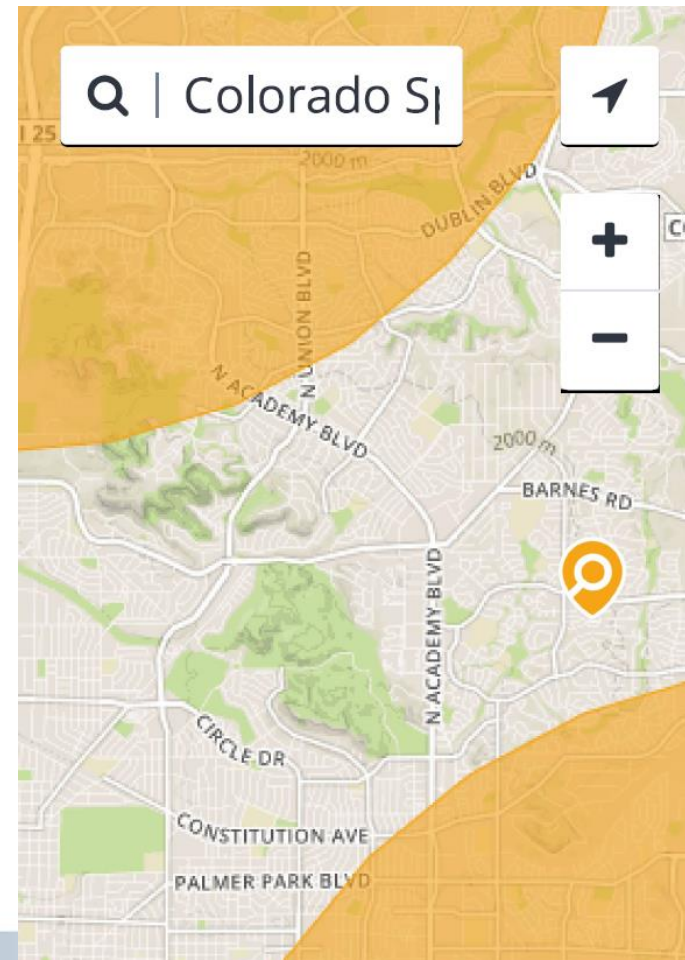
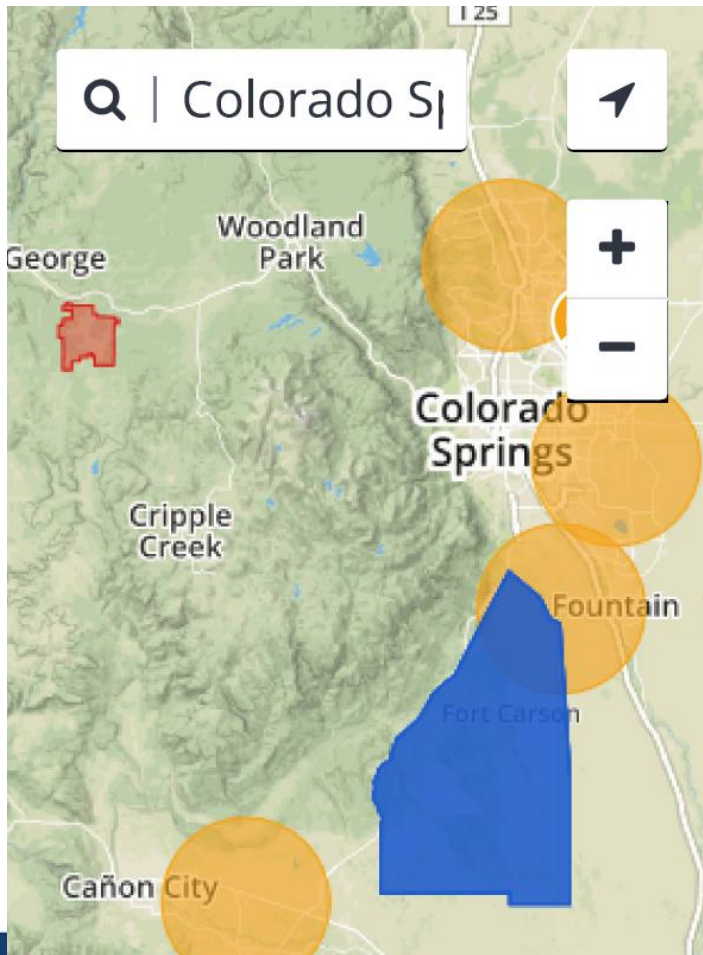
- Own and operate or lease services?
- Scope of insurance
- Mutual aid agreement provisions
- Internal policies regarding use
  - Safety
  - Data retention
  - Use of video/images
- Training
- 4<sup>th</sup> Amendment considerations
  - See *Florida v. Riley*, 488 U.S. 445 (1989); *Henderson v. People*, 879 P.2d 383 (Colo. 1994); *People v. Pollack*, 796 P.2d 63 (Colo. App. 1990)
- Trespass?

# FLYING A DRONE NEAR A MANNED AIRCRAFT IS



**ILLEGAL  
AND  
DANGEROUS**

# Airport Considerations and Restricted Airspace



# Local/State UAS Ordinances

- Variety of local ordinances/ resolutions passed or introduced
- +/- 20 states to date – focus primarily on limiting UAS use by law enforcement
  - Also, weaponization, hunting
- Little experience with enforcement
- Scope of preemption not tested by courts

# Weaponized Drone





# Possible Local Regulations -- Types

- Flat bans or moratoria
- Safety
  - Use regulation (traffic, law enforcement, code enforcement)
  - Location regulation (airports, sensitive locations)
  - Height
  - Weaponizing
  - No interference with civic functions
- Protection of privacy from government
  - Ban
  - Requirement for warrant
  - Limits on use
  - Data retention

# Possible Regulations (Continued)

- Protection of privacy/property rights (private parties) from private parties
  - Height limits
  - Use of images
  - Trespass
  - Prior permission
  - Harassment
- ~~Hunting licenses~~



# Preemption Considerations

- **Pervasive control of aircraft and flight**
  - *See Banner Towing v. People of the City of Boulder* (Colo. 1984)
- **Airspace**
  - Potential airspace “gap”
  - *See Causby v. U.S.*

1000 feet (FAR: congested)



500 feet (FAR: uncongested)

200 feet (*Pollack*)

83 feet (*Causby*)



# Preemption (continued)

- Land use not preempted
- Non-aviation-specific provisions
  - *E.g.*, remote control use of weapons
- Self-restrictions
  - Privacy controls for city departments
  - Avoidance of private property

# FAA Law Enforcement Guidance

## FAA Law Enforcement Guidance for Suspected Unauthorized UAS Operations, Jan. 8, 2015

- Seeks assistance of local law enforcement agencies to prevent unlawful UAS operations: deter, detect and investigate – report to FAA
- Reduce reckless operations:
  - Model aircraft
  - UAS

# Other Considerations

- Interference with emergency operations
- Internal and external coordination
- Websites/public communication
  - E.g., <http://knowbeforeyoufly.org/>

# Questions?

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