



MUNICIPAL LAW GROUP



February 2, 2018

DRONING ON: LEGAL REQUIREMENTS AND LIABILITIES RELATED TO MUNICIPAL DRONE USE

This E-Note summarizes the regulations governing municipal use of drones, potential liabilities for municipal drone use, and includes recommendations regarding comprehensive policies for drone use. Several resources are identified, from both the FAA and State statutes, which will guide your municipality in the proper legal use of drones for municipal purposes.

Further Resources

FAA Resources for Drone Registration - [Link](#)

FAA Part 107 Summary - [Link](#)

FAA Certificate of Authorization (COA) Resources - [Link](#)

Freedom from Drone Surveillance Act - [Link](#)

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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What is a “drone”?

A “drone” is a catch-all term, often used to refer to an unmanned aerial vehicle (UAV), unmanned aerial system (UAS), or other small and remotely piloted aircraft.



How does a municipality register a drone for flight?

Before flight, the operation of a UAV weighing less than 55 lbs. requires registration under either Federal Aviation Administration (“FAA”) Regulations, Part 107, or as a public operator with a Certificate of Authorization (COA) from the FAA. A COA is only available to a governmental entity and is issued with use restrictions governing the time and place of municipal drone flights. Part 107 registrations can allow a drone operator to fly a drone on a less-restricted basis with regard to time and location. Both processes can allow a municipality to operate a drone for a variety of public purposes.

What is a drone?

A “drone” is a catch-all term, often used to refer to an unmanned aerial vehicle (UAV), unmanned aerial system (UAS), or other small and remotely piloted aircraft. All across the U.S., private citizens are now using drones for recreational and business purposes, opening up a world of aviation before closed to the general public. Local municipalities are beginning to see the potential benefits of using drones for their own purposes, to assist with numerous municipal tasks, from law enforcement, to mapping, to property inspection. However, the municipal use of drones in Illinois brings with it certain legal requirements and potential liabilities to consider prior to taking flight.

Registration Requirements for Operation

Before flight, the operation of a UAV weighing less than 55 lbs. requires registration under either Federal Aviation Administration (“FAA”) Regulations, Part 107, or as a public operator with a Certificate of Authorization (COA) from the FAA. The FAA provides extensive online support and registration guidance, which are available at the link below. While a COA is only available to a governmental entity, it is issued with use restrictions governing the time and place of municipal drone flights. Part 107 registrations can allow a drone operator to fly a drone on a less-restricted basis with regard to time and location, but requires more steps with regard to the approval and licensing of the operator. Both processes can allow a municipality to operate a drone for a variety of public purposes.

Law Enforcement Use of Drones

Local law enforcement use of drones in Illinois is restricted under the Freedom from Drone Surveillance Act (“DSA”). Unless specifically authorized in the DSA, a law enforcement agency cannot use a drone to gather information. 725 ILCS 167/10. Examples of authorized uses include execution of a proper search warrant, for crime scene/traffic crash scene photography, a missing persons search and during a disaster or public health emergency. These exceptions are subject to further conditions.

Law enforcement agencies are required to destroy all information obtained by a drone within 30 days, and may not disclose this information to any party except another government agency, unless there is a reasonable suspicion that the information contains criminal activity, or is relevant to an ongoing criminal investigation or pending criminal trial. Failure to comply with the use or retention policies of the DSA can potentially render evidence collected via drone inadmissible in a criminal prosecution.

For any questions or comments you might have regarding this newsletter or any other tax or estate planning concerns, please feel free to contact:

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Liabilities for Municipal Drone Use

The Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1, et seq.) should generally protect a municipality from such claims of liability for the negligent use of a drone, or failure to use a drone where it may have been helpful. Further restrictions related to possible criminal acts could be implicated if a UAV were used to improperly eavesdrop (720 ILCS 5/14) or live video-record in another person's residence or other private places (720 ILCS 5/26-4), as provided in the Illinois Criminal Code.

The claims that would be most likely to be asserted against a municipality related to drone use would be for aerial surveillance that improperly intrudes on personal or private matters. Examples could include the common law claims for such violations, such as "intrusion upon seclusion"¹ or "publication of private facts"², either of which could be brought against a municipality for the improper collection or use of personal information related to a private citizen.

Minimizing Potential Issues with Municipal Drone Use

To minimize possible liability stemming from municipal drone usage, a municipality should consider implementing a written policy for drone usage that is publicly available and thoroughly disseminated to all municipal staff that will utilize the drone or any information collected from it. The policy and practice should limit or prohibit the collection or use of private or personal information where prohibited by law and/or where there is a reasonable expectation of privacy. As with other personal information of the public, data should be safeguarded against improper disclosure, exterior access or cyber-attack. To address some of this risk, your municipality may want to consider utilizing a 'live-stream' feature on a drone, rather than maintaining an actual recording of the drone's video feed. Finally, all drone operators should be properly licensed, all drones should be registered, and all staff should know that any information collected by a drone may become public record, and therefore subject to disclosure.

With proper policies in place, drones can be a useful tool to local municipalities. Ensuring that not only your drone, but the policies behind it, are ready for takeoff well before your first flight, will ensure smooth sailing for your municipally-operated drone. If your municipality is considering utilizing a drone in the near future, do not hesitate to contact us to assist you in making sure that your policies and drone registrations meet all the legal requirements for safe and legal drone operation.

¹ Intrusion upon seclusion is a common law privacy tort, commonly understood as intentionally intruding upon the seclusion or private affairs or concerns of another if the intrusion would be highly offensive to a reasonable person.

² Publication of private facts is a common law privacy tort, commonly understood as the publicizing of a private matter that would be highly offensive to a reasonable person and not of legitimate concern to the public.