

Chicago City Council adopts drone ordinance

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• **By Henry H. Perritt, Jr.**

On November 18, the Chicago City Council adopted an ordinance that regulates drone flight within the city limits. During my testimony on the proposal, co-sponsoring Alderman Ed Burke asked if this was the first municipal law on drones. "It's the first *good* one," I said.

The ordinance exempts section 333 exemption holders as long as they fly within the limitations imposed by their exemption and its accompanying COA, and allows recreational hobbyist flight according to rules specified in the ordinance. The rules basically track the AMA model aircraft guidelines and the FAA's guidance for hobbyist and recreational flight. For operations covered by the ordinance, it limits flights to below 400 feet in daylight hours, requires that drone operators ("DROP"), keep their vehicles within their line of sight, and prohibits flights over people and over private property without consent. It also limits flights over schools, churches, large assemblies, and electric utility infrastructure.

Because of the way it exempts section 333 operations and recreational flight within AMA rules, it effectively targets casual recreational users not affiliated with a model aircraft club and commercial operators who have not received a section 333 exemption. In other words, it focuses local regulatory resources on the two sources of the greatest safety threats from irresponsible drone use. Importantly, it allows local police and prosecutors to enforce FAA restrictions by incorporating FAA

rules into local law.

The ordinance, as enacted, is a vast improvement over the original version introduced on 29 July 2015. As originally introduced, the ordinance prohibited all drone flights unless the operator registered with the city, paid a registration fee, and demonstrated liability coverage. The original version made no effort to dovetail its provisions with FAA rules and imposed additional local restrictions on section 333 exemption holders.

At a hearing before the city Council's aviation committee on 12 October, all but one of about a dozen witnesses testified in favor of the ordinance. They urged Chicago to encourage innovation and job creation by allowing the benefits of this revolutionary aviation technology to be enjoyed by individuals and small businesses. Colin Hinkle, proprietor of Soaring Badger Productions, LLC, testified about his experience as a professional news photographer who captured drone imagery for the first live television broadcast for local ABC affiliate WLS. Matt Bieschke, President of UAS America Fund, testified about the potential of small drones. "I am glad to see the steps you are taking to formalize the recognition that unmanned aircraft hold tremendous promise for improving the lives of City residents and those that work here, but also the potential for generating local economic activity and most importantly attracting companies and businesses that embrace the potential drones will bring. The drafts of your proposed ordinance . . . are an excellent start towards proactively establishing a safe environment for commercial drone operations," he said.

Dennis Lyle, president of the Illinois Broadcasters Association, pointed out the benefits that drones bring to newsgathering and urged that the ordinance explicitly recognize First Amendment rights of news organizations to use drones. Albert Plawinski, a second-year law student at Chicago-Kent College of Law, explained the many autonomous safety features that mass-market drones have. He noted the trend toward open software, which allows developers to enhance safety features and to collect actual flight data that will permit manufacturers to improve drone capabilities. John Kolaczynski, representing the Commercial Drone Fund, emphasized the importance of rapid deployment of drone technology to the health of Chicago's hi-tech community.

Ryan Twose, leader of the AUVSI Heartland Chapter and organizer of a local drone interest group, said, "In Chicago, we want to build on the success and benefits of UAS by attracting and retaining more talented individuals and leading-edge corporations. At the same time, we want to ensure the technology is being used safely and responsibly by all users — both those operating commercially and recreationally."

The only one testifying against the ordinance was a community activist who regularly testifies on almost any matter coming before the city Council and generally opposes whatever the council has on his agenda.

The two co-sponsors of the ordinance, Alderman Scott Waguespack and Alderman Ed Burke, expressed concerns about safety, but also recognized that states and municipalities must allow for active drone use in commerce and recreation.

"We must promote public safety without unreasonably limiting innovation," co-sponsor Burke said. "This ordinance codifies common sense." Co-sponsor Waguespack was instrumental in inviting me

and others to suggest fundamental changes to the original proposal.

The ordinance is not perfect, in large part because it follows the FAA's limitations on commercial flight, which have a number of shortsighted limitations, including overly restrictive prohibitions on flying over people, prohibitions against night flight, limiting flights to line of sight only, and requirements for a separate visual observer and a traditional pilot's license. All of these constrain utility for newsgathering.

But all the witnesses and all the alderman present signaled flexibility to amend the ordinance as the city and professional drone operators gain experience with it. This means that, as the FAA makes progress in response to input by journalists and others, the city can follow suit. Unfortunately, municipalities lack the power under federal-preemption law to allow operations that the FAA prohibits. So the ball still largely is in the FAA's court, when it comes to opening up this revolutionary aviation technology to enhance newsgathering.

The Chicago process also shows American democracy at its best. A bad proposal turned into a good law, because the sponsors were open to receiving expert opinion on how to make it better. Individuals and interest groups recognizing the potential of drones to improve newsgathering and other socially beneficial activities were active in submitting specific proposals to improve the legislative language, while also pragmatically recognizing the need for legislative bodies to be responsive to public concerns.

News organizations and other drone operators will be fortunate if other cities follow Chicago's lead.

Henry Perritt, Jr. is a law professor and former dean at Chicago-Kent College of Law. He has written and co-written several articles about the potential use of drones in newsgathering, and co-owns a company, Modovolate Aviation, LLC; which was formed to conduct drone research, experimentation, demonstration, and education. - See more at:
http://rtdna.org/article/chicago_city_council_adopts_drone_ordinance#sthash.ouBG96iR.dpuf