

Local Regulation of Commercial Drones: The Next Frontier

Most people are familiar with military use of drones. Law enforcement's use of drones in the United States has also received growing media attention. But commercial use of drones is growing quickly in the United States. Commercial drones are smaller than the familiar pictures of military drones—in some cases smaller than a paperback book. Examples of current or planned commercial use in California include:

- Use by realtors to provide an aerial showcase of property.
- Use by farmers and ranchers to survey crops and monitor livestock.
- Use by photographers for advertising and other commercial purposes.
- Use by journalists to cover demonstrations, sporting events, or even large fires.
- Use by retailers to deliver goods, from Amazon to home delivery of pizza and burritos.
- Use to provide aerial "hubs" that expand connectivity to the internet.

For the moment, commercial use of drones is essentially unregulated in California. But the landscape may be changing quickly. The new frontier of regulation of commercial use of drones is most likely to take place at the local level.

The Federal Aviation Administration (FAA) claims the authority to regulate commercial drones. Indeed, under the FAA Modernization and Reform Act of 2012, the FAA is required to create rules to allow commercial use of drones by September 30, 2015. However, on March 6, 2014, in response to the FAA fining a photographer \$10,000 for operating a drone recklessly while filming a commercial, a federal administrative court held that the FAA didn't have the authority to regulate commercial drones absent official rule making. The FAA is appealing this decision. Given some of the uncertainties in federal law, the National Association of Realtors has advised that real estate professionals should not use drones until the legal landscape is clarified.

Some States are beginning to act. 13 States have enacted bills that regulate drones. Most State laws focus on use by law enforcement. But Texas law enumerates 19 lawful use of drones, including certain commercial uses such as inspecting oil rigs and



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other utility facilities. In California, an attempt to regulate commercial drone use passed the State Senate, but ultimately failed to become law in the summer of 2013 (SB 15). The American Civil Liberties Union was particularly vocal in its opposition to SB 15. In addition to expressing concerns over privacy rights, the ACLU emphasized the importance of local control over commercial use of drones.

Given the failure of SB 15, State law is not likely to provide such clarity any time soon. Regulation of commercial drones in California—even once the FAA issues regulations-- is therefore most likely to take place at the local level. Indeed, cities traditionally on opposite sides of the political spectrum like Berkeley and Rancho Mirage have both recently considered regulating drones. But so far, no city in California has enacted an ordinance governing the acquisition or use of commercial drones. The FAA's regulatory authority—potentially even for low-flying drones below the FAA's traditional 400 foot jurisdiction – makes it unclear whether cities may regulate drones. Even if not preempted, no law establishes that a City's traditional police power allows it to regulate commercial drone use, or what the boundaries of permissible local regulation might be. Constitutional privacy rights and national security issues add yet another layer, both legal and political, to this complex legal landscape. Finally, additional Constitutional issues arise concerning the developing area of law concerning lawful searches under the Fourth Amendment.

Anyone seeking to manufacture, sell, or use drones for a commercial purpose in California should monitor the ambiguities in existing law and should expect the developing interplay of local regulations with federal law. Because there are both political and legal concerns inherent in drone use, even when no local regulations exist, communicating effectively with local agencies may well be a key to a successful commercial venture involving drones.

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