

**CITY OF HUNTINGTON BEACH
SUPPLEMENTAL COMMUNICATION
Robin Estanislau, City Clerk
Office of the City Clerk**

TO: Honorable Mayor and City Councilmembers

FROM: Robin Estanislau, City Clerk *RE*

DATE: 9/6/2016

SUBJECT: SUPPLEMENTAL COMMUNICATION FOR THE SEPTEMBER 6, 2016, REGULAR CITY COUNCIL/PFA MEETING

Attached is a Supplemental Communication to the City Council (received after distribution of the Agenda Packet):

STUDY SESSION

#1. PowerPoint communication submitted by Director of Finance Lori Ann Farrell, dated September 6, 2016 and entitled *FY 2016/17 Proposed Budget and Long-Term Financial Plan Update*.

PUBLIC HEARING

#14. 1 communication received regarding the CIP and Annual Budget.

#14. PowerPoint communication submitted by Director of Finance Lori Ann Farrell entitled *Fiscal Year Proposed Budget*.

ADMINISTRATIVE PUBLIC HEARING

#16. PowerPoint communication submitted by Director of Public Works Travis Hopkins entitled *Atlanta Avenue Widening, Consideration of Direction to Proceed with Eminent Domain*.

ADMINISTRATIVE ITEMS

#17. PowerPoint communication submitted by Director of Public Works Travis Hopkins entitled *Sewer Service Fund Annual Performance Audit*.

#18. PowerPoint communication submitted by Police Chief Robert Handy, entitled *Body Worn Cameras*.

ORDINANCES FOR INTRODUCTION

#19. 1 communication received regarding Commercial Photography.

#19. PowerPoint communication submitted by Assistant City Manager Ken Domer, entitled *Commercial Photography*.

#20. 1 communication received regarding Unmanned Aircraft Systems (Drones).

#20. PowerPoint communication submitted by Police Chief Robert Handy, entitled *Drone Ordinance*.

#21. 1 communication received regarding the Deputy Community Prosecutor position.

#21. PowerPoint communication submitted by City Attorney Michael Gates, entitled *Community Prosecutor*.

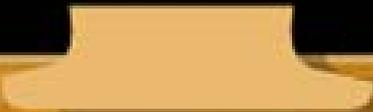


City of Huntington Beach

FY 2016/17 Proposed Budget & Long-Term Financial Plan Update



September 6, 2016

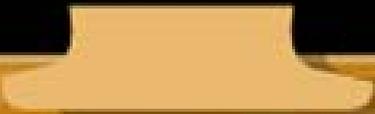


Summary

- Overview of FY 2016/17 Proposed Budget
- General Fund Five-Year Projections
 - ❖ Expenditure Assumptions
 - ❖ Revenue Assumptions
 - ❖ Base Case and Stress Test
- Budget Calendar and Recap



Overview of FY 2016/17 Proposed Budget



“Back to Basics”

- FY 2016/17 is a “Back to Basics” Budget
- Only minimal contractual increases are included
- Essentially flat staffing levels are recommended, with a few minor exceptions
- FY 2016/17 Proposed Budget focuses on core services:
 - Public Safety
 - Infrastructure
 - Quality of Life Programs
 - Financial Sustainability

FY 2016/17 Proposed Budget

- The Proposed All Funds Budget totals \$345.5 million, a \$387K or 0.1% increase from the FY 2015/16 Adopted Budget
- The Proposed General Fund Budget totals \$220.4 million, a \$3.7 million, or 1.7% increase from the FY 2015/16 Adopted Budget

FY 2016/17 General Fund Highlights

Description	FY 2015/16 Adopted Budget (in millions)	FY 2016/17 Proposed Budget (in millions)	Amount Change	% Change
General Fund Revenues	\$216.7	\$220.4	\$3.7	1.7%
General Fund Expenses	216.7	220.4	\$3.7	1.7%
Surplus/(Deficit)	\$0.0	\$0.0	\$0.0	0.0%

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- A slight General Fund revenue increase of 1.7% is projected
- Fixed cost increases such as PERS (\$2.8 million), Workers' Compensation, insurance premiums and utilities are included
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- Increase of funding for Police Department – Animal Control Services \$315K
- 15% Charter requirement for Infrastructure is met

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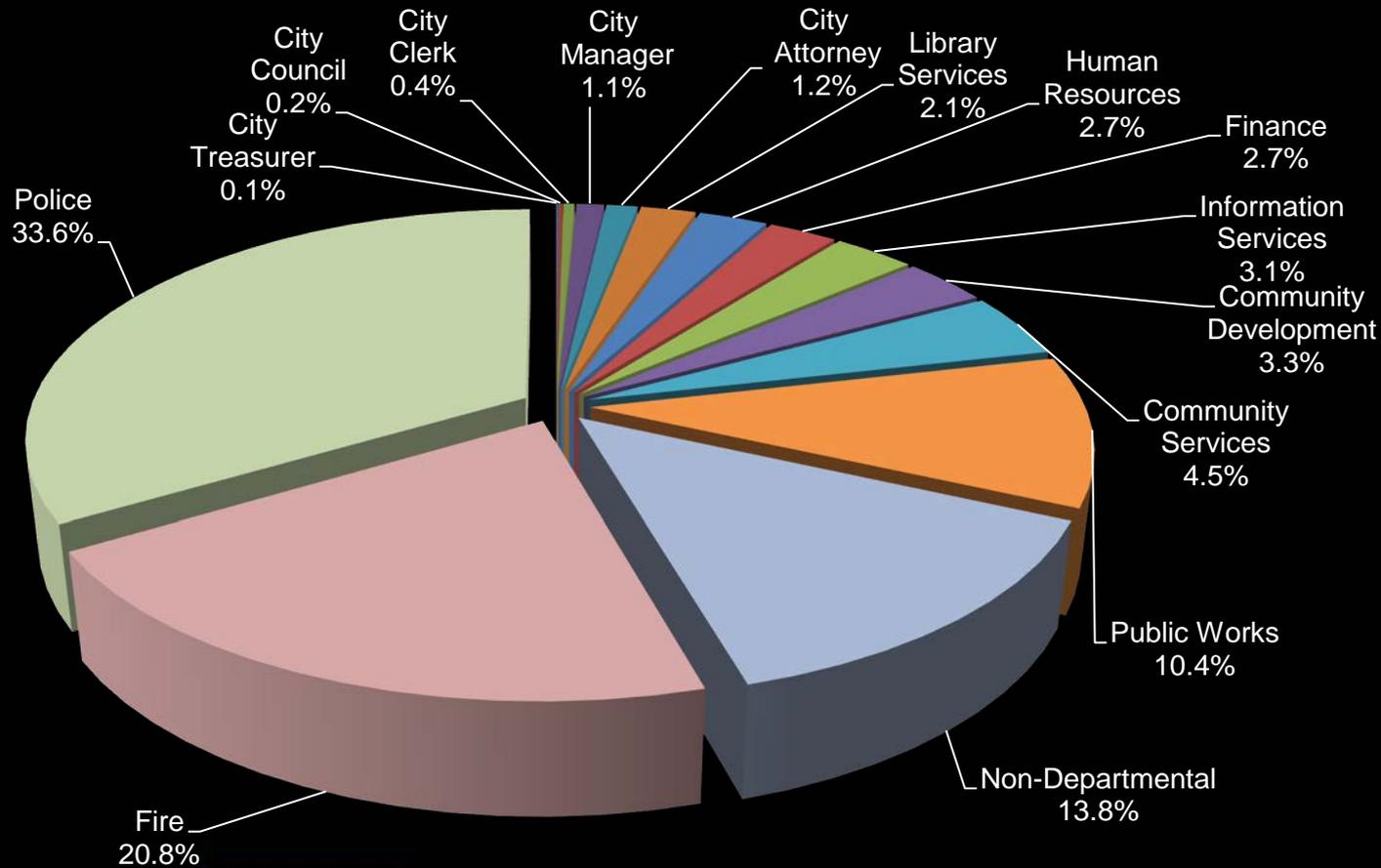
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- Sales Tax is projected at \$41.4 million, essentially flat, not including the backfill for the Triple Flip
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General Liability Insurance	0.4
Increase in Citywide Attrition Estimate	(0.5)
Animal Control Contract Increases	0.3
Savings due to Unfunded Liability Plans	(1.2)
Utility Savings due to Citywide Energy Efficiencies	(0.3)
One-Time City Election Costs	0.1
FY 2015/16 Baseline	\$220.4
Structural Increases to Baseline from FY 2015/16	+\$3.7
% Increase to Baseline from FY 2015/16	+1.7%

Public Safety

Police and Fire = 54% of General Fund



Public Safety - Police

Police Department	Amount
Animal Control Services	315,000
Part Time Student Worker Cadets	54,000
Overtime Impact of Negotiated Labor Contracts	112,948
Equipment Replacement – Helicopter Upgrade	485,150
Equipment Replacement – Fleet Vehicles	843,000
Building Enhancement Renovations	570,000
Total	\$2,380,098

Public Safety - Fire

Fire Department	Amount
Metro Cities JPA and CUPA Fund Offset	90,059
EOC Citywide Training (i.e., NIMS, RACES, and CERT certifications)	51,000
Overtime and Minimum Wage Impact	122,956
Equipment Replacement – Refurbish Oil Wells	122,700
Equipment Replacement – Emergency Transport Gurneys	108,328
Lease Financing for New Fire Engine and Ambulance, (\$1.0 M)	200,000
Equipment, Emergency Alerting System and EOC Renovation	397,000
Total	\$1,092,043

Police Officer Staffing Recap

Sworn Officer Staffing	Total Funded FTEs
Total Funded Sworn Officers in FY 2012/2013	207.0
Additional Officers Funded in FY 2013/2014	+5.0
Additional Officers Funded in FY 2014/2015	+2.0
Additional Officers Funded in FY 2015/2016	+8.0
<div style="text-align: right; padding-right: 20px;"> Adopted Budget +2.0 Revised Budget +6.0 </div>	
Total Funded Sworn Officers	222.0
Increase Since FY 2012/13	+15.0

Quality of Life

- Increase funding for new Senior Center maintenance (\$76,000)
- Repair and maintenance of beach facilities (\$70,000)
- Sand Replenishment Project – Huntington Harbour (\$200,000)
- Repair of various beach facilities – restroom doors, parking meter housing, and trash receptacles at the pier (\$105,000)
- Park Improvements – Edison Playground (\$110,000), Murdy Park Sports Field (\$50,000), Central Park Tot Lot (85,000) , and Bartlett Park (\$100,000)
- Park & Beaches Rehabilitation Projects – Beach Service Road (\$150,000), Central Park East (\$200,000)

Economic and Financial Sustainability

- To ensure strong internal controls, replaces aged Citywide Cashiering System that is no longer supported by the vendor (\$569k)
- Provides full funding for the City's annual (pay-as-you-go) Workers' Compensation costs
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- Plans above will help maintain AAA Fitch Rating

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Capital Improvement Program

(All Funds)

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- LeBard School Site funding of \$667,000 for Year Two (split funding from General Fund and park development fees)
- Concrete, arterial roadway, sand replenishment, beach service road rehabilitation, beach facilities repair and other projects
- The FY 2016/17 General Fund Budget exceeds the 15% Infrastructure requirement
- Roadway projects help maintain a PCI of 76 or “Good”

User Fee Study and Review

- The City recently completed an updated User Fee Study
- Certain fees are recommended to increase, decrease, be eliminated, and others are new
- A phased-in approach is recommended for some fees
- Overall, the Citywide rate of recovery is recommended at 74%
- A Study Session was held on August 15, 2016 and the study was referred to the Finance Commission for review
- The Finance Commission met on August 24, 2016 with staff from all Departments citywide and requested specific additional information
- A Special Meeting will be held on September 7, 2016 (and a tentative meeting has also been scheduled for September 14, 2016) for a response to City Council

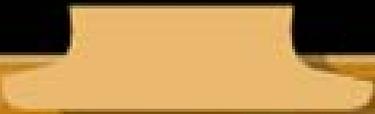
FY 2016/17 Proposed Budget Recap

- Prioritizes funding for Public Safety at 54% of the Proposed Budget
- Provides funding for quality of life enhancements at libraries, parks and beaches
- Funds infrastructure improvements to roadways, parks, facilities and other capital assets
- Enhances compliance with procedures and regulations promoting further financial sustainability



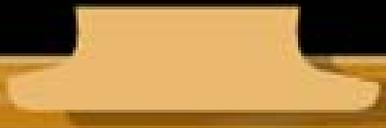


LONG-TERM FINANCIAL PLAN



Benefits of a Five-Year Plan

- Builds a financially resilient government through long-term financial planning
- Improves long-term financial sustainability as required through the Strategic Plan
- Provides time to effect change and adapt to changing conditions
- Adds transparency and encourages involvement
- Creates methods to determine the costs/benefits of decisions over the long-term
- Implements a tool to help leaders balance competing demands for enhanced or new services, additional staff, infrastructure needs and financial reserves



Five-Year Plan Highlights

- The City's personnel costs comprise approximately 73% of the General Fund Budget
- As such, fixed cost increases related to the existing payroll base will largely consume projected revenue increases
- The most significant cost increases projected over the next 5 to 10 years are the City's pension costs
- CalPERS' low investment return in June 2016 of 0.61% will increase out-year costs
- Hence, projected revenue increases will primarily assist in funding increased pension costs
- Please note these are estimates for discussion purposes only and are subject to change

Base Case Expenditure Assumptions

- Projections include two separate scenarios (base and stress test)
- Essentially flat staffing levels over the next five years
- Equipment Replacement funding of \$500K annually until \$7.0M is reached
- Infrastructure increases to \$4.5M in FY 17/18, and increases by \$500K starting in FY19/20 and capping out at \$6.0M by FY 20/21
- Adds \$1.2M in FY 20/21 for residential street repair and a PCI of 80
- Reflects projected CalPERS cost increases based on future rates
- Includes projected impact of CalPERS poor recent investment performance
- Includes continued funding for all plans to reduce unfunded liabilities
- Does NOT include a plan to reduce Workers' Comp \$11.9M liability
- Does not anticipate additional bonded projects or capital leases

Revenue Assumptions

- In depth review of the City's General Fund revenue over the past 10 years was conducted (2004/05 through 2014/15)
- One-time revenues were removed to isolate growth patterns for recurring revenue streams only
- The smoothed, average annual rate of growth for recurring revenue for the past 10 years is approximately 2.87%
- The 2.87% historical annual rate of growth is included in the "Base Case" assumption for out-year revenue growth
- Other assumptions are in the Stress Testing scenario to develop options for discussion



FIVE-YEAR PROJECTION SCENARIOS



Base Case

(in thousands)

Category	Proposed FY 2016/17	Projected FY 2017/18	Projected FY 2018/19	Projected FY 2019/20	Projected FY 2020/21
Salaries	100,297	101,582	102,645	103,201	103,830
CalPERS	32,466	35,049	37,572	39,546	40,298
CalPERS 6/30/16 Shortfall			2,000	2,000	2,000
Other Benefits	27,500	27,961	28,272	28,591	28,930
Operating	44,274	45,367	46,518	47,644	48,832
Infrastructure	3,604	4,500	4,500	5,000	6,000
Street PCI of 80					1,200
Equipment	5,221	5,500	6,000	6,500	7,000
Debt Service	7,068	6,115	6,394	5,309	4,897
Total Expenditures	220,430	226,074	233,901	237,791	242,987
Total Revenues	220,430	226,756	233,264	239,959	246,846
YOY \$		6,326	6,508	6,695	6,887
YOY %		2.87%	2.87%	2.87%	2.87%
(Challenge)/Surplus	-	682	(637)	2,168	3,859

Stress Test

(Mild Recession)

Category	Proposed FY 2016/17	Projected FY 2017/18	Projected FY 2018/19	Projected FY 2019/20	Projected FY 2020/21
Changes to Base:					
Suspend "1=5" Safety Plan	1,000	-	-	-	-
Infrastructure Flat at \$3M	3,604	3,000	3,000	3,000	4,000
Equipment Flat at \$5M	5,221	5,000	5,000	5,000	5,000
Annual Savings Needed			(3,956)	(5,509)	(2,100)
Total Expenditures	220,430	222,402	225,047	225,700	231,861
Total Revenues	220,430	218,446	219,538	223,600	231,985
YOY %		(0.90%)	0.50%	1.85%	3.75%
(Challenge)/Surplus	-	(3,956)	(5,509)	(2,100)	124
Departmental Targets		-2%	-2%	-1%	



Citywide Long Term Needs



Other Funding Gaps and Challenges

- The Five-Year Plan reflects the continuation of existing plans to reduce liabilities
- A challenge still remains in funding a plan to reduce the City's Workers' Compensation liabilities of \$11.9M
- The City's infrastructure needs for maintenance and repair exceed \$160M
- The City's storm drain system requires \$200M in upgrades
- A plan needs to be developed for the ongoing maintenance and replacement of the City's complex technology systems

Future Considerations

- If General Fund revenue exceeds baseline estimates, the City should consider budgeting \$500K per year to address the Workers' Compensation liabilities of \$11.9M
- Over the next five years, incremental increases to the General Fund CIP would help address the City's \$160M infrastructure funding shortfall as well as storm drain needs
- Ongoing funding will need to be identified for the ongoing maintenance and replacement of the City's technology systems
- As one-time funds become available, the City should consider these unfunded needs as a priority

Recap

- The City will continue to face significant increases in PERS Employer contribution rates
- The Five-Year Plan is a tool to determine how current and future decisions will impact the City's General Fund budget
- The economy is cyclical; hence, it is prudent to examine the impacts of a potential future economic downturn and remain vigilant
- **All of these scenarios are estimates only and are subject to change for factors completely beyond the City's control**
- As/if additional General Fund revenue become available, infrastructure, Workers' Compensation, and technology needs should be addressed

Questions?



September 6, 2016



Request: 27335 Entered on: 08/31/2016 9:06 PM

Customer Information

Name: Steve Engel	Phone: (657) 296-7047
Address: Huntington Beach, CA 92647	Alt. Phone:
	Email: steve.w.engel@outlook.com

Request Classification

Topic: City Council - Agenda & Public Hearing Comments	Request type: Comment
Status: Closed	Priority: Normal
Assigned to: Agenda Alerts	Entered Via: Web

Description

Hello Huntington Beach City Council- the members of the HB Tree Society and the Secret Garden Restoration Team respectfully request that you approval the CIP for the Central Park East Rehabilitation as part of the 2016/17 Annual Budget. We've been working hard to improve Central Park and this CIP will go a long ways to improve a number of issues in the park that have been in need of repair for a number of years. We pledge to continue to work with the City staff to make Central Park a place that we all can be proud of for years to come. <https://www.facebook.com/HBCentralPark/>

Reason Closed

Thank you for taking the time to send your thoughts to the City Council. A copy of your comments has been forwarded to the City Clerk to be included in the record on this item. Thank you very much for writing.
Sincerely,
Johanna Dombo
Executive Assistant

Date Expect Closed: 09/10/2016

Date Closed: 09/01/2016 07:53 AM **By:** Johanna Dombo

Enter Field Notes Below

Notes:

SUPPLEMENTAL COMMUNICATION

Meeting Date: 9-6-2016

Agenda Item No.: 14

Notes Taken By:

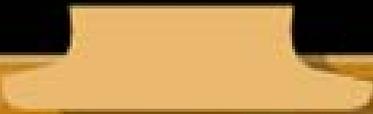
Date:

City of Huntington Beach

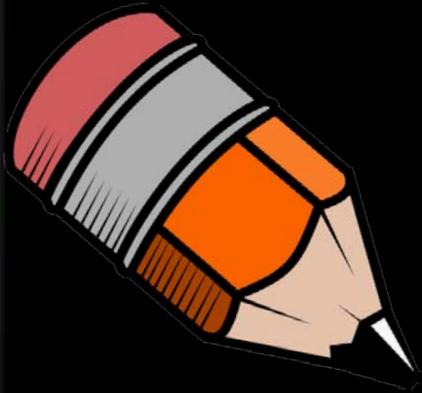
**Fiscal Year 2016/17
Proposed Budget**



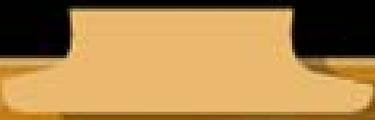
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FY 2016/17 PROPOSED BUDGET



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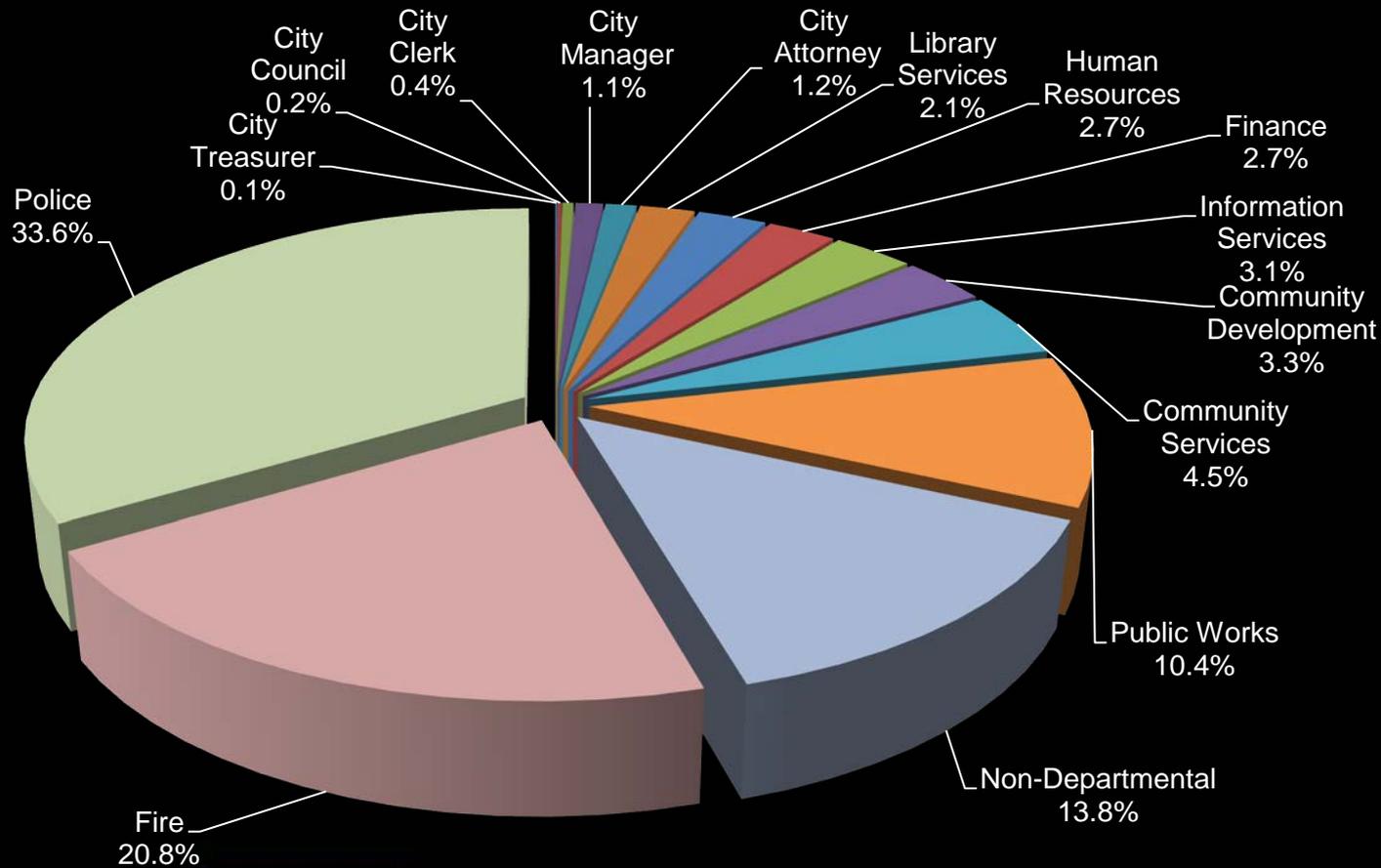
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Questions?



September 6, 2016





ATLANTA AVENUE WIDENING

CONSIDERATION OF DIRECTION TO
PROCEED WITH EMINENT DOMAIN

September 6, 2016

HISTORY

- Atlanta Avenue identified as major street in 1958 Master Plan of Streets & Highways and as primary road in 1956 Orange County Arterial Highways Plan
- Proposal is consistent with City's Precise Plan of Street Alignment (79-2)
- Grant Funding
 - 2005 obtained OCTA grant of \$1.7M
 - 2012 obtained federal grant (RSTP) of \$557k
- Coastal Development Permit 09-001 and CUP 09-119: application for widening of Atlanta Avenue
- 2010 Environmental Document (MND) Approved
 - 2011 property owner files lawsuit challenging CEQA
 - 2012 Court invalidates MND
 - 2013 Council approved revised MND
- First relocation plan adopted December 2011
- Notice to appraise May 2013
- Property sold to new owners June 2013
- Amended relocation plan adopted November 2013

HISTORY (Continued)

- March 2014 City makes offer based upon independent appraisal
- April-Oct 2014 City revises area of TCE
- Feb 4, 2015 City presents revised offer to property owner
- April 20, 2015 Council does not approve eminent domain

HISTORY (Continued)

- April 2015 thru Sept 2016 City attempted to negotiate with property owner unsuccessfully
- Council subcommittee met with owner multiple times to negotiate but was unsuccessful
- 8/12/2016 City resent notice of intent to adopt resolution of necessity

EXISTING CONDITIONS



STREET VIEW



FINAL CONFIGURATION

- Ultimate width includes 4 lanes, striped median, bicycle lane, curb, gutter, and sidewalk in each direction of travel



PROJECT COSTS

Description	Grant Funds	Local Match	Total
Design	\$68k (OCTA MPAH)	\$68k	\$136K
Right of Way	\$2.2M (Fed RSTP/OCTA)	\$2.0M	\$4.2M
Construction	\$1.2M (OCTA Measure M)	\$0.4M	\$1.6M
Total	\$3.5M	\$2.5M	\$6M



NEED AND PURPOSE / PUBLIC INTEREST AND NECESSITY

- ✓ Widening will achieve consistency with General Plan and OCTA's MPAH
- ✓ Improves Street Capacity and Traffic Safety
 - ✓ Adds approximately 75% more capacity
 - ✓ More consistent street section – eliminates “choke” point
 - ✓ Aligns roadway to the east and west
 - ✓ Less merging is required
 - ✓ Adds 2nd travel lane – allows for greater maneuvering

NEED AND PURPOSE / PUBLIC INTEREST AND NECESSITY



- ✓ Local Transit Services
 - ✓ Reduces effect of buses blocking lanes
 - ✓ Adds ADA compliant bus stop zone
- ✓ Bicycle and Pedestrian Safety
 - ✓ Adds separate bike lanes – space for bikes
- ✓ Funding if Resolution not Adopted
 - ✓ City will forfeit approx. \$2M of funds already expended
 - ✓ City will be liable to pay back \$673k of grant funding already expended
 - ✓ City will forfeit \$2M OCTA grant for project and may jeopardize future funding opportunities
 - ✓ City acquired 8 coaches and are paying rent at \$20k per month

SUMMARY

- The Resolution contains the following findings:
 - The public's interest and necessity require the Atlanta Widening Project
 - The project is planned in a manner that will be most compatible with the most public good and the least private injury;
 - The property is necessary for the project
 - The City made an offer compliant with Government Code Section 7267.2(a) – This process ensures owner gets fair market value



RECOMMENDED ACTION

Adopt resolution No. 2016-60 “finding and determining that the public interest and necessity require condemnation of a permanent street easement and temporary construction easement ...located at 80 Huntington Street” for the Atlanta Avenue Widening Project



QUESTIONS?

SEWER SERVICE FUND ANNUAL PERFORMANCE AUDIT

City of Huntington Beach
City Council Meeting
September 6, 2016

Introduction

- Sewer Service Charge adopted September 2001
- Sewer Service Fund designated for operation, maintenance & capital rehabilitation
- Annual program review is required
- Public Works Commission, acting as the oversight committee, recommended suspending the rate adjustment at their July 20, 2016 regular meeting
- City Council holds annual hearing to review recommendations of the Public Works Commission on rates as part of the budget process

Reserve Policy

- Operations and Maintenance: 33% of annual budget, \$2.6 million
- Capital Improvement Program: Average of 5-year Capital Improvement Program, \$2.65 million
- Emergency: Estimated cost to replace a sewer lift station, \$3.0 million
- Total: \$8.25 million

Fund Balance Summary

Beginning Balance	10/1/15	\$19,766,074
Projected Revenues	15/16	\$10,889,620
Projected Expenditures	15/16	(\$ 9,515,415)
Projected Balance	10/1/16	\$21,140,279
Proposed Revenues	16/17	\$10,685,000
Proposed Expenditures	16/17	(\$ 9,294,179)
Projected Balance	10/1/17	\$22,531,100

Future Sewer Needs

- Replace One Sewer Lift Station Annually at an Estimated Cost of \$2.5 million
- \$350,000 Annually in Sewer Sliplining
- Assume 2% Annual Increase in Operating Costs
- Fund Balance Will be Reduced to the Reserve Policy Level over 10 Years

Alternative Sewer Charges

- Rate modification based on CPIU available as of July 1 is +1.5%

<u>Category</u>	<u>Current</u>	<u>+ 1.5%</u>
Single Family (<i>per month</i>)	\$10.69	\$10.85
Multi-Family (<i>per unit/month</i>)	\$ 8.87	\$ 9.00
Commercial/ Industrial (<i>per month</i>)	\$12.41	\$12.60

Alternative Sewer Charges

<u>Category</u>	<u>Current</u>	<u>+ 1.5%</u>
High Consumption		
Commercial/Industrial (Per 100 Cubic Feet of Water)	\$2.32	\$2.36
Schools (<i>per ADA/year</i>)		
● High School	\$3.42	\$3.47
● K-8	\$2.20	\$2.23

Recommended Action

1. Accept Sewer Service Fund Performance Audit for Fiscal Year 2015-16
2. Recommend Council suspend the Annual CPI Adjustment of Sewer Service Charges for Fiscal Year 2016-17

SEWER SERVICE FUND ANNUAL PERFORMANCE AUDIT

September 6, 2016

City of Huntington Beach

September 6, 2016

BODY WORN CAMERAS

ITEM #18

BWCs in Huntington Beach

- Researching BWCs for years
- Study session and pilot program 2015
- Study Session March 7, 2016
- Proposed plan

Current Environment

- 95% of law enforcement agencies are testing or planning to implement BWCs
- 1/3 of law enforcement agencies have BWC's, 2/3 have in car video
- 1/2 of OC law enforcement agencies are testing or have implemented BWCs

Value of Video as Evidence

- ⦿ Criminal prosecutions
- ⦿ Civil defense
- ⦿ Video is quickly becoming an expectation
- ⦿ Scott v. Harris: United States Supreme Court
 - Court overturned lower court decision to support a police department and officer based on the evidentiary weight of video of the incident.

Traffic and DUI enforcement

- Capture moving traffic violations on cameras
- Ability to video tape a DUI impairment investigation
- Strong evidence for DUI drug cases

JAG Grant Funds

- ◎ 2011 – Dual Shield Software
- ◎ 2012 – Digital Scanner/Software
- ◎ 2013 – Intergraph AVL System
- ◎ 2014 – Electronic Ticket Writers
- ◎ 2015 – Body Worn Cameras

SLESF Grant Funds

- 2011 – Added 50 Motorola Radios & Automated Parking Citations
- 2012 – No expenses (BWC)
- 2013 – MEU Truck and Trailer
- 2014 – No expenses (BWC)
- 2015 – No expenses (BWC)

Other Recent Tech Upgrades

- CAD/RMS upgrade 2013
- 2014 – New desktops computers for the entire Police Department
- 2015/16 – New MDCs in all vehicles
- 2014/15/16 – New Dispatch Radios, Car Radios and Handheld Radios

In House Data Storage vs Cloud

- ⦿ Not just data storage, also management of the data
- ⦿ Ability to share with District Attorney and other LEA via cloud saves time and money
- ⦿ Redundant back up and reliability

Community Survey by CSULB

- 93% of respondents strongly agree or agree that HBPD can do its job well
- 79% strongly agree or agree that the HBPD is very open with the work it does

Community Survey by CSULB

- 71% of respondents strongly agree or agree that all police officers should be required to wear body-worn cameras
- 66% strongly agree or agree that body-worn cameras make everyone safer.
- 68% strongly agree or agree that the HBPD should require officers to wear body cameras.

Use of Force Injuries: 5years

- 655 Use of force incidents
- 215 resulted in an injury to an officer (33%)
- 43 officers treated at hospital

Uses of Force Injuries: 5years

- Several significant injuries requiring surgery and even medical retirements
- 503 suspects injured (77%)

Cost savings claims/litigation

- Complaints on officers reduced complaints by 85%
- Use of Force reduced by 55%
- On going studies show reduction in police officer court time (overtime)

HB Cost savings claims/litigation

- Based on review of past 10 years of legal claims, City Attorney estimates potential savings of \$300 - \$400 thousand dollars per year
- Currently we average 60 complaints per year
- Staff hours of investigation

HB Cost savings: Injury prevention

- ① Direct costs of medical treatment and ongoing therapy
- ① Salary and OT savings
- ① Some injuries take officers off work for months
 - Disability Retirement

Implementation

- Upgrade the City's Internet backbone
- Ease into the technology with 50 cameras
- Transition officers into the adjustment at a reasonable pace
- Convert Administrative Secretary position into CSO for digital evidence management

Implementation

- ◎ Purchase 50 Taser BWC's with Evidence.com digital evidence management system.
- ◎ Purchase 50 Apple Smart phones
 - Facilitates viewing/filing videos from the field
 - Crime scene photos
 - Modernize officer communications

Costs

- JAG Grant \$25,359
- SLESF \$290,000
- Appx. \$9,000 annually for CSO upgrade
- Appx. \$15,000 annually for smart phones

Questions?

Esparza, Patty

From: Dombo, Johanna
Sent: Friday, September 02, 2016 8:21 AM
To: Agenda Comment
Cc: Fikes, Cathy; CITY COUNCIL
Subject: FW: Commercial Photography - Item 19 on the Agenda

AGENDA COMMENT

From: Gino J. Bruno [mailto:gbruno@socal.rr.com]
Sent: Thursday, September 01, 2016 9:37 PM
To: CITY COUNCIL
Cc: Wilson, Fred; Gates, Michael
Subject: Commercial Photography - Item 19 on the Agenda

**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 9-6-16
Agenda Item No.: 19

TO: Huntington Beach City Council members --

Many of us complain about how much Washington and Sacramento get into our lives daily. Look what City Hall on Main Street now wants to do to us. Why? For no purpose other than to raise money!

Item 19 on Tuesday's City Council Agenda will require that, if you hire a commercial photographer to come to your home to take a family portrait, or photograph your family standing in front of your Christmas tree, or take pictures of one of your kids on prom night, or video a birthday celebration in your back yard, *THE PHOTOGRAPHER WILL NEED TO GET A CITY PERMIT!* And pay a *FEE!*

Under the proposed Ordinance 4087, "Commercial Photography" is defined to mean taking photographs "for sale or use for profit" "on public or **PRIVATE PROPERTY** in **ANY** location in Huntington Beach." [Emphasis supplied]

What business is that of the city? Street closures for TV filming? Yes, of course . . . but not pictures of the newborn baby in its nursery taken by a commercial photographer, but this proposed Ordinance would cover these situations that would have absolutely no impact on the city!

Except the city wants money!

Please direct the City Manager, in collaboration with the City Attorney, to rework this proposed Ordinance, such that the city does not intrude further and unnecessarily into our private lives.

Thank you.

Gino J. Bruno
Huntington Beach

City of Huntington Beach

9/6/2016

**ORDINANCE 4087 –
COMMERCIAL PHOTOGRAPHY
ITEM 19**

Municipal Code Chapter 5.54

- ⦿ Requires a film permit for any commercial or professional filming on public property
- ⦿ No changes to Ordinance since 1986
- ✓ Complaints regarding commercial filming in residential neighborhoods

Ordinance No. 4087

- Staff surveyed commercial filming ordinances throughout the state, and recommended changes to Chapter 5.54
- Council requested increased clarification into what groups would be exempt from being required to needing a film permit

Current Municipal Code

- Limited definition for “Commercial or Professional Photography”
- Does not define “Personal Use”
- Limited exemptions for governmental, news media & aerial mapping.

Recommended Changes

- “Commercial Photography” and “Commercial Production” are separated from “Personal Use”
- “Personal Use” is defined as “photography and/or filming that will not be used for profit” (profit is considered in a commercial sense)

Permit Required

- ⦿ Exempts insurance claims, home sales (real estate), governmental agencies, bona fide news publications, aerial mapping, and productions where the purpose is not to sell the photo or video
 - Exempts photography for “Personal Use” from the film permit requirement

Example (with amendments)

- Hiring a photographer for family photos/portraits/weddings/birthdays (public or private property) - does not require a film permit. These photos are for “personal use,” not commercial use.

ANDERSON, MCPHARLIN & CONNERS LLP

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WILLIAM R. LARR, OF COUNSEL

NEWTON E. ANDERSON (1897-1967)
ELDON V. MCPHARLIN (1910-2002)
WILLIAM J. CONNERS (1911-1986)

IN REPLY PLEASE
REFER TO FILE NO.

5000-004

WRITER'S DIRECT
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ELMIRA R. HOWARD
ALBERT K. ALIKIN

^o ADMITTED IN NV ONLY

^o ADMITTED IN CA & NV

September 5, 2016

VIA E-MAIL ONLY

FOR INCLUSION IN SEPTEMBER 6, 2016 SUPPLEMENTAL AGENDA PACKET

ITEM #20

**SUPPLEMENTAL
COMMUNICATION**

Honorable Mayor and City Council Members
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Meeting Date: 9-6-2016

Agenda Item No.: 20

Re: Proposed Ordinance No. 4121 re Unmanned Aircraft Systems

Dear Honorable Mayor, City Council Members and Staff:

I am writing to you today concerning Item #20 on the September 6, 2016 City Council Agenda relating to introduction of proposed drone ordinance No. 4121. By way of background, I am a commercial pilot and head of the Aviation and Unmanned Aerial Systems practice group at the Law Firm of Anderson, McPharlin & Connors in Los Angeles. I represent a number of individuals and organizations relating to drone law issues, including some that reside in Huntington Beach. I have been involved in considering the legal aspects of other proposed municipal ordinances in Southern California relating to drones. As a drone law attorney and someone very familiar with the legal and regulatory issues, I would like to offer some comments on this proposed ordinance.

I am very sympathetic to the concerns of the community and the Council that we work to establish reasonable, common-sense and appropriate regulations to ensure safety and privacy with this new technology while at the same time acknowledging the potential usefulness of drones in many different industries and with many societal benefits.

There are many complex issues raised by Staff's memo and the draft ordinance, many of which are highly technical. However, I would like to focus primarily on a few big-picture policy issues. Most importantly, many of the issues being addressed, and contained in the draft ordinance, are being handled at the federal level by the FAA and are preempted by

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LAWYERS

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federal regulation. I am submitting with this letter a copy of the FAA's December, 2015 "Fact Sheet Re State and Local Regulation of Unmanned Aircraft Systems (UAS)" (Attachment 1) and highly encourage Council and Staff to review this important document. In summary, the FAA has taken the position that it has sole authority to regulate UAV operations in the airspace system. This would include most of the operational rules set forth in the proposed Huntington Beach ordinance.

For example, Sec. 8.80.20, which relates to FAA registration of "drones," overlaps the FAA's own regulatory authority over drone registration. This provision, which would make it a misdemeanor for failure to follow FAA registration requirements, infringes on the FAA's authority to enforce its own regulations. The FAA has its own penalties for failure to register (up to three years in prison and/or \$250,000 fine), and these penalties preempt those of a local ordinance.

As a further example, Sec. 8.80.030 prohibits certain types of drone operations in the City. These operational limitations are clearly preempted by the federal government and FAA regulations. (See FAA Fact Sheet, Attachment 1, p. 3 "Examples.") As the FAA states, "Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. See *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), and *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); see also *Arizona v. U.S.*, 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012)."

The fact that some of the operational limitations in the City's proposed ordinance are the same or similar to the FAA's regulations does not change the fact that they cannot be enacted by local ordinance. (See also Attachment 2, UAS Magazine article dated 4-14-16 concerning these issues.)

Similar arguments can be made about Sec. 8.80.050, 8.80.060 and 8.80.070. Sec. 8.80.060 "no fly zones" is of particular concern. I am quite certain that if you were to contact the FAA General Counsel and ask for the FAA's position on the enactment of local "no fly zones," they would tell you that such local "no fly zones" are absolutely prohibited. Moreover, if the City is concerned about particular events and hazards, such as the upcoming Air Show, it need do nothing more than obtain an FAA "Temporary Flight Restriction" which would serve the

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same purpose. I have included as Attachment 5 FAA regulation 14 CFR §91.145, which specifically provides for TFRs in the area of Thunderbirds and other air show demonstrations:

§91.145 Management of aircraft operations in the vicinity of aerial demonstrations and major sporting events.

(a) The FAA will issue a Notice to Airmen (NOTAM) designating an area of airspace in which a temporary flight restriction applies when it determines that a temporary flight restriction is necessary to protect persons or property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft in the vicinity of an aerial demonstration or major sporting event. These demonstrations and events may include:

- (1) United States Naval Flight Demonstration Team (Blue Angels);
- (2) United States Air Force Air Demonstration Squadron (Thunderbirds);**
- (3) United States Army Parachute Team (Golden Knights);
- (4) Summer/Winter Olympic Games;
- (5) Annual Tournament of Roses Football Game;
- (6) World Cup Soccer;
- (7) Major League Baseball All-Star Game;
- (8) World Series;
- (9) Kodak Albuquerque International Balloon Fiesta;
- (10) Sandia Classic Hang Gliding Competition;
- (11) Indianapolis 500 Mile Race;
- (12) Any other aerial demonstration or sporting event the FAA determines to need a temporary flight restriction in accordance with paragraph (b) of this section.**

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LAWYERS

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Page 4

Also included as part of Attachment 5 is a list of examples of TFRs that are scheduled in California for the same purpose. The suggestion in the Staff Report that the proposed ordinance must be passed in order to protect against issues at the upcoming Air Show or at other similar events is not supported by the procedures already in place. In fact, I would be shocked if the FAA is not already working with the U.S. Air Force to enact a TFR for this Air Show. In any event, I would strongly encourage Staff to consult with the FAA General Counsel before enacting an ordinance which contains these types of operational restrictions.

The ordinances passed by neighboring cities, including the City of Los Angeles, upon which the draft Huntington Beach ordinance is partially based, are very likely invalid and will result in lengthy and expensive legal battles. In fact, you may not be aware that the first prosecution by the City of Los Angeles under its drone law LAMC 56.21 (included as Appendix A in the Orange County Grand Jury Report) resulted in a verdict against the City earlier this year. I have attached the press release concerning this verdict as Attachment 3. Among other things, LAMC 56.21 was challenged on constitutional grounds and the City was forced to dismiss its Complaint and re-file it only under "careless and reckless" provisions of the ordinance.

I recognize that the Orange County Grand Jury has made findings which "recommend" a response by the various municipalities (Agenda Packet Attachment 2). However, the Grand Jury does not make law and it does not appear that the Grand Jury fully considered the legal issues involved when preparing its report. It certainly does not appear to have fully considered the preemption issues but merely acknowledges them in passing. It should also be noted that the vast majority of Orange County municipalities in the Grand Jury's study had zero or few issues concerning drones, and fully 57% of the municipalities surveyed consider drones a non-issue. (Grand Jury Report, p. 13). This is not to say that Huntington Beach does not have drone issues worth addressing; rather, it suggests that the City should not rely too heavily (by way of the Grand Jury Report) on anecdotal evidence of a wide-spread problem where one does not truly exist except in limited areas and specific circumstances.

Concerns such as trespass, nuisance and invasion of privacy are already covered under various criminal and civil statutes. In fact, there are several additional proposed drone laws working their way through the state legislative process in this legislative session, some of which if passed will likely conflict with the City's proposed ordinance. I have attached these proposed laws to this letter as Attachment 4. This is not an exclusive list of all of the proposed state laws, but provides a sampling so that you can see that these issues are being debated extensively at the state level.

As noted in the Grand Jury Report at p. 9, there are already state laws in place to criminalize interference with first-responders, including Penal Code sections 148, 148.1, 148.2

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Page 5

and 402 (see also Grand Jury appendix C, D, and E). The draft ordinance include provisions which mimic, and in some cases, conflict with, these Penal Code sections.

The City can and should consider regulations under which it has clear authority to act, such as limitations on public property from which drones can be operated. Otherwise, the Council should delay any immediate action on a new or amended drone ordinance in light of these significant legal issues. At minimum, the Council should delay action on this issue until the FAA's new (August 29) Part 107 regulations have been fully implemented and the pending state bills have made their way through the legislative process. At that time, the relevant stakeholders should come together, perhaps in a committee, to create a legally valid and reasonable ordinance.

I would certainly be more than happy to answer any questions by the Council, Staff, or City Attorney and provide assistance in working through these issues.

Very truly yours,

ANDERSON, McPHARLIN & CONNERS LLP



By:

D. Damon Willens

DDW:DDW
Attachments

ATTACHMENT 1

State and Local Regulation of Unmanned Aircraft Systems (UAS)
Fact Sheet

Federal Aviation Administration
Office of the Chief Counsel

December 17, 2015

BACKGROUND

Unmanned aircraft systems (UAS) are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground. States and local jurisdictions are increasingly exploring regulation of UAS or proceeding to enact legislation relating to UAS operations. In 2015, approximately 45 states have considered restrictions on UAS. In addition, public comments on the Federal Aviation Administration's (FAA) proposed rule, "Operation and Certification of Small Unmanned Aircraft Systems" (Docket No. FAA-2015-0150), expressed concern about the possible impact of state and local laws on UAS operations.

Incidents involving unauthorized and unsafe use of small, remote-controlled aircraft have risen dramatically. Pilot reports of interactions with suspected unmanned aircraft have increased from 238 sightings in all of 2014 to 780 through August of this year. During this past summer, the presence of multiple UAS in the vicinity of wild fires in the western U.S. prompted firefighters to ground their aircraft on several occasions.

This fact sheet is intended to provide basic information about the federal regulatory framework for use by states and localities when considering laws affecting UAS. State and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework pertaining to control of the airspace, flight management and efficiency, air traffic control, aviation safety, navigational facilities, and the regulation of aircraft noise at its source.

Presented below are general principles of federal law as they relate to aviation safety, and examples of state and local laws that should be carefully considered prior to any legislative action to ensure that they are consistent with applicable federal safety regulations. The FAA's Office of the Chief Counsel is available for consultation on specific questions.

WHY THE FEDERAL FRAMEWORK

Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735. Congress has directed the FAA to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. § 40103(b)(1). Congress has further directed the FAA to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes)" for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable

airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. 49 U.S.C. § 40103(b)(2).

A consistent regulatory system for aircraft and use of airspace has the broader effect of ensuring the highest level of safety for all aviation operations. To ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions, FAA has regulatory authority over matters pertaining to aviation safety.

REGULATING UAS OPERATIONS

In § 333 of the FAA Modernization and Reform Act of 2012 (Public Law No. 112-95), Congress directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the national airspace system (NAS) and if so, to establish requirements for the safe operation of these systems in the NAS.

On February 15, 2015, the FAA proposed a framework of regulations that would allow routine commercial use of certain small UAS in today's aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA's Notice of Proposed Rulemaking offered safety rules for small UAS (under 55 pounds) conducting non-recreational or non-hobby operations. The proposed rule defines permissible hours of flight, line-of-sight observation, altitude, operator certification, optional use of visual observers, aircraft registration and marking, and operational limits.

Consistent with its statutory authority, the FAA is requiring Federal registration of UAS in order to operate a UAS. Registering UAS will help protect public safety in the air and on the ground, aid the FAA in the enforcement of safety-related requirements for the operation of UAS, and build a culture of accountability and responsibility among users operating in U.S. airspace. No state or local UAS registration law may relieve a UAS owner or operator from complying with the Federal UAS registration requirements. Because Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. See *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), and *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); see also *Arizona v. U.S.*, 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any

state regulation in the area, even if it is parallel to federal standards.”), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992).

EXAMPLES OF STATE AND LOCAL LAWS FOR WHICH CONSULTATION WITH THE FAA IS RECOMMENDED

- Operational UAS restrictions on flight altitude, flight paths; operational bans; any regulation of the navigable airspace. For example – a city ordinance banning anyone from operating UAS within the city limits, within the airspace of the city, or within certain distances of landmarks. Federal courts strictly scrutinize state and local regulation of overflight. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1117 (9th Cir. 2002); *American Airlines v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968); *American Airlines v. City of Audubon Park*, 407 F.2d 1306 (6th Cir. 1969).
- Mandating equipment or training for UAS related to aviation safety such as geo-fencing would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment requirements related to aviation safety is not consistent with the federal regulatory framework. *Med-Trans Corp. v. Benton*, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); *Air Evac EMS, Inc. v. Robinson*, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

EXAMPLES OF STATE AND LOCAL LAWS WITHIN STATE AND LOCAL GOVERNMENT POLICE POWER

Laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation. *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002). Examples include:

- Requirement for police to obtain a warrant prior to using a UAS for surveillance.
- Specifying that UAS may not be used for voyeurism.
- Prohibitions on using UAS for hunting or fishing, or to interfere with or harass an individual who is hunting or fishing.
- Prohibitions on attaching firearms or similar weapons to UAS.

CONTACT INFORMATION FOR QUESTIONS

The FAA’s Office of the Chief Counsel is available to answer questions about the principles set forth in this fact sheet and to consult with you about the intersection of federal, state, and local regulation of aviation, generally, and UAS operations, specifically. You may contact the Office of Chief Counsel in Washington, D.C. or any of the following Regional Counsels:

FAA Office of the Chief Counsel
Regulations Division (AGC-200)
800 Independence Ave. SW
Washington, DC 20591
(202) 267-3073

Central Region
Office of the Regional Counsel
901 Locust St., Room 506
Kansas City, MO 64406-2641
(816) 329-3760
(IA, KS, MO, NE)

Great Lakes Region
Office of the Regional Counsel
O'Hare Lake Office Center
2300 East Devon Ave.
Des Plaines, IL 60018
(847) 294-7313
(IL, IN, MI, MN, ND, OH, SD, WI)

Northwest Mountain Region
Office of the Regional Counsel
1601 Lind Ave. SW
Renton, WA 98055-4056
(425) 227-2007
(CO, ID, MT, OR, UT, WA, WY)

Southwest Region
Office of the Regional Counsel, 6N-300
10101 Hillwood Parkway Dr.
Fort Worth, TX 76177
(817) 222-5099
(AR, LA, NM, OK, TX)

Alaskan Region
Office of the Regional Counsel
222 West 7th Ave.
Anchorage, AK 99513
(907) 271-5269
(AK)

Eastern Region
Office of the Regional Counsel
1 Aviation Plaza, Room 561
Jamaica, NY 11434-4848
(718) 553-3285
(DC, DE, MD, NJ, NY, PA, VA, WV)

New England Region
Office of the Regional Counsel
12 New England Executive Park
Burlington, MA 01803
(781) 238-7040
(CT, ME, MA, NH, RI, VT)

Southern Region
Office of the Regional Counsel
1701 Columbia Ave., Suite 530
College Park, GA 30337
(404) 305-5200
(AL, FL, GA, KY, MS, NC, SC, TN)

Western-Pacific Region
Office of the Regional Counsel
P.O. Box 92007
Los Angeles, CA 90009
(310) 725-7100
(AZ, CA, HI, NV)

APPENDIX – LIST OF AUTHORITIES

Federal Statutes

- 49 U.S.C. §§ 40103, 44502, and 44701- 44735 (former Federal Aviation Act of 1958, as amended and recodified).
- FAA Modernization and Reform Act of 2012, Public Law No. 112-95 (Feb. 14, 2012), Subtitle B, “Unmanned Aircraft Systems.”

Federal Regulations

- Title 14 of the Code of Federal Regulations, Chapter 1.

The U.S. Supreme Court

- “Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.” *Northwest Airlines v. State of Minnesota*, 322 U.S. 292, 303 (1944)(Jackson, R., concurring).
- “If we were to uphold the Burbank ordinance [which placed an 11 p.m. to 7 a.m. curfew on jet flights from the Burbank Airport] and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of FAA in controlling air traffic flow. The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded.” *Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 639 (1973).
- “The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground ... The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.” *Burbank* at 638-639.
- “The paramount substantive concerns of Congress [in enacting the FAA Act] were to regulate federally all aspects of air safety ... and, once aircraft were in ‘flight,’ airspace management....” *Burbank* at 644 (Rehnquist, J. dissenting).

U.S. Courts of Appeals

- “Air traffic must be regulated at the national level. Without uniform equipment specifications, takeoff and landing rules, and safety standards, it would be impossible to operate a national air transportation system.” *Gustafson v. City of Lake Angeles*, 76 F.3d 778, 792-793 (6th Cir. 1996)(Jones, N., concurring).
- “The purpose, history, and language of the FAA [Act] lead us to conclude that Congress intended to have a single, uniform system for regulating aviation safety. The catalytic events leading to the enactment of the FAA [Act] helped generate this intent. The FAA [Act] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules In discussing the impetus for the FAA [Act], the Supreme Court has also noted that regulating the aviation industry requires a delicate balance between safety and efficiency. It is precisely because of ‘the interdependence of these factors’ that Congress enacted ‘a uniform and exclusive system of federal regulation.’” *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471 (9th Cir. 2007), citing *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 638-39 (1973).
- “[W]hen we look to the historical impetus for the FAA, its legislative history, and the language of the [FAA] Act, it is clear that Congress intended to invest the Administrator of the Federal Aviation Administration with the authority to enact exclusive air safety standards. Moreover, the Administrator has chosen to exercise this authority by issuing such pervasive regulations that we can infer a preemptive intent to displace all state law on the subject of air safety.” *Montalvo* at 472.
- “We similarly hold that federal law occupies the entire field of aviation safety. Congress’ intent to displace state law is implicit in the pervasiveness of the federal regulations, the dominance of the federal interest in this area, and the legislative goal of establishing a single, uniform system of control over air safety. This holding is fully consistent with our decision in *Skysign International, Inc. v. Honolulu*, 276 F.3d 1109 (9th Cir. 2002), where we considered whether federal law preempted state regulation of aerial advertising that was distracting and potentially dangerous to persons on the ground. In upholding the state regulations, we held that federal law has not ‘preempt[ed] altogether any state regulation purporting to reach into the navigable airspace.’ *Skysign* at 1116. While Congress may not have acted to occupy exclusively all of air commerce, it has clearly indicated its intent to be the sole regulator of aviation safety. The FAA, together with federal air safety regulations, establish complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation by, or variation among, states.” *Montalvo* at 473-474.
- “[W]e remark the Supreme Court’s reasoning regarding the need for uniformity [concerning] the regulation of aviation noise, see *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973), and suggest that the same rationale applies here. In *Burbank*, the Court struck down a municipal anti-noise ordinance placing a curfew on jet flights from a regional airport. Citing the ‘pervasive nature of the scheme of federal

regulation,' the majority ruled that aircraft noise was wholly subject to federal hegemony, thereby preempting state or local enactments in the field. In our view, the pervasiveness of the federal web is as apparent in the matter of pilot qualification as in the matter of aircraft noise. If we upheld the Rhode Island statute as applied to airline pilots, 'and a significant number of [states] followed suit, it is obvious that fractionalized control ... would severely limit the flexibility of the F.A.A' [citing *Burbank*] Moreover, a patchwork of state laws in this airspace, some in conflict with each other, would create a crazyquilt effect ... The regulation of interstate flight-and flyers-must of necessity be monolithic. Its very nature permits no other conclusion. In the area of pilot fitness as in the area of aviation noise, the [FAA] Act as we read it 'leave[s] no room for ... local controls.' [citing *Burbank*]. *French v. Pan Am Express, Inc.*, 869 F.2d 1, 6 (1st Cir. 1989).

ATTACHMENT 2



More

The War Between The Drones States

Cities and states want to pass laws and regulations protecting the safety and privacy of their citizens. Congress is considering a bill that would allow the FAA to preempt state and local measures. Which approach is best for the UAS industry?

By Patrick C. Miller | April 14, 2016

I've been told by a number of attorneys specializing in UAS law that the battle between the Federal Aviation Administration (FAA) and states and municipalities to regulate the airspace in which drones operate will ultimately be won by the FAA. The debate has been sparked by FAA reauthorization legislation being considered by Congress. The Senate bill contains a provision preempting state and local drone laws.



That the federal government prefers a "one size fits all" approach comes as no surprise. A national poll shows that 68 percent of Americans are against the FAA deciding what UAS regulations are best for their communities. That's really not surprising, either, given the public perception of drones—often based on misconceptions.

Organizations such as the National League of Cities and Conference of Mayors are against giving the FAA the authority to trump the laws and regulations they deem necessary to assure the safety and privacy of their citizens. A letter the two organizations sent to a U.S. Senate committee said, "Much like automobiles and land use development regulations, local leaders know best how to regulate issues that affect their residents in their own backyards."

A statement from a group called Smart Government said, "Including federal preemption language of state and local drone laws in the FAA Reauthorization bill is a perfect example of the federal government overstepping its bounds to the detriment of its citizens."

Also not surprising is support for the preemption provision from the Association for Unmanned Vehicle Systems International (AUVSI), an organization whose members back the commercial integration of UAS into the national airspace at the earliest possible date.

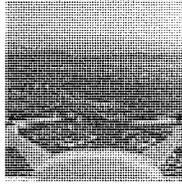
It sent a letter to members of the U.S. Senate which said: "Rules and regulations that determine who can fly, whether you can fly, where you can fly, how high you can fly, or when you can fly are generally the exclusive domain of the federal government. Proposals by state and local governments in these areas have the potential to create a complicated patchwork of laws that may erode, rather than enhance, air safety. Additionally, it opens the door to those jurisdictions being able to put forward proposals that could have a profound effect on the operations of the manned aviation community."

The letter was signed by the Aerospace Industries Association, the Aircraft Owners and Pilots Association, the Consumer Technology Association, DJI, the Drone Manufacturers Alliance, the General Aviation Manufacturers Association, the Small UAV Coalition, the National Business Aviation Association and Cherokee Nation Technologies.

It's the classic battle between big government, big business and American citizens represented by their state and local governments. While I'd like to think I understand the views of those who oppose the preemption provision in the Senate's FAA reauthorization bill, the UAS attorneys to whom I've spoken—who also happen to be pilots—make an excellent point: Unless the FAA can regulate unmanned aviation in the same manner it regulates manned aviation, the UAS industry will be held back and will continue to struggle because of regulatory uncertainty.

ATTACHMENT 3

Jury Clears Los Angeles Filmmaker in First Criminal Drone Trial



Ballard Spahr scored a decisive victory on behalf of the Unmanned Aircraft Systems (UAS) community when a Los Angeles jury returned a unanimous "not guilty" verdict in what is thought to be the first U.S. case to go to trial on a drone-specific criminal charge. In this highly publicized case, Arvel Chappell III, a filmmaker, aerospace engineer, and aviation enthusiast, was accused of violating the City of Los Angeles' newly enacted "anti-drone" ordinance, which purports to impose municipal restrictions on UAS flight and can potentially subject violators to imprisonment.

Mr. Chappell was the first person prosecuted under the ordinance. Ironically, at the time he was charged, Mr. Chappell was working on his latest film—*Compton: The Antwon Ross Story*—the fictional story of an African American teen who turns to aviation as a way to escape his crime-ridden neighborhood.

The case began when Mr. Chappell was charged with violating provisions of the City of Los Angeles' UAS ordinance, which attempted to regulate drone operation within city limits—regardless of whether the city's municipal rules were inconsistent with those proposed by the federal government (namely, the Federal Aviation Administration). Early in the case, Ballard Spahr brought a constitutional challenge against the provisions of the city ordinance under which Mr. Chappell was charged, arguing that they were preempted by federal law. In response, the government dismissed all charges.

But rather than dismiss the case and move on, the government filed a new charge under the same ordinance, this time alleging that Mr. Chappell operated his UAS in a "careless and reckless" manner, a standard that is defined by federal law. The government contended that Mr. Chappell's drone operation interfered with the flight of a police helicopter. Although the government's "careless and reckless" charge was clearly designed as to end-run the federal preemption argument, Ballard Spahr was unwavering in its fight to protect the rapidly growing civilian drone industry. We took the case to trial and won, vindicating Mr. Chappell and offering increased protections for the wider UAS community.

"In the end, what resonated with the jury is that drones are an emerging technology that should be embraced, not stifled," said Terrence Jones, the Los Angeles-based Ballard Spahr attorney who handled the case. "As long as we all fly responsibly, we can all share the airspace—private citizens, commercial businesses, and law enforcement agencies."

This verdict was significant in light of the growing popularity of commercial and recreational drone use. Currently, the retail, shipping, aerospace, and filmmaking industries, among others, are grappling with a patchwork of state and local laws regulating UAS that are being passed throughout the country. The verdict was also particularly timely: it was rendered on the same day that the FAA released its highly-anticipated final rules on the operation of small UAS for routine commercial use (Part 107).

ATTACHMENT 4

Assembly Bill No. 1662

Passed the Assembly August 31, 2016

Chief Clerk of the Assembly

Passed the Senate August 31, 2016

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 2016, at ____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Part 6.5 (commencing with Section 24455) to Division 9 of the Public Utilities Code, relating to aviation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1662, Chau. Unmanned aircraft systems: accident reporting.

Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of unmanned aircraft systems, commonly known as drones, into the national airspace system. Existing federal law requires the operator of an unmanned aircraft system to immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board office when, among other things, an aircraft accident, as defined, or certain serious incidents occur. Those notifications are required to include, among other things, the name of the owner of the unmanned aircraft system, the name of the operator of the unmanned aircraft system, the date and time of the accident, and the nature of the accident.

Existing state law requires the driver of a vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person, to immediately stop the vehicle at the scene of the accident and provide certain information and render assistance, as necessary, to the driver and occupants of the other vehicle and provide the specified information to any traffic or police officer at the scene of the accident. A person who violates this requirement is guilty of a misdemeanor or a felony. Existing law requires the driver of a vehicle involved in an accident resulting only in damage to any property, including vehicles, to immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists and provide certain information to the owner or person in charge of the damaged property or place that information in a conspicuous place on the damaged property. A person who violates this requirement is guilty of a misdemeanor.

This bill would require, except as specified, the operator of any unmanned aircraft system involved in an accident resulting in injury to an individual or damage to property to immediately land

the unmanned aircraft at the nearest location that will not jeopardize the safety of others and provide certain information to the injured individual or the owner or person in charge of the damaged property or place that information in a conspicuous place on the damaged property. The bill would make a person who knowingly fails to comply with these provisions guilty of an infraction or a misdemeanor, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Part 6.5 (commencing with Section 24455) is added to Division 9 of the Public Utilities Code, to read:

PART 6.5. UNMANNED AIRCRAFT SYSTEMS

24455. (a) The operator of any unmanned aircraft system involved in an accident resulting in injury to an individual or damage to property shall immediately land the unmanned aircraft at the nearest location that will not jeopardize the safety of others. Moving the unmanned aircraft in accordance with this subdivision does not affect the question of fault. The operator shall also immediately do one of the following:

(1) Present his or her valid identification, if he or she has that identification, and his or her name and current residence address to the injured individual. For purposes of this section, “valid identification” includes, but is not limited to, a driver’s license, a state-issued identification card, or a passport.

(2) Locate and notify the owner or person in charge of that property of the name and address of the operator of the unmanned aircraft system involved and, upon locating the owner or person in charge of the damaged property and being requested to do so, present his or her valid identification, if he or she has that identification, and his or her name and current residence address

to the other property owner or person in charge of the damaged property.

(3) Leave in a conspicuous place on the damaged property a written notice giving the name and address of the operator of the unmanned aircraft system involved and a statement of the circumstances of the accident and, without unnecessary delay, notify the police department of the city where the damage occurred or, if the damage occurred in unincorporated territory, the local headquarters of the sheriff's department of the county where the damage occurred.

(b) The operator shall also provide the name and address of his or her employer or his or her place of business if he or she is the commercial operator of the unmanned aircraft system in the same manner as specified in paragraph (1), (2), or (3) of subdivision (a).

(c) A person who knowingly fails to comply with the requirements of this section is guilty of an infraction punishable by a fine of not more than two hundred fifty dollars (\$250), or a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) (1) A law enforcement officer, or an employee of a police department, fire department, fire protection district, or other law enforcement agency, operating an unmanned aircraft system within the scope of his or her employment shall comply with this section unless landing the aircraft would interfere with the officer's or employee's duties or would put individuals at risk of further injury or property at risk of further damage.

(2) A person operating an unmanned aircraft system as part of an organized sport, league, or club shall comply with this section only if the accident results in one or more of the following:

(A) Injury to an individual.

(B) Damage to property that was not operated for purposes of the organized sport, league, or club.

(C) Damage to property that was not owned or controlled by a participant or organizer of the sport, league, or club.

(e) This section does not apply to a person operating an unmanned aircraft system pursuant to a current exemption, Certificate of Waiver, or authorization issued pursuant to Section 333 or 334 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95 (Feb. 12, 2014) 126 Stat. 11, 75-76), or other

commercial operator authorization granted by, or commercial operator rule of, the Federal Aviation Administration.

(f) For purposes of this section, the following definitions apply:

(1) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(2) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(g) Nothing in this section shall be construed to affect, expand, alter, or limit any requirements, duties, rights, or remedies under other law, including those pertaining to notification of, or liability for, accidents involving an unmanned aircraft system.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Assembly Bill No. 1680

Passed the Assembly May 9, 2016

Chief Clerk of the Assembly

Passed the Senate August 16, 2016

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 2016, at ____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 402 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1680, Rodriguez. Crimes: emergency personnel.

Existing law provides that every person who goes to the scene of an emergency or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or those activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

This bill would include, for purposes of these provisions, the operation or use of an unmanned aerial vehicle, remote piloted aircraft, or drone, regardless of the operator's location, in the definition of a person. By expanding the scope of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 402 of the Penal Code is amended to read:

402. (a) (1) Every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or those activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

(2) For purposes of this subdivision, a person shall include a person, regardless of his or her location, who operates or uses an unmanned aerial vehicle, remote piloted aircraft, or drone that is at the scene of an emergency.

(b) Every person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor.

(c) For the purposes of this section, an emergency includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a powerplant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

AMENDED IN ASSEMBLY MAY 19, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

AMENDED IN ASSEMBLY MARCH 8, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1820

Introduced by Assembly Member Quirk

February 8, 2016

An act to add Title 14 (commencing with Section 14350) to Part 4 of the Penal Code, relating to unmanned aircraft systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 1820, as amended, Quirk. Unmanned aircraft systems.

Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil and public unmanned aircraft systems, commonly known as drones, into the national airspace system.

This bill would generally prohibit a law enforcement agency from using an unmanned aircraft system, obtaining an unmanned aircraft system from another public agency by contract, loan, or other arrangement, or using information obtained from an unmanned aircraft system used by another public agency, except as ~~provided~~ *authorized by the bill's provisions; provisions of this bill*. The bill would make its provisions applicable to all law enforcement agencies and private entities when contracting with or acting as the agent of a law enforcement agency for the use of an unmanned aircraft system. The bill would authorize a law enforcement agency to use an unmanned aircraft system, obtain an unmanned aircraft system from another public agency by contract, loan, or other arrangement, or permit another law enforcement

agency to use an unmanned aircraft system within the agency's ~~jurisdiction~~ *jurisdiction*, if the law enforcement agency complies with specified requirements, including, among others, that before the use of an unmanned aircraft system, the law enforcement agency develops ~~and makes available to the public~~ a policy on the use of ~~an~~ *the* unmanned aircraft system, ~~system that meets specified requirements~~, as provided, and that the law enforcement agency complies with all applicable federal, state, and local law and the ~~unmanned aircraft system policy developed by the law enforcement agency pursuant to the bill's~~ *policy adopted pursuant to these provisions*. The bill would prohibit a law enforcement agency from using an unmanned aircraft system to surveil private property ~~unless, among other justifications,~~ *property, unless* the law enforcement agency obtains a search ~~warrant~~ *warrant or express permission to search the property, as specified, or an exigent circumstance exists*.

The bill would require *any* images, footage, or data obtained through the use of an unmanned aircraft system under these provisions to be permanently destroyed within one year, except as specified. Unless authorized by federal law, the bill would prohibit a person or ~~entity, including a public agency subject to these provisions, or a person or entity under contract to a public agency, for the purpose of that contract,~~ *entity* from equipping or arming an unmanned aircraft system with a weapon or other device ~~that may be carried by, or launched or directed from, an unmanned aircraft system and that is intended to cause incapacitation, bodily injury or death, or damage to, or the destruction of, real or personal property.~~ *device, as specified*. By creating a new crime, the bill would impose a state-mandated local program. The bill would also provide that specified surveillance restrictions on electronic devices apply to the use or operation of an unmanned aircraft system by a law enforcement agency.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Title 14 (commencing with Section 14350) is
2 added to Part 4 of the Penal Code, to read:

3
4 TITLE 14. UNMANNED AIRCRAFT SYSTEMS
5

6 14350. (a) A law enforcement agency shall not use an
7 unmanned aircraft system, obtain an unmanned aircraft system
8 from another public agency by contract, loan, or other arrangement,
9 or use information obtained from an unmanned aircraft system
10 used by another public agency, except as provided in this title.
11 This title shall apply to all law enforcement agencies and private
12 entities when contracting with or acting as the agent of a law
13 enforcement agency for the use of an unmanned aircraft system.

14 (b) A law enforcement agency may use an unmanned aircraft
15 system, obtain an unmanned aircraft system from another agency
16 by contract, loan, or other arrangement, or permit another law
17 enforcement agency to use an unmanned aircraft system within
18 the agency's jurisdiction if the law enforcement agency complies
19 with the requirements of this title and all applicable federal, state,
20 and local law.

21 (c) If the use of an unmanned aircraft system by a local law
22 enforcement agency may involve the collection of images, footage,
23 or data from another county, city, or city and county, the law
24 enforcement agency shall obtain a warrant based on probable cause,
25 unless either of the following applies:

26 (1) An exigent circumstance exists.

27 (2) The law enforcement agency has entered into a written,
28 public agreement with the appropriate law enforcement agency in
29 the other county, city, or city and county, and that other law
30 enforcement agency complies with paragraph ~~(5)~~ (6) of subdivision
31 (d).

32 (d) (1) If a law enforcement agency elects to use an unmanned
33 aircraft system, the law enforcement agency shall first develop
34 and make available to the public a policy on its use of the
35 unmanned aircraft system, and train the law enforcement agency's
36 officers and employees on the policy, before the use of the
37 unmanned aircraft system.

1 (2) A law enforcement agency shall use the unmanned aircraft
2 system consistent with the policy developed pursuant to this
3 subdivision.

4 ~~(3) Before finalizing the policy required by this subdivision,~~
5 ~~the law enforcement agency shall present the proposed policy at~~
6 ~~a regularly scheduled and noticed public meeting of its governing~~
7 ~~body with an opportunity for public comment.~~

8 ~~(4)~~

9 (3) The policy required by this subdivision shall specify, at a
10 minimum, all of the following:

11 (A) The circumstances under which an unmanned aircraft system
12 may or may not be used.

13 (B) The rules and processes required before the use of an
14 unmanned aircraft system.

15 (C) The individuals who may access or use an unmanned aircraft
16 system or the information collected by an unmanned aircraft system
17 and the circumstances under which those individuals may do so.

18 (D) The safeguards to protect against unauthorized use or access.

19 (E) The training required for any individual authorized to use
20 or access information collected by an unmanned aircraft system.

21 (F) The guidelines for sharing images, footage, or data with
22 other law enforcement agencies and public agencies.

23 (G) The manner in which information obtained from another
24 public agency's use of an unmanned aircraft system will be used.

25 (H) Mechanisms to ensure that the policy required by this
26 subdivision is adhered to.

27 *(4) The finalized policy developed pursuant to this subdivision*
28 *shall be predominantly posted on the law enforcement agency's*
29 *public Internet Web site.*

30 *(5) The law enforcement agency shall maintain an Internet Web*
31 *site page for public input to address civilians' concerns and*
32 *recommendations.*

33 ~~(5)~~

34 (6) If a law enforcement agency elects to permit another law
35 enforcement agency to use an unmanned aircraft system within
36 the agency's jurisdiction by means of an agreement entered into
37 pursuant to subdivision (c), the agency shall post a copy of the
38 agreement on its Internet Web site. *The agreement, at a minimum,*
39 *shall specify that the policies developed by the law enforcement*
40 *agency that owns the unmanned aircraft system will be complied*

1 *with by that law enforcement agency in the jurisdiction in which*
2 *the unmanned aircraft system is used.*

3 (e) A law enforcement agency shall not use an unmanned aircraft
4 system, obtain an unmanned aircraft system from another public
5 agency by contract, loan, or other arrangement, or use information
6 obtained from an unmanned aircraft system used by another public
7 agency to surveil private property unless the law enforcement
8 agency has obtained either of the following:

9 (1) A search warrant based on probable cause.

10 (2) The express permission of the person or entity with the legal
11 authority to authorize a search of the specific private property to
12 be subjected to surveillance.

13 (f) Notwithstanding subdivision (e), a law enforcement agency
14 may use an unmanned aircraft system to surveil private property
15 if an exigent circumstance exists, including, but not limited to,
16 either of the following circumstances:

17 (1) In emergency situations if there is an imminent threat to life
18 or of great bodily harm, including, but not limited to, fires, hostage
19 crises, barricaded suspects, “hot pursuit” situations if reasonably
20 necessary to prevent harm to law enforcement officers or others,
21 and search and rescue operations on land or water.

22 (2) To determine the appropriate response to an imminent or
23 existing environmental emergency or disaster, including, but not
24 limited to, oil spills or chemical spills.

25 14351. (a) Images, footage, or data obtained through the use
26 of an unmanned aircraft system shall be permanently destroyed
27 within one year, except that a law enforcement agency may retain
28 the images, footage, or data in both of the following circumstances:

29 (1) For training purposes. Images, footage, or data retained for
30 training purposes shall be used only for the education and
31 instruction of a law enforcement agency’s employees in matters
32 related to the mission of the law enforcement agency and for no
33 other purpose.

34 (2) For academic research or teaching purposes. Images, footage,
35 or data retained for academic research or teaching purposes shall
36 be used only for the advancement of research and teaching
37 conducted by an academic or research institution and matters
38 related to the mission of the institution and for no other purpose.

39 (b) Notwithstanding subdivision (a), a law enforcement agency
40 may retain beyond one year images, footage, or data obtained

1 through the use of an unmanned aircraft system in both of the
2 following circumstances:

3 (1) If a search warrant authorized the collection of the images,
4 footage, or data.

5 (2) If the images, footage, or data are evidence in any claim
6 filed or any pending litigation, internal disciplinary proceeding,
7 enforcement proceeding, or criminal investigation.

8 14352. Unless authorized by federal law, a person or entity,
9 including a law enforcement agency subject to Section 14350 or
10 a person or entity under contract to a law enforcement agency, for
11 the purpose of that contract, shall not equip or arm an unmanned
12 aircraft system with a weapon or other device that may be carried
13 by, or launched or directed from, an unmanned aircraft system and
14 that is intended to cause incapacitation, bodily injury or death, or
15 damage to, or the destruction of, real or personal property.

16 14353. A law enforcement agency that uses an unmanned
17 aircraft system or obtains an unmanned aircraft system from
18 another public agency by contract, loan, or other arrangement shall
19 make a good faith effort to operate the system so as to minimize
20 the collection of images, footage, or data of persons, places, or
21 things not specified with particularity in the warrant authorizing
22 the use of an unmanned aircraft system, or, if no warrant was
23 obtained, for purposes unrelated to the justification for the
24 operation.

25 14354. (a) This title is not intended to conflict with or
26 supersede federal law, including rules and regulations of the
27 Federal Aviation Administration.

28 (b) A local legislative body may adopt more restrictive policies
29 on the acquisition, use, or retention of unmanned aircraft systems
30 by a law enforcement agency.

31 14355. Except as provided in this title, the surveillance
32 restrictions on electronic devices described in Chapter 1.5
33 (commencing with Section 630) of Title 15 of Part 1 shall apply
34 to the use or operation of an unmanned aircraft system by a law
35 enforcement agency.

36 14356. For the purposes of this title, the following definitions
37 shall apply:

38 (a) "Criminal intelligence" means information compiled,
39 analyzed, or disseminated in an effort to anticipate, prevent,
40 monitor, or investigate criminal activity.

1 (b) “Law enforcement agency” means the Attorney General,
2 each district attorney, and each agency of the state or political
3 subdivision of the state authorized by statute to investigate or
4 prosecute law violators and that employs peace officers.

5 (c) “Surveil” means the purposeful observation of a person or
6 private property with the intent of gathering criminal intelligence.

7 (d) “Unmanned aircraft system” means an unmanned aircraft
8 and associated elements, including communication links and the
9 components that control the unmanned aircraft, that are required
10 for the pilot in command to operate safely and efficiently in the
11 national airspace system.

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

Assembly Bill No. 2148

Passed the Assembly August 30, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 2016, at ____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 3003.5 of, and to add Sections 1746 and 2001.5 to, the Fish and Game Code, and to add Article 4 (commencing with Section 5085) to Chapter 1.2 of Division 5 of the Public Resources Code, relating to unmanned aircraft systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2148, Holden. Unmanned aircraft systems: operation or use within or over state-managed lands or waters.

Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil and public unmanned aircraft systems, commonly known as drones, into the national airspace system. Existing law establishes both the Department of Fish and Wildlife and the Department of Parks and Recreation in the Natural Resources Agency. A violation of any rule or regulation made or adopted by the Department of Fish and Wildlife pursuant to the Fish and Game Code is a misdemeanor. A violation of the rules and regulations established by the Department of Parks and Recreation to protect the state park system is punishable as either a misdemeanor or an infraction.

This bill would make it unlawful for any person to operate an unmanned aircraft system in, or fly an unmanned aircraft system over, lands or waters managed by the Department of Fish and Wildlife and Department of Parks and Recreation, except as authorized or unless exempted from this prohibition. The bill would authorize the consideration of certain factors when reviewing a request for authorization for the use of an unmanned aircraft system.

The bill would also make it unlawful to use an unmanned aircraft system to take, or assist in the take of, fish or wildlife for sport purposes, including, but not limited to, the use of unmanned aircraft systems for scouting purposes. The bill would provide that an unmanned aircraft system is a motorized air vehicle within the meaning of a certain existing prohibition and, thus, under that prohibition may not be used to pursue, drive, or herd any bird or

mammal, except as specified, including, among other things, specified permits and notices.

Because violations of the provisions of the bill would be crimes, the bill would impose a state-mandated local program.

The bill would provide that certain of its provisions are severable and do not apply to the operation of an unmanned aircraft system by a state agency within or over these managed lands or waters, or to any person whom the Federal Aviation Administration authorizes to operate an unmanned aircraft system for a commercial purpose and who operates it in a manner that complies with that authorization.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that the state fully cooperate with the Federal Aviation Administration regarding the appropriate division of responsibility for the regulation of unmanned aircraft systems between the federal and state governments so that the state may reserve and fully exercise any and all appropriate authority pursuant to federal laws as they exist in their current form and as they may be further amended hereafter.

SEC. 2. Section 1746 is added to the Fish and Game Code, to read:

1746. (a) It shall be unlawful for any person to operate an unmanned aircraft system in, or fly an unmanned aircraft system over, the department's managed lands or waters, except as authorized by the department, or unless otherwise exempted from this section.

(b) The prohibition in subdivision (a) does not apply to the operation of an unmanned aircraft system by a state agency within or over department-managed lands or waters, or to any person whom the Federal Aviation Administration, whether by permit, license, rule, or regulation, authorizes to operate an unmanned aircraft system for a commercial purpose and that is operated in a

manner that complies with that authorization and the applicable regulations of the commission.

(c) The prohibition in subdivision (a) does not apply to legitimate news-gathering activity by a person described in Section 1070 of the Evidence Code.

(d) The commission may draft regulations consistent with this section and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In drafting the regulations, the commission shall maintain the authority to limit or revoke approved requests for the use of an unmanned aircraft system due to changing natural conditions or land management requirements.

(e) In reviewing a request to authorize the use of an unmanned aircraft system the department may, and in drafting the regulations authorized pursuant to subdivision (d), the commission may, consider any of the following:

(1) Protection of wildlife and visitors from harassment or disturbance.

(2) Harm to sensitive species, including those listed as threatened or endangered or that have other protected status.

(3) Disruption to wildlife at times of the year when incidents may have adverse effects, including, but not limited to, nesting, breeding, gestation, and migration seasons.

(4) The natural, cultural, and historic value of the department-managed lands.

(5) The purpose of the department-managed lands.

(6) Operation of an unmanned aircraft system in a careless or reckless manner, including an operator's failure to adhere to visual line-of-sight practices.

(7) De minimis access by adjacent landowners for bona fide agricultural purposes.

(8) The appropriate use of unmanned aircraft systems for conservation and scientific research purposes.

(9) Authorization for pursuit and take for depredation purposes pursuant to Sections 3003.5 and 4181.

(10) Other special purposes as approved by the department.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Section 2001.5 is added to the Fish and Game Code, to read:

2001.5. It shall be unlawful to use an unmanned aircraft system to take, or assist in the take of, fish or wildlife for sport purposes, including, but not limited to, the use of unmanned aircraft systems for scouting purposes.

SEC. 4. Section 3003.5 of the Fish and Game Code is amended to read:

3003.5. It is unlawful to pursue, drive, or herd any bird or mammal with any motorized water, land, or air vehicle, including, but not limited to, a motor vehicle, airplane, unmanned aircraft system, powerboat, or snowmobile, except in any of the following circumstances:

(a) On private property by the landowner or tenant thereof to haze birds or mammals for the purpose of preventing damage by that wildlife to private property.

(b) Pursuant to a permit from the department issued under regulations as the commission may prescribe. With respect to unmanned aircraft systems, this subdivision shall include a lawful depredation permit issued by the department, notice to the department of the intended use of an unmanned aircraft system, approval from the department, and notice to the landowner.

(c) In the pursuit of agriculture.

SEC. 5. Article 4 (commencing with Section 5085) is added to Chapter 1.2 of Division 5 of the Public Resources Code, to read:

Article 4. Unmanned Aircraft Systems

5085. (a) It shall be unlawful for any person to operate an unmanned aircraft system in, or fly an unmanned aircraft system over, Department of Parks and Recreation managed lands or waters, except as authorized by the department, or unless otherwise exempted from this article.

(b) The prohibition in subdivision (a) does not apply to the operation of an unmanned aircraft system by a state agency within or over department-managed lands or waters, or to any person whom the Federal Aviation Administration, whether by permit, license, rule, or regulation, authorizes to operate an unmanned aircraft system for a commercial purpose and that is operated in a

manner that complies with that authorization and the applicable regulations of the department.

(c) The prohibition in subdivision (a) does not apply to legitimate news-gathering activity by a person described in Section 1070 of the Evidence Code.

(d) The department may draft regulations consistent with this section and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In drafting the regulations, the department shall maintain the authority to limit or revoke approved requests for the use of an unmanned aircraft system due to changing natural conditions or land management requirements.

(e) In reviewing a request to use an unmanned aircraft system or in drafting the regulations authorized pursuant to subdivision (d), the department may consider any of the following:

(1) Protection of wildlife and visitors from harassment or disturbance.

(2) Harm to sensitive species, including those listed as threatened or endangered or that have other protected status.

(3) Disruption to wildlife at times of the year when incidents may have adverse effects, including, but not limited to, nesting, breeding, gestation, and migration seasons.

(4) The natural, cultural, and historic value of the department-managed lands.

(5) The purpose of the department-managed lands.

(6) Operation of an unmanned aircraft system in a careless or reckless manner, including an operator's failure to adhere to visual line-of-sight practices.

(7) De minimis access by adjacent landowners for bona fide agricultural purposes.

(8) The appropriate use of unmanned aircraft systems for conservation and scientific research purposes.

(9) Other special purposes as approved by the department.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Assembly Bill No. 2320

Passed the Assembly August 24, 2016

Chief Clerk of the Assembly

Passed the Senate August 18, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 273.6, 402, 646.9, and 4573.5 of, and to add Section 290.97 to, the Penal Code, relating to unmanned aircraft systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2320, Calderon. Unmanned aircraft systems.

(1) Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil and public unmanned aircraft systems, commonly known as drones, into the national airspace system.

Existing state law generally authorizes a court to issue an order for the protection of certain persons, including, among others, the victims of domestic violence, elder and dependent adult abuse, workplace violence, and civil harassment. Under existing law, an intentional and knowing violation of those types of protective orders is a misdemeanor. If the violation results in physical injury, or occurs within specified time periods of a previous violation, existing law imposes additional penalties. Existing law also makes the crime of stalking another person, as defined, punishable as a misdemeanor or felony. Existing law makes it a felony to commit that offense when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior.

This bill would specifically prohibit a person who is prohibited from coming within a specified distance of another person, from operating an unmanned aircraft system in a way that causes an unmanned aircraft, as those terms are defined, to fly within the prohibited distance of the other person or from capturing images of the other person by using an unmanned aircraft system. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing law requires a person who has been convicted of specified sex offenses to register with local law enforcement authorities as a sex offender.

This bill would specifically authorize a judge to order a person required to register pursuant to those provisions for an offense committed on or after January 1, 2017, to not operate an unmanned

aircraft system if the judge finds that restriction is in the public interest. Because a violation of that provision would be a crime, the bill would impose a state-mandated local program.

(3) Existing law provides that every person who goes to the scene of an emergency or stops at the scene of an emergency for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or activities, and thereby impedes police officers, firefighters, emergency medical or other emergency personnel, or military personnel in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

This bill would also make the operation or use of an unmanned aircraft system, that is at the scene of an emergency, regardless of the operator's location, punishable as a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(4) Existing law makes a person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, guilty of the crime of stalking, punishable as a misdemeanor or a felony.

This bill would specifically include, for purposes of these provisions, the operation or use of an unmanned aircraft system in the definition of a person.

(5) Existing law makes a person who knowingly brings into certain correctional facilities or certain other places where prisoners or inmates of those facilities are located, any alcoholic beverage, any drugs, other than controlled substances, in any manner, shape, form, dispenser, or container, or any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming any drug other than controlled substances, without having authority so to do by the rules of the correctional facility, guilty of a felony.

This bill would specifically include, for purposes of these provisions, the operation or use of an unmanned aircraft system in the definition of a person.

(6) The bill would make related legislative findings and declarations.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Federal Aviation Act of 1958 established the Federal Aviation Administration (FAA) and made the FAA responsible for the control and use of navigable airspace within the United States.

(b) The FAA regulates unmanned aircraft systems, also known as drones.

(c) Public entities, including law enforcement agencies, firefighter units, border and port patrols, disaster relief workers, search and rescue personnel, qualifying public universities, military training facilities, and other government operational mission units, may operate unmanned aircraft systems by applying for a Certificate of Waiver or Authorization from the FAA.

(d) The FAA is in the process of developing rules that are intended to safely integrate small unmanned aircraft systems into the national airspace system and that, following issuance of a notice of proposed rulemaking and public comment period, are expected to be released in 2016 or 2017.

(e) The small unmanned aircraft system rules are anticipated to be similar to the current hobbyist rules for operations of model unmanned aircraft systems that limit the area of operation to low-risk and controlled environments and the size of the system to less than 55 pounds.

(f) While the FAA is developing the small unmanned aircraft system rules, private commercial entities on a

company-by-company basis may apply to the FAA for a Section 333 exemption from the current rules for manned aircraft by showing that the entity operates with at least an equivalent level of safety. The FAA has granted over 1,900 Section 333 exemptions to date for the commercial operation of unmanned aircraft systems in the photography, film, utilities, energy, infrastructure, real estate, agricultural, and construction industries.

(g) In addition to being used in military training and operations and public safety areas, unmanned aircraft systems may be used in a wide variety of activities, including oil and natural gas pipeline inspection, transportation, natural disaster aid, search and rescue, precision agriculture, natural resource and environmental protection, bridge and infrastructure inspection, public utility support, construction and building inspection, surveying, golf course marketing, wind turbine inspection, realtor marketing photography, and prison monitoring.

(h) While the public has expressed concerns with the operation of unmanned aircraft systems, including privacy and safety issues, there are benefits that may be realized by the state, including the state's various industry sectors, from conducting research on unmanned aircraft systems in the state and developing, manufacturing, and operating unmanned aircraft systems in the state.

(i) The FAA has warned that a "patchwork quilt" of inconsistent regulation raises substantial safety concerns, impedes innovation, and makes it virtually impossible for end-users to understand the rules for operating unmanned aircraft systems.

SEC. 2. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) A violation of subdivision (a) that results in physical injury, shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment.

However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or “a credible threat” of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(e) A subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons

stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under Section 29825.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the

defendant's ability to pay. An order to make payments to a battered women's shelter shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(j) (1) This subdivision applies to a person who is both of the following:

(A) The person is subject to a protective order, as defined in Section 6218 of the Family Code, or a protective order issued pursuant to this code, Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code.

(B) The person is prohibited by the protective order described in subparagraph (A) from coming within a specified distance of another person.

(2) A person described in paragraph (1) shall not do either of the following:

(A) Operate an unmanned aircraft system in a way that causes an unmanned aircraft to fly within the prohibited distance of the other person.

(B) Capture images of the other person by using an unmanned aircraft system.

(3) A violation of paragraph (2) is a violation of the protective order.

(4) For the purposes of this subdivision, the following definitions apply:

(A) "Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) "Unmanned aircraft system" means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the

unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

SEC. 3. Section 290.97 is added to the Penal Code, to read:

290.97. (a) A judge may order a person required to register pursuant to this chapter for an offense committed on or after January 1, 2017, to not operate an unmanned aircraft system if the judge finds that restriction is in the public interest.

(b) For purposes of this section, both of the following definitions apply:

(1) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(2) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

SEC. 4. Section 402 of the Penal Code is amended to read:

402. (a) (1) A person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person’s employment to view that scene or those activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

(2) For purposes of this subdivision, a person includes a person, regardless of his or her location, who operates or uses an unmanned aircraft system that is at the scene of an emergency. For purposes of this paragraph, both of the following definitions apply:

(A) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to,

communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) A person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor.

(c) For the purposes of this section, an emergency includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a powerplant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

SEC. 5. Section 646.9 of the Penal Code is amended to read:

646.9. (a) (1) A person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(2) For purposes of this subdivision, a person includes a person who operates or uses an unmanned aircraft system. For purposes of this paragraph, both of the following definitions apply:

(A) "Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) "Unmanned aircraft system" means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a)

against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(g) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”

(h) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 6. Section 4573.5 of the Penal Code is amended to read:

4573.5. (a) (1) A person who knowingly brings into any state prison or other institution under the jurisdiction of the Department

of Corrections, or into any prison camp, prison farm, or any other place where prisoners or inmates of these institutions are located under the custody of prison or institution officials, officers, or employees, or into any county, city and county, or city jail, road camp, farm or any other institution or place where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any institution or place, any alcoholic beverage, any drugs, other than controlled substances, in any manner, shape, form, dispenser, or container, or any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming any drug other than controlled substances, without having authority so to do by the rules of the Department of Corrections, the rules of the prison, institution, camp, farm, place, or jail, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony.

(2) For purposes of this subdivision, a person includes a person who operates or uses an unmanned aircraft system. For purposes of this paragraph, both of the following definitions apply:

(A) "Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) "Unmanned aircraft system" means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

ATTACHMENT 5

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of September 1, 2016

Title 14 → Chapter I → Subchapter F → Part 91 → Subpart B → §91.145

Title 14: Aeronautics and Space
PART 91—GENERAL OPERATING AND FLIGHT RULES
Subpart B—Flight Rules

§91.145 Management of aircraft operations in the vicinity of aerial demonstrations and major sporting events.

(a) The FAA will issue a Notice to Airmen (NOTAM) designating an area of airspace in which a temporary flight restriction applies when it determines that a temporary flight restriction is necessary to protect persons or property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft in the vicinity of an aerial demonstration or major sporting event. These demonstrations and events may include:

- (1) United States Naval Flight Demonstration Team (Blue Angels);
- (2) United States Air Force Air Demonstration Squadron (Thunderbirds);
- (3) United States Army Parachute Team (Golden Knights);
- (4) Summer/Winter Olympic Games;
- (5) Annual Tournament of Roses Football Game;
- (6) World Cup Soccer;
- (7) Major League Baseball All-Star Game;
- (8) World Series;
- (9) Kodak Albuquerque International Balloon Fiesta;
- (10) Sandia Classic Hang Gliding Competition;
- (11) Indianapolis 500 Mile Race;

(12) Any other aerial demonstration or sporting event the FAA determines to need a temporary flight restriction in accordance with paragraph (b) of this section.

(b) In deciding whether a temporary flight restriction is necessary for an aerial demonstration or major sporting event not listed in paragraph (a) of this section, the FAA considers the following factors:

- (1) Area where the event will be held.
- (2) Effect flight restrictions will have on known aircraft operations.
- (3) Any existing ATC airspace traffic management restrictions.
- (4) Estimated duration of the event.
- (5) Degree of public interest.
- (6) Number of spectators.
- (7) Provisions for spectator safety.
- (8) Number and types of participating aircraft.

(9) Use of mixed high and low performance aircraft.

(10) Impact on non-participating aircraft.

(11) Weather minimums.

(12) Emergency procedures that will be in effect.

(c) A NOTAM issued under this section will state the name of the aerial demonstration or sporting event and specify the effective dates and times, the geographic features or coordinates, and any other restrictions or procedures governing flight operations in the designated airspace.

(d) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft or device, or engage in any activity within the designated airspace area, except in accordance with the authorizations, terms, and conditions of the temporary flight restriction published in the NOTAM, unless otherwise authorized by:

(1) Air traffic control; or

(2) A Flight Standards Certificate of Waiver or Authorization issued for the demonstration or event.

(e) For the purpose of this section:

(1) *Flight restricted airspace area for an aerial demonstration*—The amount of airspace needed to protect persons and property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft will vary depending on the aerial demonstration and the factors listed in paragraph (b) of this section. The restricted airspace area will normally be limited to a 5 nautical mile radius from the center of the demonstration and an altitude 17000 mean sea level (for high performance aircraft) or 13000 feet above the surface (for certain parachute operations), but will be no greater than the minimum airspace necessary for the management of aircraft operations in the vicinity of the specified area.

(2) *Flight restricted area for a major sporting event*—The amount of airspace needed to protect persons and property on the surface or in the air, to maintain air safety and efficiency, or to prevent the unsafe congestion of aircraft will vary depending on the size of the event and the factors listed in paragraph (b) of this section. The restricted airspace will normally be limited to a 3 nautical mile radius from the center of the event and 2500 feet above the surface but will not be greater than the minimum airspace necessary for the management of aircraft operations in the vicinity of the specified area.

(f) A NOTAM issued under this section will be issued at least 30 days in advance of an aerial demonstration or a major sporting event, unless the FAA finds good cause for a shorter period and explains this in the NOTAM.

(g) When warranted, the FAA Administrator may exclude the following flights from the provisions of this section:

(1) Essential military.

(2) Medical and rescue.

(3) Presidential and Vice Presidential.

(4) Visiting heads of state.

(5) Law enforcement and security.

(6) Public health and welfare.

[Doc. No. FAA-2000-8274, 66 FR 47378, Sept. 11, 2001]

Need assistance?



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Selected NOTAMs

The following NOTAM list was selected by the user from a previous request. This list may not reflect all active NOTAMs for any of the below locations.

Data Current as of: Mon, 05 Sep 2016 02:10:00 UTC

KZLA LOS ANGELES (ARTCC)PALMDALE, CA. ()

FDC 6/6533 - CA..AIRSPACE LOS ANGELES, SAN BERNARDINO, CA..TEMPORARY FLIGHT RESTRICTIONS.

PURSUANT TO 14 CFR SECTION 91.145, MANAGEMENT OF AIRCRAFT OPERATIONS IN THE VICINITY OF AERIAL DEMONSTRATIONS AND MAJOR SPORTING EVENTS, AIRCRAFT OPERATIONS ARE PROHIBITED WI AN AREA DEFINED AS 4NM RADIUS OF 340553N1171331W (PDZ040018.6) SFC-8000FT EXCLUDING AN AREA DEFINED AS 1.4NM RADIUS OF 340507N1170847W (PDZ047021.6) SFC-3100FT.

EFFECTIVE:

1609092130-1609100030

1609101730-1609102030

1609102230-1609110130 DUE TO AEROBATIC DEMONSTRATIONS DURING THE AIR FEST AT SAN BERNARDINO INTERNATIONAL AIRPORT. UNLESS AUTHORIZED BY ATC. GALE RAWITZER, PHONE 831-594-4712, IS THE POINT OF CONTACT. THE SOUTHERN CALIFORNIA /SCT/ TRACON, PHONE 858-537-5900, IS THE COORDINATION FACILITY. 09 SEP 21:30 2016 UNTIL 11 SEP 01:30 2016. CREATED: 01 SEP 22:34 2016

KZOA OAKLAND (ARTCC) FREMONT,CA. ()

FDC 6/6535 - NV..AIRSPACE OAKLAND, RENO, NV..TEMPORARY FLIGHT RESTRICTION.

PURSUANT TO 14 CFR SECTION 91.145, MANAGEMENT OF AIRCRAFT OPERATIONS IN THE VICINITY OF AERIAL DEMONSTRATIONS AND MAJOR SPORTING EVENTS, AIRCRAFT OPERATIONS ARE PROHIBITED WI AN AREA DEFINED AS 393312N1195104W THEN COUNTERCLOCKWISE ON A 7NM ARC CENTERED ON 394003N1195241W TO 394500N1195909W TO 394500N1200000W TO 394414N1200000W THEN COUNTERCLOCKWISE ON A 7NM ARC CENTERED ON 394003N1195241W TO 393557N1200000W TO 393104N1200000W TO 393030N1195622W TO 393116N1195225W TO POINT OF ORIGIN SFC-17999FT

EFFECTIVE:

1609151800-1609152330

1609162000-1609162230

1609172000-1609172230

1609181945-1609182230 DUE TO HIGH SPEED AEROBATIC DEMONSTRATIONS DURING THE RENO AIR RACES. UNLESS AUTHORIZED BY ATC. RACE CONTROL SUPERVISOR, PHONE 775-972-2613, IS THE POINT OF CONTACT. THE NORTHERN CALIFORNIA /NCT/ TRACON, PHONE 916-366-4080, IS THE COORDINATION FACILITY. 15 SEP 18:00 2016 UNTIL 18 SEP 22:30 2016. CREATED: 01 SEP 22:40 2016

FDC 6/6534 - NV..AIRSPACE OAKLAND, RENO, NV..TEMPORARY FLIGHT RESTRICTION.

PURSUANT TO 14 CFR SECTION 91.145, MANAGEMENT OF AIRCRAFT OPERATIONS IN THE VICINITY OF AERIAL DEMONSTRATIONS AND MAJOR SPORTING EVENTS, AIRCRAFT OPERATIONS ARE PROHIBITED WI AN AREA DEFINED AS 393600N1194800W TO 393500N1194800W TO 393324N1195056W TO 393116N1195225W TO 393030N1195622W TO 393104N1200000W TO 393400N1200000W TO 393240N1195400W TO POINT OF ORIGIN SFC-9500FT

EFFECTIVE:

1609111730-1609120030

1609121500-1609130030

1609131500-1609140030

1609141500-1609150030
1609151500-1609151759
1609152331-1609160030
1609161500-1609161959
1609162231-1609170030
1609171500-1609171959
1609172231-1609180030

END PART 1 OF 2. 11 SEP 17:30 2016 UNTIL 19 SEP 00:30 2016. CREATED: 01 SEP 22:38 2016

FDC 6/6534 - NV..AIRSPACE OAKLAND, RENO, NV..TEMPORARY
FLIGHT

1609181500-1609181944

1609182231-1609190030 DUE TO HIGH SPEED AIRCRAFT DURING THE RENO AIR RACES. UNLESS AUTHORIZED BY ATC. RACE CONTROL SUPERVISOR, PHONE 775-972-2613, IS THE POINT OF CONTACT. THE NORTHERN CALIFORNIA /NCT/ TRACON, PHONE 916-366-4080, IS THE COORDINATION FACILITY.

END PART 2 OF 2. 11 SEP 17:30 2016 UNTIL 19 SEP 00:30 2016. CREATED: 01 SEP 22:38 2016

Number of NOTAMs selected: 4 End of Report

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City of Huntington Beach

September 6, 2016

DRONE ORDINANCE

ITEM #20

Unmanned Aircraft Systems Drones

- Over 1 million drones sold in US
- Estimates of 7 million by 2020
- Recreational and commercial users throughout Huntington Beach
- Orange County Grand Jury report

Need for Ordinance

- Multiple close calls with aircraft, including HBPD helicopter
- Dangerous drone crashes into populated areas during special events
- FAA rules evolving with little enforcement away from airports
- Privacy issues reported

Ordinance Development

- Multiple City staff from several departments participated in workgroup
- Hours of legal research by City Attorney's Office
- FAA, other agencies, and private companies consulted

Ordinance

- ◎ Many provisions mirror FAA Rules
 - Requires FAA registration
 - Must be marked with registration number
 - Must maintain line of sight

Prohibited Operations (partial)

- Cannot fly within 2,000 feet of City heliport
- No fly zone around special event
- Less than 300 feet over private property without permission
- In airspace where there is an expectation of privacy

Prohibited Operations (partial)

- Record image of person readily identifiable when person has expectation of privacy or is on private property
- City notification required by manner to be prescribed in the future

Questions?

Esparza, Patty

From: Dombo, Johanna
Sent: Friday, September 02, 2016 8:19 AM
To: Agenda Comment
Cc: Fikes, Cathy; CITY COUNCIL
Subject: FW: Agenda Item 21 - September 6, 2016 City Council Meeting

AGENDA COMMENT

From: Kim Kramer [mailto:kim@e-mailcom.com]
Sent: Friday, September 02, 2016 6:21 AM
To: CITY COUNCIL
Cc: Gates, Michael; Wilson, Fred; Handy, Robert
Subject: Agenda Item 21 - September 6, 2016 City Council Meeting

Dear City Council,

I am writing in support of agenda item 21 which is the next step in creating a Community Prosecutor position for the City of Huntington Beach. And once again, I wish to express my appreciation to City Attorney Michael Gates for taking this proactive approach in dealing with misdemeanor crimes in our City. As a downtown resident, I have seen first hand how these types of crimes have negatively and seriously impacted the downtown economy and our residential quality of life. I urge you to vote YES on agenda item 21 and let's continue to move forward as quickly as possible to establish a Community Prosecutor position for the City of Huntington Beach.

Thank you,

Kim Kramer
Sent from my iPad

**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 9-6-16

Agenda Item No.: 21

City of Huntington Beach

September 6, 2016

COMMUNITY PROSECUTOR

AGENDA ITEM #21

History on Plan for Prosecutor

- ◎ Orange County District Attorney
 - Charged with Prosecuting Felony and Misdemeanor referrals from City of Huntington Beach

History on Plan for Prosecutor

- Passage of Prop 47 and State's early Release from Incarceration Program
 - Increase in number of Misdemeanors that were formerly Felonies
 - Certain key Misdemeanors recurring throughout City, downtown area

Move to Increase Public Safety

- ◎ Key Crimes in City of Huntington Beach
 - Property crimes,
 - Public intoxication,
 - Theft,
 - Fraud,
 - Shoplifting,
 - Drug possession,
 - Trespassing,
 - Urinating in Public, etc.

The Call for a Community Prosecutor

- ◎ Huntington Beach City Charter, Section 309
 - “The City Attorney also prosecutes... violation[s] of the provisions of the City Charter or Huntington Beach Municipal Code, and such State misdemeanors as the City has the power to prosecute.”
- ◎ CA Government Code, Section 41803.5(a):
 - “With the consent of the district attorney... the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law.”

The Call for a Community Prosecutor

- OCDA, Tony Rackauckas Provided Authority
 - In accordance with the provisions of Government Code Sections 41803.5 and 72193, and Section 309 of the Huntington Beach City Charter, the OCDA hereby consents to the prosecution by the Huntington Beach City Attorney of the following: any misdemeanor crimes arising out of violations of California State law that are committed within the City of Huntington Beach.

The Plan

- To add a Community Prosecutor to the City Attorney's Office
- Full-time, In-House, At-Will, Contract Position
- Estimated \$100,000/annum salary, with \$145,000 estimated budget impact
- Handle rolling average of 50-100 criminal cases, civil nuisance/fraud cases

Remaining Steps in Process for Council

- Adopt Budget, which includes the funding for Community Prosecutor in the City Attorney's Office
- Adopt Ordinance to create the "Community Prosecutor" position
- Delegate Authority to Negotiate/Execute Employment Contract for Prosecutor

Questions?