

Memorandum

To: Board of Directors
Livermore Area Recreation and Park District

From: Andrew Shen, Legal Counsel

Date: May 3, 2024

Re: Amendments to Ordinance 8, Establishing Rules and Regulations
Regarding Uses of District Facilities and Parks

I write to provide an update regarding the proposed amendments to Ordinance 8, establishing rules and regulations regarding uses of Livermore Area Recreation and Park District (“District”) facilities and parks.

At its March 27, 2024 meeting, the Board of Directors (“Board”) considered the proposed amendments. As we discussed, the amendments largely seek to incorporate the rules and regulations that the California Department of Parks and Recreation applies to its facilities and properties, *see* California Code of Regulations, Title 14, Section 4300 *et seq.* At that meeting, the Board inquired about two issues that I will address further below: (1) regulation of drones; and (2) penalties for violations.

As requested, I have also attached a “clean” version of Ordinance 8, accepting the proposed changes, to aid review of this proposal. This version of Ordinance 8 only accepts the proposals previously reviewed by the Board at its March 27, 2024 meeting – it does not yet incorporate potential changes regarding regulation of drones or penalties for violations.

1. Regulation of Drones

a. The current approach of Ordinance 8

As we discussed at the March meeting, the current version of Ordinance 8 prohibits drones. The current section 506(a) provides:

It shall be unlawful to operate model crafts of any kind or description, whether powered or unpowered, that utilize an autonomous control system (onboard computer), a remote control guidance system or attached line operating system, on or over any District Facility or Parkland. This includes but is not limited to Unmanned Aerial Vehicles, drones, boats and automobiles.

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b. Federal Aviation Administration (“FAA”) guidance

Since the District’s adoption of this provision, the FAA has clarified the extent to which state and local governments may regulate the use of drones. A copy of the FAA’s July 14, 2023 guidance is attached.¹

For the purposes of the District’s potential rules, the FAA’s guidance outlines the following areas of permissible regulation, among others:

- privacy-related restrictions that apply to lower altitudes over facilities where people could likely have an expectation of privacy—such as parks or schools—would likely be permissible because of its lesser impact so long as the restrictions are limited to the lower altitudes and still permitted overflight by drones;
- laws aimed at objectives other than aviation safety or airspace efficiency, such as those that address privacy and voyeurism; and
- laws that regulate drone takeoff and landing areas.

Note that under 14 C.F.R. § 107.51, the FAA limits the altitude of drones to either 400 feet above ground level or 400 feet above a structure.

c. Options and Alternatives

Given the above, the Board may consider the adoption of a modified rule regarding drones that do not prohibit their use altogether but abides by the FAA’s guidance. Such a rule could prohibit:

- the flight of drones within 200 feet of any District facility or park;
- the use of drones to capture images or video of any person on District property, without that person’s written permission; and
- using any District property as takeoff and landing areas for drones.

Further, the Board could require drone operators to comply with the FAA’s rules for the operation of drones² and explicitly authorize District staff to use drones for official purposes, such as for the inspection or monitoring of District facilities.

¹ This guidance refers to drones as “Unmanned Aircraft Systems.”

² The FAA has established separate rules for recreational versus non-recreational operation of drones. Recreational operators must fly drones at or below 400 feet, keep drones within their visual line of sight,

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2. Penalties for Violations

a. The current approach of Ordinance 8

The current version of Ordinance 8 generally penalizes violations as infractions, unless the violation of a provision is specifically identified as a misdemeanor. Violations of the following current provisions can currently be prosecuted as misdemeanors:

- §303(b), failure to obey an evacuation order
- §501(d), dumping into/near water body
- §501(e), depositing commercial quantities of waste
- §514(a), reckless behavior
- §517(a), possession/use of firearm
- §518(c), failure to obey an evacuation order due to fire hazard
- §520(a), possession/use of fireworks
- §521(a), vandalism
- §704(a), failure to obey authorized personnel/disturbing the peace
- §705(a), failure to obey ejection order
- §802(l), reckless operation of motor vehicle
- §1003(j), domestic animal abandonment
- §1003(n), vicious animal
- §1003(o), training animal for attack
- §1101(a), harming wildlife
- §1101(f), releasing wildlife
- §1102(a), harming/collecting flora
- §1103(a), harming/collecting geological features
- §1104(a), harming/collecting cultural artifact

b. State law

The State of California treats violations of rules and regulations established by the Department of Parks and Recreation as “wobblers” – either a misdemeanor or infraction. Public Resources Code Section 5008 provides:

(d) Any person who violates the rules and regulations established by the department is guilty of either a misdemeanor, punishable by imprisonment in the county jail not

and cannot interfere with aircraft or airports. Recreational operators must also pass a safety test and register their drones with the FAA.

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exceeding 90 days, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment, or an infraction punishable by a fine of not more than one thousand dollars (\$1,000).

For special districts, Public Resources Code Section 5786.17 similarly allows violations of its rules to constitute either a misdemeanor or infraction:

- (a) Violation of any rule, regulation, or ordinance adopted by a board of directors is a misdemeanor punishable pursuant to Section 19 of the Penal Code.
- (b) Any citation issued by a district for violation of a rule, regulation, or ordinance adopted by a board of directors may be processed as an infraction pursuant to subdivision (d) of Section 17 of the Penal Code.

...

c. Options and Alternatives

The version of Ordinance 8 presented to the Board in March preliminarily identified violations as infractions only, and the Board could proceed with that approach. But the Board could explore other options.

For example, the Board may wish to – as set forth in the current Ordinance 8 – specifically identify provisions that may be prosecuted as a misdemeanor. Or the Board may mirror State law by treating violations as “wobblers” that could be either a misdemeanor or infraction.

Thank you for your consideration. I look forward to your comments and direction at the upcoming May 9, 2024, Board meeting.

Attachment 1: Proposed Amendments to Ordinance 8 (clean)
Attachment 2: Federal Aviation Administration, Updated Fact Sheet (2023) on State and Local Regulation of Unmanned Aircraft Systems (UAS), July 14, 2023

Ordinance Amending Ordinance 8, Establishing Rules and Regulations Concerning Use of Livermore Area Recreation and Park District Facilities and Parklands, to Incorporate Standards Applied by the California State Department of Parks and Recreation (California Code of Regulations, Title 14, Section 4300 et seq.).

The Board of Directors for the Livermore Area Recreation and Park District ordains as follows:

**Livermore Area Recreation and Park District
Rules and Regulations (Ordinance 8)**

In order that residents of the Livermore Area Recreation and Park District (LARPD or District) may use and receive maximum benefit from District facilities, parklands and programs, the Board of Directors of the Livermore Area Recreation and Park District hereby establishes the following rules and regulations concerning use of District facilities and parklands.

Chapter 100 – General Provisions

Section 101 – Authority

§101(a) Authority: All sections of this Ordinance are adopted pursuant to Section 5780, et seq., of the Public Resources Code of the State of California and apply to all District facilities and parklands. A title, where used, does not limit the language of a section.

Section 102 - Exceptions

§102(a) The following regulations shall apply to all persons except:

(1) They shall not apply to employees of the District, District volunteers, or to its concessionaires or their employees engaged in and acting within the scope of their authorized duties and concession activities. However, District employees, District volunteers and District concessionaires and their employees shall abide by the laws of the State of California and all applicable county and/or municipal ordinances.

(2) They shall not apply to persons possessing a special use permit or contract, granted by the District, when such permits or contracts specifically suspend a section or sections of the regulations, providing said permittees are in compliance with all conditions of the permit or contract and all other regulations.

(3) They shall not apply to lease holders where such use is expressly provided for in the terms and conditions of their leases and where they are in compliance with all other regulations.

(4) They shall not apply to public safety employees of Federal, State, County or Municipal governments acting within the scope of their authorized duties and with the knowledge of the District.

Section 103 – Application

- §103(a)** Special regulations enacted for an area or a subject do not preclude the application of general regulations unless expressly so indicated.
- §103(b)** Any judge or commissioner of a judicial District lying wholly or in part within the District, shall have jurisdiction over all prosecutions under this article for violations adopted by the Board of Directors.
- §103(c)** All persons entering upon District facilities or parklands shall abide by the rules and regulations of the District, the laws of the State of California and all applicable County and/or municipal laws or ordinances that pertain. In District Facilities and Parklands, District rules and regulations will supersede all other local ordinances when they are in conflict, as per section 5786.1(j) of the Public Resources Code.
- §103(d)** Parents or guardians shall be held responsible for the acts of minor children in their custody or control. Damage to property of the District shall be the financial responsibility of the minor child(ren)'s parents or guardians as set forth in the Civil Code 1714.1.
- §103(e)** The District or its authorized representatives shall diligently enforce the provisions of these regulations and may withdraw or revoke the privilege of access to District parklands or the use of any District facility for reasons of safety, security or resource protection, or from any person or group violating any provision of these regulations or any other law or ordinance.
- §103(f)** Uniformed District Rangers are empowered to enforce all District rules and regulations and all laws of the State of California and all applicable county and/or municipal laws or ordinances when the violation is committed within a District owned or managed Facility or Parkland.
- §103(g)** A violation of the rules set forth in this Ordinance is an infraction punishable by:
- 1) a fine not exceeding one hundred dollars (\$100) for a first violation;
 - 2) a fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation; and
 - 3) a fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.
- §103(h)** Headings, divisions and references to specific code sections are for convenience only and shall not be considered in the interpretation or application of this ordinance and shall not in any way affect the conduct or activities covered in other sections of this ordinance. Some rules may be duplicated in multiple sections.

- §103(i)** If any chapter, section, subsection, subparagraph, sentence, or clause of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance; and the Board of Directors declares that this paragraph, sentence, and clause thereof would have been adopted irrespective of such possible finding of invalidity or unconstitutionality and, to that end, the provisions of this ordinance are hereby declared to be severable.
- §103(j)** Where a section herein or rule or regulation adopted pursuant thereto is amended or repealed, acts and commissions occurring prior thereto may be prosecuted as though such section, rule or regulation had not been so amended or repealed.
- §103(k)** The failure to enforce any provision of this Ordinance shall not constitute a waiver of any right to enforce that provision or any other provision of this Ordinance.
- §103(l)** These Rules and Regulations shall take effect and be in force upon their adoption by the District’s Board of Directors.

Chapter 200 – Definitions

Unless the context otherwise requires, the definitions hereinafter set forth shall govern the construction of this ordinance.

“Aircraft” means any powered, unpowered, or towed device that is used or intended to be used to carry a person or persons in the air.

“Camping” means:

- 1) Erecting a tent or shelter or arranging bedding, or both, for purposes of, or in such a way as will permit, remaining overnight.
- 2) Use of houseboats or boats for the purpose of sleeping during the nighttime hours, whether anchored, moored or beached.
- 3) Use of any parked or standing vehicle for the purpose of sleeping during nighttime hours.

“Juvenile” means any person under the age of 18 years old.

“Nighttime” means any time from one-half hour after sunset to one-half hour before sunrise.

“Person” means and includes natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

“Rockhounding” means the recreational gathering of stones and minerals found occurring naturally on the undisturbed surface of the land.

Chapter 300 – Rules and Regulations

Section 301 – Hours of Operation.

It shall be unlawful to enter or remain in or on any District Facility, Parkland or Trail, after said Facility, Parkland or Trail is closed for public use, without a Permit. All District Facilities, Parklands and Trails hours of operation shall be Sunrise to one half (1/2) hour after Sunset, except for lighted sports facilities that are permitted for use up until 10 PM.

Section 302 – Use of Facilities; Payment.

No person shall use or be present in any portion of a unit under control of the District for which a use fee has been established by the District, without paying such fee, with the exception of units which require payment of fees upon exit.

Section 303 – Aircraft.

No person, using any aircraft, shall land, taxi on or take off from any body of water or from any portion of any District-controlled property if not specifically approved by the District. No person shall parachute into, fly an unlicensed aircraft, ultralight vehicle, or hang glider over, or parasail or balloon over any District-controlled property at an altitude of less than 500 feet unless authorized by the District.

Section 304 – Animals.

- (a) Protection. No person shall molest, hunt, disturb, harm, feed, touch, tease, or spotlight any kind of animal or fish or so attempt.
- (b) No person shall injure, trap, take, net, poison, or kill, any kind of animal or fish, or so attempt, except that fish and bait may be taken, other than for commercial purposes in accordance with state laws and regulations.
- (d) This section does not apply to activities undertaken by the District in conjunction with its resource management activities.

Section 305 – Plants.

- (a) No person shall willfully or negligently pick, dig up, cut, mutilate, destroy, injure, disturb, move, molest, burn, or carry away any tree or plant or portion thereof, including but not limited to leaf mold, flowers, foliage, berries, fruit, grass, turf, humus, shrubs, cones, and dead wood, except in specific District-controlled property with authorization by the District to take berries, or gather mushrooms, or gather pine cones, or collect driftwood is posted at the headquarters of the unit to which the authorization applies. Any collecting allowed by authority of this Section 305 may be done for personal use only and not for commercial purposes.
- (b) This section does not apply to activities undertaken by the District in conjunction with its resource management activities.

Section 306 – Geological Features.

- (a) No person shall destroy, disturb, mutilate, or remove earth, sand, gravel, oil, minerals, rocks, paleontological features, or features of caves.
- (b) Rockhounding may be permitted as defined in Chapter 200.

Section 307 – Archaeological Features.

No person shall remove, injure, disfigure, deface, or destroy any object of archaeological, or historical interest or value.

Section 308 – Special Permits.

The District may grant a permit to remove, treat, disturb, or destroy plants or animals or geological, historical, archaeological or paleontological materials; and any person who has been properly granted such a permit shall to that extent not be liable for prosecution for violation of the foregoing.

Section 309 – Litter.

No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes, waste paper, cans, or other litter in a unit except in a receptacle designated for that purpose, and no person shall import any litter, or import and deposit any litter into or in any unit from other places.

Section 310 – Fire in Stoves; Smoking.

- (a) No person shall light, build, use, or maintain a fire within a unit except in a camp stove or a fireplace provided, maintained, or designated by the District for such purpose. Portable camp stoves may be used in portions of units approved by the District.
- (b) Fires shall at all times be maintained in a safe condition that does not threaten any person, natural or structural feature.
- (c) Upon a finding of extreme fire hazard by the District no person shall smoke or build fires in portions of units other than those designated by the District for such purposes.
- (d) This section does not apply to fire fighters or District employees carrying out fire suppression or resource management activities approved by the District.

Section 311 – Control of Animals.

- (a) No person shall permit a dog to run loose, or turn loose any animal in any portion of a unit, except upon written authorization by the District.
- (b) No person shall keep an animal in any unit except under his/her immediate control.
- (c) No person shall keep a noisy, vicious, or dangerous dog or animal or one which is disturbing to other persons, in any unit and remain therein after he/she has been asked by a peace officer to leave.
- (d) No person shall permit a dog or a cat to remain outside a tent, camper, or enclosed vehicle during the night.

- (e) No person shall bring a dog into, permit a dog to enter or remain, or possess a dog in property under control of the District unless the dog is on leash of no more than six feet in length and under the immediate control of a person or confined in a vehicle.
- (f) No person shall bring a dog into, permit a dog to enter or remain, or possess a dog:
 - 1) beyond the limits of campgrounds, picnic areas, parking areas, roads, structures or in posted portions of units except as provided elsewhere in this Section 310.
 - 2) on any beach adjacent to any body of water in any unit except in portions of units designated for dogs.
- (g) Subsections (e) and (f) shall not apply to trained “seeing eye,” “signal,” or “service” dogs used to guide a physically impaired person there present, or dogs that are being trained to become “seeing eye,” “signal,” or “service” dogs.
- (h) Grazing. No person shall graze, herd or permit livestock to enter or remain inside a unit without specific written authorization of the District, except for grazing by animals used for riding or packing under direct control of visitors or concessionaires.

Section 312 – Weapons and Traps.

- (a) No person shall carry, possess or discharge across, in or into any portion of any unit any weapon, firearm, spear, bow and arrow, trap, net, or device capable of injuring, or killing any person or animal, or capturing any animal, or damaging any public or private property, except in underwater parks or designated archery ranges where the District finds that it is in its best interests.
- (b) Nothing herein contained shall be construed in derogation of the use of weapons permitted by law or regulation.
- (c) Firearms not having a cartridge in any portion of the mechanism, other unloaded weapons or devices such as traps, nets, and bows and arrows may be possessed within temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased, or stored in a manner that will prevent their ready use.

Section 313 – Fireworks.

- (a) No person shall possess, discharge, set off, or cause to be discharged, in or into any portion of a unit any firecrackers, torpedoes, rockets, fireworks, explosives, or substances harmful to the life or safety of persons.
- (b) The District may grant exceptions to this section for specified locations and periods of time upon finding that such activity will not endanger persons, property, or resources.
- (c) This Section 313 does not apply to explosives lawfully possessed or used under the direction of the District.

Section 314 – Commercial Filming.

Except where authorized by the District, no person shall photograph, videotape or film for commercial (profit and sale) purposes in any property, or portion thereof, owned, operated or administered by the District without a permit.

Section 315 – Curfew.

- (a) The District may from time to time by order declare curfew for juveniles in any unit or portion thereof upon a finding that conditions therein are such as to warrant special measures for the protection of juveniles and others and for the safety and welfare of the general public.
- (b) Such curfew order shall specify the hours thereof and the period therefor and shall be posted.
- (c) When curfew has been so ordered, no juvenile so prohibited shall during the effective period enter or remain therein, except as follows:
 - 1) One who is accompanied by a parent or guardian.
 - 2) One who is part of a group permitted to occupy a District-controlled property or portion thereof and who is supervised by at least one responsible adult for each fifteen juveniles.
 - 3) One who is lawfully camping, having furnished to the District written consent of and the full name, residence number, and telephone number of the juvenile's parent or guardian, with the inclusive dates for which permission is granted to camp at the property involved.

Section 316 – Peeping Toms.

No person shall loiter, prowl or wander about a park restroom, shower or changing facility and peek into the doors and windows or other openings of such facilities when occupied, without visible or lawful business with the occupants thereof.

Section 317 – Games and Recreational Activities.

No person shall engage in games or recreational activities that endanger the safety of persons, property, resources, or interfere with visitor activities except as permitted by the District. No person shall hold, sponsor, lead, or otherwise have control over a game or recreational activity occurring wholly or partially within or on any property owned, operated or administered by the District without an approved permit.

Section 318 – Peace and Quiet.

To insure peace and adequate rest for visitors:

- (a) No person shall disturb others in sleeping quarters or in campgrounds between the hours of 10 p.m. and 6 a.m. daily.
- (b) No person shall, at any time, use outside machinery or electronic equipment including electrical speakers, radios, phonographs, televisions, or other devices, at a volume which is, or is likely to be, disturbing to others without specific permission of the District.
- (c) No person shall operate an engine driven electric generator which emits sound which is, or is likely to be, disturbing to others between the hours of 8 p.m. and 10 a.m. without permission of the District.

Section 319 – Assembly.

No person shall conduct or attend an assembly or public demonstration except by (a) permission of the District upon a finding that such activity would not substantially interfere with park use or (b) as otherwise required by law.

Section 320 – Nudity.

No person shall appear nude while in any unit except in authorized areas set aside for that purpose by the District. The word nude as used herein means unclothed or in such a state of undress as to expose any part or portion of the pubic or anal region or genitalia of any person or any portion of the breast at or below the areola thereof of any female person.

Section 321 – Sanitation.

- (a) No person shall deposit waste, water, sewage or effluent from sinks, portable toilets, and other plumbing fixtures directly upon or into the surface of the ground or water.
- (b) No person shall deposit any body waste in or any portion of any comfort station or other structure except into fixtures provided for that purpose.
- (c) No person shall place any bottle, can, cloth, rag, metal, wood, paper, or stone substances in any plumbing fixture in such a manner as would interfere with the normal operation of such fixture.

Section 322 – Violation of Posted Orders or Permits.

No person shall:

- (a) violate any provision of a posted order including, but not limited to, prohibited areas, use periods, no alcoholic beverage areas, no smoking areas and no parking areas, or
- (b) violate any provision or restriction of a permit issued by the District.

Section 323 – Pesticides.

No person shall disperse or otherwise apply any pesticide within any unit or portion thereof, whether to the air, water, ground, or vegetation, unless prior written approval has been obtained from the District.

Section 324 – Soliciting.

No person shall solicit, sell, hawk, or peddle any goods, wares, merchandise, services, liquids, or edibles for human consumption or distribute circulars in any District-controlled property, except as permitted by the District. Such prohibition shall include sales activities that utilize park property or facilities to complete the terms of sale or provide a service as a result of the sale or that affect park operations, facility use or visitor safety. Also included are sales activities which encroach on the sales rights of a vendor authorized to sell such products, or services pursuant to a concession contract with the District.

Section 325 – Glass Containers.

No person shall possess or use a glass container, bottle, jar, tumbler, or vessel of whatever nature, empty or not, where prohibited by order of the District, except that persons may pick up glass containers left or discarded by others and remove or deposit same in an approved trash receptacle. Signs shall be posted at locations where glass containers are prohibited.

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**U.S. Department
of Transportation**
Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

July 14, 2023

RE: Updated Fact Sheet (2023) on State and Local Regulation of Unmanned Aircraft Systems (UAS)

Dear Colleague:

We write to share the updated Fact Sheet (2023) issued by the Federal Aviation Administration (“FAA”), Office of the Chief Counsel, and the United States Department of Transportation, Office of the General Counsel, discussing legal considerations applicable to state and local regulation of Unmanned Aircraft Systems (“UAS”) (also commonly referred to as “drones”). Like its 2015 predecessor, the Fact Sheet is a guide for state and local governments as they respond to the increased use of UAS in the national airspace.

The updated Fact Sheet summarizes well-established legal principles regarding federal authority for regulating the efficiency of the airspace, including the operation or flight of aircraft, which includes, as a matter of law, UAS. It reviews the federal responsibility for ensuring the safety of flight, as well as the safety of people and property on the ground as a result of the operation of aircraft. The updated Fact Sheet also sets forth the basic preemption framework applicable to UAS:

- States and local governments may not regulate in the fields of aviation safety or airspace efficiency but generally may regulate outside those fields.
- A state or local law will be preempted if it conflicts with FAA regulations.
- State or local laws affecting commercial UAS operators are more likely to be preempted.

As substantial air safety issues are implicated when state or local governments attempt to regulate the operation of aircraft in the national airspace, but legitimate state and local interests in health and safety exist in other contexts, the updated Fact Sheet provides examples of laws addressing UAS that would be subject to federal preemption and others that would likely pass muster.

The updated Fact Sheet concludes with a discussion of Enforcement Matters and Contact Information for Questions. The FAA Office of the Chief Counsel’s Aviation Litigation Division is available to answer questions about the principles set forth in this fact sheet and to discuss with you the intersection of Federal, state, and local regulation of aviation, generally, and UAS

operations, specifically. A special email address has been set up to receive any questions you may have: 9-AGC300-Preemptionquestions@faa.gov.

A copy of the updated Fact Sheet is attached to this letter. The document is also available at: <https://www.faa.gov/uas/state-and-local-regulation-unmanned-aircraft-systems>. Thank you in advance for your consideration.

Sincerely,



John E. Putnam
General Counsel



Marc A. Nichols
Chief Counsel, FAA

Enclosure



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

Federal Aviation Administration
Office of the Chief Counsel

United States Department of Transportation
Office of the General Counsel

July 14, 2023

SUMMARY

The general balance between Federal and state authority in the context of aviation regulation is well established. The Federal Aviation Administration (“FAA”) has the exclusive authority to regulate aviation safety and the efficient use of the airspace by aircraft. Attempts by state and local governments to regulate in those fields are preempted.¹ Outside those fields, the States are generally free to regulate—even by enacting laws that are aimed at or affect aviation—as long as their laws do not conflict with FAA regulations or relate to the prices, routes, or services of commercial air carriers.

Despite important differences between manned aircraft and unmanned aircraft systems (“UAS”), the basic preemption framework described above is fully applicable to UAS. That means:

- *States and local governments may not regulate in the fields of aviation safety or airspace efficiency but generally may regulate outside those fields.* A state or local law is preempted if it is aimed at aviation safety or the efficient use of the airspace. But a law seeking to advance other objectives is generally not covered by field preemption unless it impairs the reasonable use by UAS of the airspace.

¹ Federal preemption refers to the power of Congress, derived from the Supremacy Clause of the United States Constitution, to promulgate laws that are the supreme law of the land. Under Supreme Court precedent, Federal law can preempt state law in two ways: Federal law can either *expressly preempt* state law when a Federal statute or regulation contains explicit preemptive language, or it can *impliedly preempt* state law (through *field* or *conflict* preemption) when its structure and purpose implicitly reflect Congress’ preemptive intent.

- *A state or local law will be preempted if it conflicts with FAA regulations.* A law is preempted if it makes it impossible to comply with FAA regulations or frustrates the purposes and objectives of such regulations.
- *State or local laws affecting commercial UAS operators are more likely to be preempted than laws affecting non-commercial UAS operators.* The Airline Deregulation Act preempts any state or local law that directly references the prices, routes, or services of a UAS operator with economic authority to provide interstate transportation, or that has a significant impact on such prices, routes, or services. Thus, even laws that would be permissible in the context of recreational UAS users may be preempted as applied to commercial UAS operators.

BACKGROUND

This document, which updates and replaces the FAA's *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet* (Dec. 17, 2015), is intended to provide essential information about the Federal regulatory framework for use by States and localities when considering enacting laws affecting UAS.² State and local restrictions affecting UAS operations should be consistent with the extensive Federal statutory and regulatory framework pertaining to control of the airspace, air traffic control, aviation safety, navigational facilities, and the regulation of aircraft noise at its source.

Successive FAA reauthorization acts have each emphasized the Congressionally-mandated priority that the FAA integrate UAS into the national airspace.

State and local jurisdictions continue to explore the regulation of UAS. Since 2013, at least 44 States have enacted laws relating to UAS, addressing issues such as privacy, delivery of prison contraband, firefighting, law enforcement use of UAS, and UAS registration. However, some jurisdictions have enacted or are considering laws that raise preemption issues, such as regulation of UAS operations (prohibiting UAS operations over the jurisdiction; addressing flight altitude, safety, and/or maintaining visual line of sight), a law providing for UAS interdiction/neutralization, and a law that would have created trespass liability for anyone operating UAS less than 350 feet above real property without the express permission of the property owner.

Since 2015, the FAA's Office of the Chief Counsel has fielded many questions from state officials and legislators, local jurisdictions (mayors, county executives, police departments, correctional facilities, etc.), industry associations, and private individuals concerning the regulation of UAS.

² While this document only addresses UAS, it is based on principles that apply to airspace and aviation more generally. Accordingly, many of the principles in this fact sheet are likely to ultimately apply to Advanced Air Mobility (AAM) operations and other emerging aviation activities. The FAA and DOT intend to develop a similar fact sheet for AAM operations.

THE FEDERAL FRAMEWORK IN AVIATION

Congress has vested the FAA with the authority to regulate the areas of airspace use, management, and efficiency; air traffic control; safety; navigational facilities; and aircraft noise at its source. Congress directed the FAA to prescribe air traffic regulations (including safe altitudes), and rules for protecting individuals and property on the ground, using the navigable airspace efficiently, and preventing collision between aircraft and other aircraft including airborne objects. A citizen of the United States has a statutory public right of transit through the navigable airspace. To ensure the maintenance of a safe and sound air transportation system, the FAA has exclusive regulatory authority over matters pertaining to aviation safety and the efficient use of the airspace.

In 2012, Congress provided the FAA with a statutory mandate to develop a comprehensive plan to safely accelerate the integration of UAS into the national airspace. In subsequent legislation, Congress directed the FAA to develop a means for remote identification of UAS and mitigation of threats posed by errant or hostile UAS, to continue development with the National Aeronautics and Space Administration (“NASA”) of a UAS traffic management system, and to address other UAS-related matters.³

In response to Congress’ direction, the FAA has promulgated several UAS-related rules and is developing additional rulemakings.⁴ Congress created a statutory *Exception for Limited Recreational Operations of Unmanned Aircraft* to allow those flying UAS purely for personal enjoyment to operate without having to comply with 14 CFR part 107. People flying under this statutory exception are required to comply with all rules for recreational flyers.

Presented below are general principles of Federal law as they relate to aviation safety and the efficiency of the airspace, and examples of state and local laws that would most likely raise preemption issues, and those that would most likely not.⁵ The FAA’s Office of the Chief Counsel is available to discuss specific questions.

³ See, e.g., 49 U.S.C. § 46320 (prohibiting interference with wildfire suppression, law enforcement, or emergency response efforts by operation of unmanned aircraft); FAA Reauthorization Act of 2018, Pub. L. 115-254, § 363, 132 Stat. 3186, 3308 (prohibiting a person from operating a UAS that is equipped or armed with a dangerous weapon).

⁴ See 14 C.F.R. part 107 (*Small Unmanned Aircraft Systems*); 14 C.F.R. part 89 (*Remote Identification of Unmanned Aircraft*), see also 87 Fed. Reg. 55,685 (Sept. 12, 2022), *Notification of Enforcement Policy Regarding Production Requirements for Standard Remote Identification Unmanned Aircraft*; 14 C.F.R. part 48 (*Registration and Marking Requirements for Small Unmanned Aircraft*); and 14 C.F.R. § 107.39 and subpart D (*Operations Over Human Beings*), and 86 Fed. Reg. 4,314 (Jan. 15, 2021), *Final Rule, Operation of Small Unmanned Aircraft Systems Over People*.

⁵ Congress has exclusively authorized the Departments of Defense, Energy, Justice, and Homeland Security to engage in limited UAS detection and mitigation activities to counter UAS presenting a credible threat to covered facilities or assets. Because no other entities have been granted that authority, it is important that state, local, tribal and territorial (SLTT) and private sector entities without such statutory authority (including SLTT law enforcement organizations, SLTT governments, and owners and operators

FIELD PREEMPTION – BASIC PRINCIPLES

- Federal statutes give the FAA comprehensive and exclusive authority to regulate aviation safety and the efficient use of the airspace, and the FAA has issued a complex set of regulations in these areas. States may not regulate in those fields.
- State and local governments may not adopt FAA regulatory requirements and then enforce them as state or local regulations. The courts have held that where Congress occupies an entire field, even complementary 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.
- The FAA has exclusive authority to regulate aviation safety and airspace efficiency with respect to UAS operations at any altitude. Field preemption does not depend on the altitude of the operations affected by a state law.
- The FAA has exclusive authority to regulate airspace efficiency for UAS at low altitudes as it does for manned aircraft at higher altitudes. The FAA has not set minimum altitudes for UAS and in fact, requires UAS to operate only at low altitudes (generally not to exceed 400 feet above ground level).
- The FAA has exclusive jurisdiction over certain regulatory fields, not over certain airspace. Thus, while the “navigable airspace” extends to the ground, that does not mean that States are powerless to regulate UAS operations if they are not acting to regulate aviation safety or airspace efficiency. It is well established in the context of manned aircraft that Federal law does not preempt altogether any state regulation purporting to reach into the navigable airspace; the same is true with respect to UAS.

CONFLICT PREEMPTION – BASIC PRINCIPLES

- State laws are subject to conflict preemption when compliance with both Federal and state regulations is impossible, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.
- Even if a state law regulates outside the fields of aviation safety and airspace efficiency and is therefore not covered by field preemption, it may still be preempted if it conflicts with one or more FAA regulations.
- Note that field preemption analysis and conflict preemption analysis may often lead to the same result. For example, a ban on UAS operations above an entire city or over a broad swath of facilities would very likely be preempted not only as an intrusion into the field of airspace efficiency (*i.e.*, field preemption), but also as an obstacle to the FAA’s exercise of its airspace authority (*i.e.*, conflict preemption).

of critical infrastructure, stadiums, outdoor entertainment venues, airports, and other key sites) understand that federal laws may prevent, limit, or penalize the sale, possession, or use of UAS detection and mitigation capabilities. See https://www.faa.gov/uas/resources/c_uas.

EXPRESS PREEMPTION UNDER THE AIRLINE DEREGULATION ACT OF 1978 – BASIC PRINCIPLES CONCERNING AIR CARRIERS

- State laws are subject to express preemption under the Airline Deregulation Act of 1978 (“ADA”) if they “relate to” the prices, routes, and services of an air carrier that has been given economic authority by the Department of Transportation (“DOT”) to provide interstate or foreign air transportation.
- A state law is “related to” air carrier prices, routes, and services—and therefore preempted—when it directly references such prices, routes, or services or has a “significant impact” on such prices, routes, or services.
- State laws may be preempted as applied to certain commercial UAS operators even if they would not be preempted as applied to other UAS operators.

EXAMPLES OF STATE AND LOCAL LAWS ADDRESSING UAS THAT WOULD BE SUBJECT TO FEDERAL PREEMPTION⁶

- State laws aimed at regulating aviation safety or airspace efficiency. For example, laws:
 - Regulating UAS operations or restricting flight altitude or flight paths in order to protect the safety of individuals and property on the ground or aircraft passengers, or in order to ensure the efficient use of the airspace by UAS and/or other aircraft;
 - Implementing UAS traffic control systems;
 - Designating “highways” or “routes” for UAS;
 - Selling or leasing UAS-related air rights above roadways;
 - Regulating UAS markings;
 - Establishing a licensing scheme for UAS pilots;
 - Requiring air safety education or training;
 - Imposing requirements for the safe manufacturing of UAS; or
 - Mandating safety-related equipment such as geo-fencing. 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.
- Certain state or local laws aimed at other objectives that impair the reasonable use by UAS of the airspace.
 - If a law seeks to advance non-safety or efficiency objectives but affects where UAS may operate in the air, the question of whether the law is preempted will depend primarily on whether the law negatively impacts safety and on how much of an impact the law has on the ability of UAS to use or traverse the airspace.

⁶ The 2015 Fact Sheet listed examples of laws “for which consultation with the FAA is recommended.” Some have interpreted this language as suggesting that the FAA did not believe that state and local UAS laws were subject to field preemption. That is not the case: as noted above, state and local governments are barred from regulating in the fields of aviation safety and airspace efficiency. The FAA remains open to consulting with state and local governments that are trying to determine whether particular laws fall within the preempted fields, but any such consultations will not modify the scope of preemption and do not contemplate “co-regulation” of UAS safety or airspace matters with the States.

- For example, a privacy-related ban on UAS operations over an entire city would very likely be preempted because it would completely prohibit UAS from using or traversing the airspace above the city and impede the FAA’s and Congress’s ability to safely and effectively integrate UAS into the national airspace.⁷ In contrast, a privacy-related restriction applied to the lower altitudes over facilities where people could likely have an expectation of privacy—such as parks or schools—would more likely be permissible because of its lesser impact. Similarly, tailored security-related restrictions over open-air water treatment facilities or certain types of critical infrastructure would more likely be permissible where the restrictions were limited to the lower altitudes and still permitted UAS overflight (*e.g.*, by commercial package delivery UAS) at higher altitudes.⁸

EXAMPLES OF STATE AND LOCAL LAWS ADDRESSING UAS THAT WOULD LIKELY NOT BE SUBJECT TO FIELD OR CONFLICT PREEMPTION⁹

- Laws aimed at objectives other than aviation safety or airspace efficiency that do not impair the reasonable use by UAS of the airspace.
 - Such laws could include those concerning land use or zoning; harassment of individuals or groups; privacy; voyeurism; trespass on property; the exercise of other police powers; reckless endangerment; emergency medical services; search and rescue; law enforcement use of facial recognition; delivery of prison contraband; wildfire suppression;¹⁰ criminal mischief; transfer or delivery of controlled substances; taking photographs or videos with respect to particular facilities (*e.g.*, water treatment facilities; prisons; oil refineries; chemical facilities; railroad facilities; amusement parks; energy production, transmission, and distribution facilities; and any system or asset described by title 42 of the United States Code, § 5195c(e)); requirements for police to obtain a warrant prior to using a UAS for surveillance; protection of wildlife; using UAS for hunting or fishing, or to interfere with or harass an individual who is hunting or fishing; and law enforcement operations.

⁷ See, *e.g.*, *Singer v. City of Newton*, 284 F. Supp. 3d 125, 131-132 (D. Mass. 2017) (holding that the city’s prohibition of UAS operations below 400 feet (1) over any private property without the express permission of the property owner, and (2) over public property without prior permission from the city worked in tandem to “create an essential ban on drone use within the limits of Newton ... thwart[ing] not only the FAA’s objectives, but also those of Congress for the FAA to integrate drones into the national airspace.”).

⁸ Under 14 C.F.R. § 107.51, *Operating limitations for small unmanned aircraft*, the altitude of UAS cannot be higher than 400 feet above ground level, unless the UAS is (1) flown within a 400-foot radius of a structure; and (2) does not fly higher than 400 feet above the structure's immediate uppermost limit.

⁹ As noted above, the ADA may preempt certain state or local laws as applied to air carriers—*i.e.*, commercial UAS operators with economic authorization to provide interstate transportation—even if they would not be preempted with respect to other UAS users.

¹⁰ States and localities are encouraged to coordinate with their Law Enforcement Assistance Program (“LEAP”) agent.

- Such laws are not covered by field preemption even if they have some effect on where UAS may operate in the air, as long as they do not impair the reasonable use by UAS of the airspace.
- Many of these state and local concerns are already addressed by laws that regulate ground-based conduct not involving UAS, and such laws often can be applied to UAS. Restrictions on *how* UAS are utilized (*i.e.*, conduct) instead of *where* they may operate in the airspace would more likely be consistent with Federal preemption principles.
- Laws regulating the location of UAS takeoff and landing areas. It is well established that States have a valid interest in choosing where aircraft may operate on the ground. Laws designating takeoff and landing locations have no direct effect on where UAS may operate in the air.
- Laws that prohibit, restrict, or sanction operations by UAS in the immediate reaches of property to the extent that such operations substantially interfere with the property owner's actual use and enjoyment of the property.
- State and local policies concerning where a UAS operator can be located while conducting operations.
- UAS registration requirements that are ministerial and do not directly or indirectly regulate aviation safety or the efficient use of the airspace.

ENFORCEMENT MATTERS

- Federal aviation statutes authorize the FAA to initiate legal enforcement action, including certificate actions and imposing civil penalties, for violations of FAA statutory or regulatory requirements. Federal aviation statutes do not authorize the FAA to delegate its formal enforcement functions to state or local governments.
- The FAA has continuously conducted outreach efforts with Federal, state, and local law enforcement on UAS operations. Additionally, the FAA has the Law Enforcement Assistance Program (“LEAP”), which provides, as appropriate, aviation-related support and education to law enforcement agencies.
- The FAA realizes that public safety agencies, such as law enforcement, are well-positioned to deter, detect, and investigate unauthorized or unsafe UAS operations. These also have an important role in protecting the public from unsafe and unauthorized UAS operations. https://www.faa.gov/uas/public_safety_gov
- Unauthorized operations can cause potential hazards to people and property both in the air and on the ground. The FAA's *Drone Response Playbook for Public Safety* (Sept. 2020) is a resource for public safety officials who conduct investigations into drone operations. The *Playbook* can help determine the difference between authorized and unauthorized drone operations and what actions public safety agencies may take. The *Playbook* is available at [https://www.faa.gov/sites/faa.gov/files/uas/public_safety_gov/public_safety_toolkit/Public Safety_Drone_Playbook.pdf](https://www.faa.gov/sites/faa.gov/files/uas/public_safety_gov/public_safety_toolkit/Public_Safety_Drone_Playbook.pdf).

CONTACT INFORMATION FOR QUESTIONS

The FAA's Office of the Chief Counsel, Aviation Litigation Division (AGC-300), is available to answer questions about the principles set forth in this fact sheet and to discuss with you the intersection of Federal, state, and local regulation of aviation, generally, and UAS operations, specifically. You may contact the Aviation Litigation Division at [9-AGC300-Preemptionquestions@faa.gov](tel:9-AGC300-Preemptionquestions@faa.gov) or by mail addressed to: Federal Aviation Administration, Aviation Litigation Division (AGC-300), Office of the Chief Counsel, Ninth Floor, 800 Independence Avenue, S.W., Washington, D.C. 20591.