CLOSE ENCOUNTERS
OF THE DRONE KIND

TEXAS CITY ATTORNEYS ASSOCIATION
2017 SUMMER CONFERENCE
SOUTH PADRE ISLAND | JUNE 14-16, 2017
THE NICHOLS FIRM, PLLC
DISCLAIMERS
OF THE DRONE KIND

• IF YOU OWN A DRONE, DO NOT TRY TO DO ANYTHING YOU SEE IN THIS PRESENTATION.
• IF YOU DO NOT OWN A DRONE, DO NOT GO BUY ONE AND TRY TO DO ANYTHING YOU SEE IN THIS PRESENTATION.
• THIS 30-MINUTE PRESENTATION IS MEANT TO GIVE YOU A VERY GENERAL OVERVIEW OF THE DRONE INDUSTRY AND THE CHALLENGES IT PRESENTS.
• ENTIRE COURSES ARE NOW BEING DEVOTED TO DRONE ISSUES. THE BODY OF AVAILABLE MATERIAL IS HUGE!
• THE FIRM’S DRONE PAPER WILL BE AVAILABLE ON THE TCAA WEBSITE FOLLOWING THE CONFERENCE.
WHAT IS A **DRONE?** ("QUADS")

- FAA: “unmanned aircraft system” (UAS)
  - The FAA defines a UAS as an unmanned aircraft and the equipment necessary for the safe and efficient operation of that aircraft.
  - An unmanned aircraft is a component of a UAS.
  - It is defined by statute as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.
HOW POPULAR ARE DRONES?

UNIT STATISTICS

• SMALL HOBBYIST DRONES:
  • FAA 2016 Estimates: 1.1 Million
  • FAA 2021 Estimates: 3.1 Million

• COMMERCIAL DRONES:
  • FAA 2016 Estimates: 42,000 Units
  • FAA 2021 Estimates: 1.6 Million

APPLICATION STATISTICS

• Aerial Photography: 34%
• Construction, Industrial & Utility Inspection: 26%
• Real Estate: 26%
• Agriculture: 21%
POPULAR DRONE USES:

- Hobbyists
- Architects
- Commercial
DRONE REGULATIONS: THE FAA

WHAT PLACE DO DRONES (UAS) HAVE IN THE NATIONAL AIRSPACE SYSTEM?

• With the introduction of drones to the marketplace, the FAA had to figure out how to incorporate them into our airspace.

• FAA Modernization & Reform Act of 2012
  • FAA to develop a comprehensive plan
  • Accelerate and integrate civil UAS into the national airspace system

• Effect:
  • Prohibited commercial UAS flights unless civilian operators obtained an exemption; or
  • Experimental airworthiness certificate; and
  • Certificate of waiver & authority limiting operation to specific vehicles / area
DRONE REGULATIONS: THE FAA

JUNE 21, 2016: "Part 107 Rules" (Operational Approach)

• COMMERCIAL OPERATORS
  • Obtain a remote pilot certificate OR be under the direct supervision of a certificate holder
  • Register the aircraft as a non-recreational drone with the FAA
  • Not fly at night unless they hold a FAA waiver (governmental entities may get waivers)
  • Follow all the operation rules and regulations for commercial drone use

• RECREATIONAL OPERATORS
  • Fly for hobby or recreational purposes only; fly under 400’
  • Follow a community-based set of safety guidelines
  • Fly the UAS within visual line-of-sight (VLOS)
  • Give way to manned aircraft
  • Provide prior notification to the airport and air traffic control tower (if present) when flying within 5 miles of an airport (obeattie.github.io/gmaps-radius/)
  • Fly UAS that weighs no more than 55 lbs. unless certified by a community-based organization
DRONE REGULATIONS: TEXAS

WHAT HAS TEXAS DONE TO REGULATE DRONE ACTIVITY?

- 83rd Legislative Session (2013) – Privacy Approach
  - Created Chapter 423 – Government Code
  - Illegal for a UAS operator to capture images on private property for surveillance
  - EXCEPTIONS:
    - Public real property; persons on public property
    - Private landowner consent
    - Educational purposes
    - FAA-designated test sites / ranges
    - Military use
    - Satellite mapping
    - Utility uses
    - Valid search warrants
  - Law enforcement in immediate pursuit of someone believed to have committed a felony
  - Hazardous material spills
  - Fire suppression
  - Rescue of an individual
  - Real estate brokers (no individuals identified)
  - No more than 8’ off the ground (public)
  - Pipeline inspections
  - Port security
DRONE REGULATIONS: TEXAS

WHAT HAS TEXAS DONE TO REGULATE DRONE ACTIVITY?

84th Legislative Session (2015) – Amendments & Offenses

• HB 1481: Added Sec. 423.0045 creating an offense for operation of UAS over critical infrastructure
  • 12 categories of “critical infrastructure” (e.g., dams, power plants, refineries)
  • Class B misdemeanor (Class A with a previous conviction)

• HB 2167: Amended Sec. 423.002(a) to add acceptable circumstances for capturing images
  • Academic purposes; institutions of higher education
  • Professional land surveyors
  • Professional engineers

• HB 3628: Amended Sec. 411.062 to require the Dept. of Public Safety director to adopt rules governing UAS operation in the Capitol Complex
  • Class C misdemeanor (Class B with a previous conviction)
DRONE REGULATIONS: TEXAS

WHAT HAS TEXAS DONE TO REGULATE DRONE ACTIVITY?

- 85th Legislative Session (2017) – More Amendments & Offenses
  - HB 1643: Amendments to the “critical infrastructure” list
    - Oil and gas drilling sites
    - Telecommunications infrastructure (e.g., cell towers, but what about small cell nodes?)
    - Concentrated animal feeding operations (CAFOs)
  - Sent to Gov. Abbott on May 30, 2017 (not yet signed)
  - Flying over “critical infrastructure” lower than 400’
    - Class B misdemeanor; and
    - 180 days in jail
  - CRITICISM? “The law tramples on the public and the media’s First Amendment rights…”
DRONE REGULATIONS: FAA + TEXAS

WHAT DOES THE FAA HAVE TO SAY ABOUT LOCAL REGS?

• Preemption!
• Recommended potential restrictions:
  • Permitting process
  • Minimum operating ages (18+)
  • Maximum drone weights (up to 55 lbs)
  • Operation limitations (e.g., daylight only; no image capture)

• WHY SHOULD CITIES CARE?
WHY SHOULD CITIES BE CONCERNED ABOUT DRONES?

- **Apr. 2014**: Drone crashes outside of South Carolina prison trying to deliver contraband
- **Jan. 2015**: Drone landed on the White House lawn
- **Jul. 2015**: 18 y/o investigated after posting video of a drone firing a gun
- **Oct. 2015**: Drone crashed into Los Angeles power lines cutting off power
- **Feb. 2016**: NJ man arrested after crashing drone into Empire State Bldg.
DO YOU NEED DRONE REGULATIONS?

• PROACTIVE APPROACH
  • Do you need to get ahead of a growing problem? Increased complaints?
  • Open air festivals, assemblies, conventions or other crowd attractions?
  • Unique tourist attractions, parks, nature preserves, other areas of public interest where drones could be disruptive?
  • "Critical Infrastructure" that could attract drone operators? (drainage channels)
  • Active drone clubs or enthusiasts?
  • Attract drones for potential economic development? (drone-ports)

• REACTIVE APPROACH
  • Rural location with little drone activity or complaints?
  • Farming / agriculture community?
  • Drone usage is incidental at best?
  • Little to no commercial usage?
  • Existing nuisance or trespass ordinances?
POSSIBLE DRONE REGULATIONS?

• PROACTIVE APPROACH
  • Keep it simple…illegal to violate any existing federal or state regulations.
  • Operator / UAS registration
  • Operator / UAS permitting
  • Age requirements
  • Proof of insurance requirements
  • City indemnity requirements
  • Time, place & manner restrictions
    • VLOS, intoxication, no weapons
  • Dedicated operation zones

• REACTIVE APPROACH
  • Keep it simple…illegal to violate any existing federal or state regulations.
  • Rely on existing ordinances to deter disturbing drone activity.
CITIES OF INTEREST?

• CITY OF KERRVILLE, TX
  • Chapter 71 – Parks & Recreation
  • Restricts the use of drones in municipal parks
    • City of Parker
    • City of Rosenberg
  • No interference with person’s “orderly conduct of any person engaged in any supervised or unsupervised play or amusement program being conducted in a city park of recreation area.”

• CITY OF ORLANDO, FL
  • Side-stepped the idea of regulating airspace
  • Frame their drone regulations as land use issues
  • Prohibitions on the areas where a person may launch and land drones
  • With VLOS regulations, limiting launch and land locations indirectly controls where drones may be flown

• CITY OF DENVER, CO:

14.3 Flying Objects: The throwing, striking, propelling, launching or otherwise operating flying or propelled object of a potentially dangerous nature, such as a hang glider, sky diving, sky sail, model airplane or helicopter, model rocket, golf ball, rock, and similar flying or propelled item ("Flying Object") is not allowed in a Park Facility. A Flying Object does not include a non-motorized model airplane under a half pound in weight, a Frisbee or a kite. Objects propelled by Weapons identified in 7.2 above are subject to the restrictions set forth in 7.2. Fireworks identified in 6.3 are prohibited in Park Facilities. Exceptions to this rule:
LET’S NOT **DRONE** ON

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