

Amended in City Council July 11, 2013

City of Northampton
MASSACHUSETTS

In City Council, June 27, 2013

Upon the recommendation of Councilor William H. Dwight, Councilor Jesse M. Adams, Councilor Maureen T. Carney, and Councilor Paul D. Spector

RESOLUTION ON DRONE AIRCRAFT

I. NAVIGABLE AIRSPACE AND DRONE AIRCRAFT

WHEREAS, the former City Councilor and Mayor of Northampton, Calvin Coolidge, as President of the United States, signed into law the Air Commerce Act of 1926ⁱ, establishing the national airspace system in the United States; and

WHEREAS, this act declared that the airspace above the minimum safe altitudes of flight, generally understood to be about 500 feet or more above the surfaceⁱⁱ, is “navigable airspace”; and

WHEREAS, aircraft, including drone aircraftⁱⁱⁱ, have the “public right of transit” through navigable airspace^{iv}; and

WHEREAS, navigable airspace is preempted by federal laws^v and therefore not generally subject to state and local control; and

WHEREAS, Congress and the FAA now appear to be expanding navigable airspace down to the ground in order to accommodate low-flying drone aircraft^{vi,vii}; and

WHEREAS, such an expansion of navigable airspace threatens long-standing property rights, expectations of privacy, and state and local sovereignty; and

WHEREAS, such an expansion of navigable airspace could give the FAA unprecedented authority to restrict any landowner activity that could potentially interfere with low-flying drone aircraft^{viii}; and

WHEREAS, such an expansion of navigable airspace is contrary to the findings of the landmark 1946 Supreme Court case, *United States v. Causby*, which affirmed that the landowner “must have exclusive control over the immediate reaches of the enveloping atmosphere” and that “the landowner owns at least as much of the airspace as they can occupy or use in connection with the land”^{ix}; and

WHEREAS, such an expansion of navigable airspace is contrary to the aviation statutes in Title 49 of the United States Code^x, which have been in force, largely unchanged, since President Coolidge first signed them into law in 1926; and

II. SURVEILLANCE AND WEAPONIZED DRONE AIRCRAFT

WHEREAS, drone aircraft are poised to gain unprecedented access to private property at any altitude and for any purpose, including but not limited to purposes of advertising, news reporting, environmental monitoring, package delivery, recreation, and private investigations; and

WHEREAS, police departments in the United States have begun using drone aircraft in the absence of clear guidance from lawmakers; and

WHEREAS, some drone aircraft being marketed to law enforcement agencies are designed to carry weapons including tear gas, rubber buckshot, and firearms^{xi} and the introduction of such technology sends a chilling message to the American people; and

WHEREAS, the rapid development of drone aircraft technology, driven largely by manufacturers producing drone aircraft for military use, poses a serious threat to the privacy and constitutional rights of the American people, including the residents of Northampton; and

WHEREAS, the federal use of weaponized drone aircraft overseas is a poor precedent for their domestic use, in that the extrajudicial use of drones has turned public opinion against the U.S. government in Pakistan, Yemen, Somalia, and Afghanistan; and

WHEREAS drone aircraft strikes have killed more non-targeted people than those targeted, including men, women, and children, some known by name and others unidentified;^{xii}

BE IT RESOLVED, that the City of Northampton calls on the U.S. government to immediately end its practice of extrajudicial killing by armed drone aircraft; and

BE IT FURTHER RESOLVED, that the City of Northampton affirms that, within the city limits, the navigable airspace for drone aircraft shall not be expanded below the long-established airspace for manned aircraft; and

BE IT FURTHER RESOLVED, that the City of Northampton affirms that within the city limits, landowners subject to state laws and local ordinances have exclusive control of the immediate reaches of the airspace and that no drone aircraft shall have the “public right of transit” through this private property; and

BE IT FURTHER RESOLVED, that the City of Northampton calls on the United States Congress, the Federal Aviation Administration, and the General Assembly of the Commonwealth of Massachusetts to respect legal precedent and constitutional guarantees of privacy, property rights, and local sovereignty in all matters pertaining to drone aircraft and navigable airspace.

- ⁱ Air Commerce Act of 1926 (44 Stat. 568), May 20, 1926
- ⁱⁱ *Griggs v. Allegheny County*, 369 U.S. 84 (1962); *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989); *Argent v. United States*, 124 F. 3d 1277 (1997)
- ⁱⁱⁱ The term "drone aircraft" in this resolution includes the classes of aerial vehicles defined by the FAA as "unmanned aircraft", "small unmanned aircraft", "model aircraft", and "remotely piloted aircraft".
- ^{iv} United States Code, Title 49, § 40103 (a) (2). The "public right of transit" through navigable airspace applies to aircraft that are being operated by U.S. citizens in accordance with FAA safety regulations. Under reciprocal agreements with other nations, foreign aircraft may also be navigated through U.S. airspace.
- ^v For example, see MacPherson, R., "Letter to Mr. Don Marcostica, Executive Director Colorado Office of Economic Development and International Trade," Assistant Chief Counsel for Regulations at the Federal Aviation Administration, July 9, 2010.
- ^{vi} The FAA Modernization and Reform Act of 2012, Public Law 112-95, Sec. 332, allows government public safety agencies to operate small unmanned aircraft at altitudes of "less than 400 feet above the ground" without any mention of privacy or property. This language implies that the minimum safe altitude for these new "aircraft" is at ground level and therefore all airspace is navigable and subject to the "public right of transit". Under the provisions of PL 112-95, commercial unmanned aircraft could soon be allowed to operate with similar autonomy.
- ^{vii} Les Dorr, Media Specialist, Federal Aviation Administration, "...any altitudes mandated in the [Federal Aviation Regulations] are considered navigable airspace", email communication with Paul Voss, July 11, 2012.
- ^{viii} United States Code, Title 49, § 40103 (b) (2) (A-D)
- ^{ix} *United States v. Causby*, 328 U.S. 256 (1946)
- ^x United States Code, Title 49, § 40102 (a) (32)
- ^{xi} "VANGUARD SHADOWHAWK." *Tactical Life*. N.p., 1 Feb. 2012. Web. 18 June 2013.
- ^{xii} Kilcullen, David, and Andrew McDonald Exum. "Death From Above, Outrage Down Below." *New York Times*. New York Times, 16 May 2009. Web.

In City Council, June 27, 2013

Passed First Reading on Voice Vote of 8 Yes, 0 No, 1 Absent (Councilor Murphy)

Attest: May L. Midura, Clerk of Council

In City Council, July 11, 2013

Passed Second Reading on Roll Call Vote of 8 Yes, 0 No, 1 Absent (Councilor Schwartz)

Attest: May L. Midura, Clerk of Council

Approved: David J. Narkewicz, Mayor

Rules suspended, passed two readings and enrolled.

I hereby certify that the above Order passed the Northampton City Council on July 11, 2013.

David J. Narkewicz, Mayor approved the Order on July 12, 2013

Attest: May L. Midura, Clerk of Council