

# ANTONELLI LAW

**Drone – UAS Practice Group**

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September 21, 2017

By FedEx

The Honorable Secretary Elaine L. Chao

US Department of Transportation

1200 New Jersey Ave, SE

Washington, DC 20590

Re: FAA Reauthorization – Local Governments Banning UAS Takeoffs & Landings

Dear Secretary Chao:

I write to you about an urgent issue that is unaddressed in the draft bills for the 2017 FAA Reauthorization. I will keep this brief, but can go into more detail in a follow on communication if desired.

First, the lack of “express federal preemption” relating to airspace operations of UAS, both commercially and recreationally, is continuing to bear ugly fruit. Despite the formation of the DAC (Drone Advisory Committee) by the FAA there is no express federal preemption language whatsoever in either the House or Senate bills.

This is causing problems like this one in Chicago: I recently defended an FAA Part 107 UAS pilot who was prosecuted by the City of Chicago under its Chicago Drone Ordinance. While we won based on lack of evidence of the accusation my client flew over any people (he did not), the judge refused my motion to dismiss stating that her reading of the Chicago Drone Ordinance required a specific FAA approved flight plan for the date and time of the flight. This is nonsense, but this is what we are facing.

Second, the lack of new federal law outlining to what extent states and local governments can and cannot restrict drone (and rc model aircraft) takeoffs and landings is causing terrible consequences. As one example, yesterday Cook County, Illinois banned all drones from taking off or landing from any land Cook County owns or leases or from any county facilities.

This ban is akin to a state or local government preventing motorists from accessing the onramp to the federal interstate highway. **These local governments are preventing UAS pilots from accessing the national airspace (NAS).**

These two issues, lack of express federal preemption over airspace regulation and lack of new federal law delineating to what extent state and local governments can restrict or ban drone takeoffs

and landings are having a terrible effect on the American UAS commercial drone industry. My firm's clients range from billion-dollar telecom, engineering, and construction firms to cinema companies and infrastructure inspection companies. The issues above are having a negative impact on them.

Sincerely,



Jeffrey J. Antonelli

Enclosures:

Cook County Ordinance banning UAS flights on county property  
Chicago Drone Ordinance

Cc:

The Honorable Dick Durbin  
711 Hart Senate Building  
Washington, D.C. 20510

The Honorable Tammy Duckworth  
524 Hart Senate Office Building  
Washington, DC 20510

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Details

Reports

File #:

17-3674

Version: 1

Name:

ORDINANCE ESTABLISHING LIMITATION OF UNMANNED AERIAL SYSTEM USAGE ON COUNTY PROPERTY

Type:

Ordinance

Status:

Approved

File created:

6/1/2017

In control:

Legislation and Intergovernmental Relations Committee

On agenda:

6/7/2017

Final action:

9/13/2017

Title:

PROPOSED ORDINANCE ESTABLISHING LIMITATION OF UNMANNED AERIAL SYSTEM USAGE ON COUNTY PROPERTY WHEREAS, use of Unmanned Aerial Systems (UAS), including drones, has exponentially increased and is becoming more common in both commercial and private contexts; and WHEREAS, increased UAS use has given rise to emerging conflicts and challenges requiring additional guidance as to responsible and lawful operation thereof; and WHEREAS, given their ability to carry and smuggle drugs, weapons or other contraband, UAS usage is increasingly presenting safety concerns for the operations of jails and prisons nationally, including Cook County Jail; and WHEREAS, UAS can also be used to surreptitiously take photographs and video footage, which can create a privacy, safety or security threat at other county property such as county courthouses and health system facilities; NOW THEREFORE BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 58, Offenses and Miscellaneous Offenses, Ar...

Sponsors: JOHN A. FRITCHEY, LUIS ARROYO JR, GREGG GOSLIN, DEBORAH SIMS

History (4)    Text

title  
**PROPOSED ORDINANCE**

**ESTABLISHING LIMITATION OF UNMANNED AERIAL SYSTEM USAGE ON COUNTY PROPERTY**

**WHEREAS**, use of Unmanned Aerial Systems (UAS), including drones, has exponentially increased and is becoming more common in both commercial and private contexts; and

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**WHEREAS**, UAS can also be used to surreptitiously take photographs and video footage, which can create a privacy, safety or security threat at other county property such as county courthouses and health system facilities;

**NOW THEREFORE BE IT ORDAINED**, by the Cook County Board of Commissioners that Chapter 58, Offenses and Miscellaneous Offenses, Article II, Offenses Involving Property Rights Sec. 58-48 of the Cook County Code, is hereby enacted as follows:

**Sec. 58-48. Limitation of Unmanned Aerial System Usage on County Property.**

- (a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- Agency* shall mean any County agency that is the authorized custodian of County property.
- Unmanned Aerial System* or *UAS* shall mean an unmanned aerial vehicle or drone that is operated without the possibility of direct human intervention from within the aircraft.
- Property* shall mean any land, building or facility owned or leased by Cook County.
- (a) No person shall, at any time, fly any form of UAS on County property unless expressly authorized by the Agency that is the custodian of said property. Any person violating the provisions of this Section shall be subject to a fine of \$2,500.00 for each offense and shall be adjudicated pursuant to Chapter 2, Administration, Article IX, Administrative Hearings, of this Code.
- (b) Confiscation; seizure. Whenever an Agency or any of its duly authorized representatives shall discover any UAS used in violation of this section on County property, they are hereby authorized and empowered forthwith to confiscate; seize and take possession of such UAS and it shall thereupon be deemed to be forfeited to the County of Cook.
- (c) Destruction; redemption. If it is determined at an administrative hearing, by a preponderance of evidence, that the seized UAS was not operated in violation of this section, such UAS may be claimed by its owner without charge within 7 days of such determination. In the event that the UAS remains unclaimed after such period, the Agency shall cause the seized UAS to be destroyed.
- (d) Operations Authorized by the State of Illinois - Exception. Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit the use of an unmanned aerial system (UAS) by a law enforcement agency in accordance with Section 15 of the Freedom from Drone Surveillance Act, codified at 725 ILCS 167/1, et seq., or its successor provision.
- (e) If any clause, sentence, paragraph, section, subdivision or other part of this ordinance or its applications shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this ordinance which shall remain in full force and effect except as limited by such order or judgment.

**Effective date:** This ordinance shall be in effect immediately upon adoption.  
end

# TEXT OF ORDINANCE AS PASSED BY COOK COUNTY

\*\*\*

## ESTABLISHING LIMITATION OF UNMANNED AERIAL SYSTEM USAGE ON COUNTY PROPERTY

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**Effective date:** This ordinance shall be in effect immediately upon adoption.



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Chicago, IL 60602

## Legislation Details (With Text)

**File #:** SO2015-5419  
**Type:** Ordinance  
**Status:** Passed  
**File created:** 7/29/2015  
**In control:** City Council  
**Final action:** 11/18/2015  
**Title:** Amendment of Municipal Code Title 10 by adding new Chapter 10-36 to regulate use of small unmanned aircraft in City airspace  
**Sponsors:** Burke, Edward M., Waguespack, Scott  
**Indexes:** Ch. 121 Small Unmanned Aircraft  
**Attachments:** 1. SO2015-5419.pdf, 2. O2015-5419.pdf

| Date       | Ver. | Action By             | Action                   | Result |
|------------|------|-----------------------|--------------------------|--------|
| 11/18/2015 | 1    | City Council          | Passed as Substitute     | Pass   |
| 11/12/2015 | 1    | Committee on Aviation | Substituted in Committee | Pass   |
| 7/29/2015  | 1    | City Council          | Referred                 |        |

### SUBSTITUTE

### ORDINANCE AS

### AMENDED

WHEREAS, The City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, Pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs, including the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, A recent Washington Post investigation found that law enforcement agencies, universities and other registered drone users have reported 23 accidents and 236 unsafe incidents since November 2009; and

WHEREAS, Chicago has witnessed an increase in "flyaways", which occur when drones go rogue and fly off from their users; and

WHEREAS, Last August, Federal Aviation Administration (FAA) officials criticized a Chicago man for being "reckless and careless" after he sent a drone over the Lollapalooza music festival and posted videos from it on You Tube; and

WHEREAS, Videos have recently surfaced of a handgun-firing drone built by an 18-year-old

Connecticut student for a college class; and

WHEREAS, On May 5, 2014, a DJI Phantom 2 Quadcopter crashed into the 30<sup>th</sup> floor of the Metropolitan Square building, the tallest building in St. Louis, Missouri; and

WHEREAS, Pilots have reported dozens of cases in which drones flew too close to their aircraft, and the FAA has stated that our Nation's air-traffic system is not equipped to handle thousands of small devices flying at low altitudes; and

WHEREAS, Chicago's airspace is among the busiest in the world. In 2014, Chicago-O'Hare International Airport handled nearly 882,000 flights and 70 million passengers, while Chicago Midway Airport handled approximately 250,000 flights and 21 million passengers; and

WHEREAS, On July 21, 2015, a drone crashed into the runway at Chicago Midway Airport while the United States National Guard was conducting a Blackhawk training mission there, causing a breach of security at the airport; and

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WHEREAS, Drones can be equipped with highly sophisticated surveillance technology that threatens privacy; and

WHEREAS, Last December, the FAA launched a public awareness campaign urging novice operators to pay attention to safety and to avoid reckless and unsafe activities, such as flying too close to passenger planes, buzzing crowds or operating drones or unmanned aircraft while under the influence of alcohol or drugs; and

WHEREAS, The prevalence and unregulated use of drones throughout the City of Chicago poses a threat to the public health, safety and welfare and has created public health, safety and welfare concerns, including, but not limited to, privacy, nuisance and trespass concerns; and

WHEREAS, On the other hand, responsible and safe drone use is an increasingly popular recreational activity, particularly among amateur photographers, and promotes technological innovation, economic growth and job creation; and

WHEREAS, The use of drones for hobby and recreational purposes will enable Chicagoans of all ages to familiarize themselves with this exciting new technology, and will undoubtedly inspire a whole new generation of entrepreneurs and innovators to pursue careers in this field and in related high-tech industries that are flourishing in Chicago; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. The above recitals are expressly incorporated into SECTION 2 of this ordinance and made

part thereof as though fully set forth therein.

SECTION 2. Chapter 10-36 of the Municipal Code of Chicago is hereby amended by inserting a new Article IV, and a new Section 10-36-400, as follows:

#### **ARTICLE IV. SMALL UNMANNED AIRCRAFT**

##### **10-36-400 Small unmanned aircraft.**

(a) Definitions. As used in this section:

"Aircraft" means any contrivance invented, used or designed to navigate or fly in the air.

#### **2**

"City airspace" means the airspace above the land, water and waterways within the jurisdiction of the city.

"Firearm" has the meaning ascribed to the term in section 8-20-010.

"Hobby or recreational purposes" means a pursuit engaged in for relaxation, and not for business purposes and not for compensation or hire.

"Open air assembly unit" means any structure, enclosed area or other demarcated space used for the assembly of persons in the open air, including, but not limited to, amusement parks, stadiums, athletic fields, automotive speed ways, aviation fields, band stands, beach enclosures, grandstands, observation platforms, outdoor public swimming pools, outdoor theaters, race tracks, reviewing stands, street festivals or parade routes.

"Operate" means to pilot, steer, direct, fly or manage a small unmanned aircraft through the air whether from within the aircraft or remotely. The term "operate" includes managing or initiating a computer system that pilots, steers, directs, flies or manages a small unmanned aircraft.

"Public aircraft" has the meaning ascribed to the term in Section 40102 of Title 49 of the United States Code.

"Small unmanned aircraft" means an aircraft that (1) is operated without the possibility of direct human intervention from within or on the aircraft, and (2) weighs less than 55 pounds at the time of the operation, including the weight of any payload or fuel. The term "small unmanned aircraft" does not include "toy aircraft" or "public aircraft" as defined herein.

"Surveillance" means the gathering, without permission and in a manner that is offensive to a reasonable person, of visual images, physical impressions, sound recordings, data or other information

involving the private, personal, business or familial activities of another person, business or entity, or that otherwise intrudes upon the privacy, solitude or seclusion of another person, business or entity, regardless of whether a physical trespass onto real property owned, leased or otherwise lawfully occupied by such other person, business or other entity, or into the airspace above real property owned, leased or otherwise lawfully occupied by such other person, business or other entity, occurs in connection with such surveillance.

"Toy aircraft" means (1) a glider or hand-tossed small unmanned aircraft that is not designed for and is incapable of sustained flight; or (2) a small unmanned aircraft that is capable of sustained flight and is controlled by means of a physical attachment, such as a string or wire.

"Weapon" means any instrument, article or substance that, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

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(b) Operating regulations. Except as otherwise provided in subsection (c) of this section, no person shall operate any small unmanned aircraft in city airspace:

- 1) except for hobby or recreational purposes only and in conformity with this section;
- 2) directly over any person who is not involved in the operation of the small unmanned aircraft, without such person's consent;
- 3) over property that the operator does not own, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;
- 4) at an altitude higher than 400 feet above ground level;
- 5) outside the visual line of sight of the operator. The operator shall use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to maintain at all times an unobstructed view of the small unmanned aircraft, without the use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, goggles designed to provide a "first person view" from the model or similar devices;
- 6) within five miles of any airport;
- 7) in a manner that interferes with, or fails to give way to, any manned aircraft;
- 8) between dusk and dawn;
- 9) whenever weather conditions impair the operator's ability to operate the small unmanned aircraft safely;
- 10) over any open air assembly unit, school, school yard, hospital, place of worship, prison or police station, without the property owner's consent, and subject to any restrictions that the property owner may place on such operation;

11) within 500 feet of any water intake facility or any electric generating facility, substation or control center, or within 100 feet of any electric transmission facility, or within 25 feet of any electric distribution facility or of any overhead wire, cable, conveyor or similar equipment for the transmission of sounds or signal, or of heat, light or power, or data, upon or along any public way within the city, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation;

12) for the purpose of conducting surveillance, unless expressly permitted by law;

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13) while under the influence of alcohol, or other drug or drugs, intoxicating compound or compounds or any combination thereof, as those terms are defined in 625 ILCS 5/11-501, as amended;

14) that is equipped with a firearm or other weapon;

15) with intent to use such small unmanned aircraft or anything attached to it to cause harm to persons or property;

16) in a reckless or careless manner; or

17) in violation of any Federal or State law.

c) *Construction of section.*

1) Operations authorized by the FAA - Exception. Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit, limit or otherwise restrict any person who is authorized by the Federal Aviation Administration to operate a small unmanned aircraft in city air space, pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 or a certificate of waiver, certificate of authorization or airworthiness certificate under Section 44704 of Title 49 of the United States Code or other Federal Aviation Administration grant of authority for a specific flight operation(s), from conducting such operation(s) in accordance with the authority granted by the Federal Aviation Administration.

2) Operations prohibited by the FAA - Clarification. Nothing in this section shall be construed to authorize the operation of any small unmanned aircraft in city airspace in violation of any Federal statute or rules promulgated thereunder, including, but not limited to, any temporary flight restrictions or notices to airmen issued by the Federal Aviation Administration.

3) Operations authorized by the State of Illinois - Exception. Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit the use of a drone by a law enforcement agency in accordance with Section 15 of the Freedom from Drone Surveillance Act, codified at 725 ILCS 167/1 et seq., or its successor provision.

d) Violatioii - Penalty. Any person who violates this section or any rule promulgated thereunder shall be fined not less than \$500.00 nor more than \$5,000.00 for each offense, or may be incarcerated for a term not to exceed 180 days, or both. Each day that a violation continues shall constitute a separate and distinct offense.

e) Seizure for unlawful use. If the mayor, superintendent of police, commissioner of aviation, fire commissioner or their duly authorized enforcement officers or designees have a reasonable basis to believe that any small unmanned aircraft is or has been operating in violation of this section, said small unmanned aircraft may be seized by such duly authorized enforcement

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official, followed by an opportunity for an administrative hearing, with notice to the owner within seven calendar days of such seizure, for the purpose of reviewing the appropriateness of the seizure, and shall be held by the city until such time that the owner of such small unmanned aircraft reimburses the city for the actual cartage costs incurred in connection with the seizure and pays to the city \$20.00 for each day, or part of a day, that the small unmanned aircraft is in storage. If criminal charges involving the use, condition or operation of the small unmanned aircraft are pending, the small unmanned aircraft shall be held until disposition of the criminal charges. If it is determined at an administrative hearing, by a preponderance of evidence, that the seized small unmanned aircraft was not operated in violation of this section, such small unmanned aircraft shall be returned to its owner without charge.

(f) Rules. The commission of aviation, in consultation with the corporation counsel, is authorized to promulgate rules necessary or appropriate to implement this section. Such rules shall be posted by the commissioner on the City of Chicago's rule web portal.

SECTION 3. Section 10-36-380 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

**10-36-380 Helicopter operations - Prohibitions - Exception for governmental entities.**

*(Omitted text is unaffected by this ordinance)*

(d) As used in this section, the term "other rotary wing aircraft capable of vertical landing and takeoff does not include small unmanned aircraft, public aircraft or toy aircraft, as defined in section 10-36-400.

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SECTION 4. This ordinance shall take full force and effect 10 days after its passage and publication.

**Michael R. Zalewski**

Alderman.23rd Ward 6247 South Archer Avenue

Chicago, Illinois 60638 Telephone: (773) 582-4444 [mzalewski@cityofchicago.org](mailto:mzalewski@cityofchicago.org) <<mailto:mzalewski@cityofchicago.org>>

**CITY COUNCIL**

City of Chicago

COUNCIL CHAMBER

City Hall Second Floor 121 North LaSalle Street

Chicago, Illinois 60602 Telephone: 312-744-6828 Fax: 312-744-1024

COMMITTEE MEMBERSHIPS

Aviation (Chairman)

Budget & Government Operations

Health & Environmental Protection

Rules & Ethics

Economic, Capital & Technology Development

Workforce Development & Audit

Finance

November 18, 2015

To the President and Members of the City Council:

Your Committee on Aviation begs to leave report and recommend that your Honorable Body pass the proposed ordinances transmitted herewith.

A meeting was held on November 12, 2015 in Council Chambers at City Hall to consider the following ordinances:

02015-7314 Lease Agreement with American Airlines for equipment and storage and staging  
Emanuel (Mayor)

02015-7370 Amendment and term extension of intergovernmental agreement with Chicago  
O'Hare Noise Compatibility Commission for implementation of noise  
compatibility  
programs and projects  
Emanuel (Mayor)

02015-7376 Amendment and term extension of intergovernmental agreement with Chicago  
Midway Noise Compatibility Commission for implementation of noise  
compatibility  
programs and projects  
Emanuel (Mayor)



02015-4650 Amendment of Chapter 10-36 regarding airport access agreements and public parking programs at Chicago Midway and Chicago O'Hare International airports.  
Emanuel (Mayor)

SO2015-5419 Amendment of Municipal Code Title 9 by adding new Chapter 9-121 entitled "Small Unmanned Aircraft"  
Burke (14)  
Waguespack (32)

These ordinances were passed unanimously by a viva voce vote of the members. /

J3^spectfully submitted,

Iael R. Zalewski/  
Chairman, ^-  
Committee on Aviation

# Antonelli Law Successfully Defends Part 107 Pilot in Chicago Drone Ordinance Case

By Jeffrey Antonelli - 15 August 2017



In June, licensed drone pilot Jerrick Hakim flew his DJI Inspire 2 for one solitary flight on Chicago's lakefront. A slow, cinematic flight, the drone flew above Lake Michigan perhaps several hundred feet from shore. After about 15 minutes, the professional photographer landed his drone next to the lakefront walking path, walked to his car nearby and proceeded to leave the lakefront parking lot. That's when the cops arrived.

With pilot license in hand from the FAA, Mr. Hakim answered the police officers' questions. He even showed them a copy of the Chicago Drone Ordinance, pointing to the section that said the ordinance did not apply to those flying with permission from the FAA. He was, in all, *a licensed drone pilot*. He flew safely, briefly, and had nothing to hide.

Based on a radio call from Chicago Fire Department personnel that a drone was in the area,

the Chicago Police stopped him in his car. But why was he stopped? According to documents obtained through a FOIA request, when the police officers arrived they observed a heavy presence of pedestrian traffic on the lake path and surmised Mr. Hakim must have been flying over people. So they issued him a ticket.

They later wrote in the police report that the heavy pedestrian presence “made it impossible to not operate the drone directly over people without their consent.” Except, of course, the fact that Mr. Hakim had not flown over any people, and no witnesses said that he had. And of course, the police officers themselves never observed any part of the drone flight. Their observation of pedestrian traffic on the lakefront path? That was some time after flight had occurred, and they were in the parking lot a distance away from the drone’s takeoff and landing point. Despite his cooperation, FAA drone pilot’s license, and no witnesses stating he flew over anybody, Mr. Hakim was issued a ticket under the Chicago Drone Ordinance for violating Section 10-36-400 (b)(2).

The ticket had a mandatory court appearance in about one month. This was doubly an burden, because not only was he licensed by the FAA to fly his drone and he did not fly over any people, but Mr. Hakim lives in Wisconsin and would have to drive again back to Chicago just to go to court. He would also have to hire a lawyer, since the Chicago Drone Ordinance provides for potentially thousands of dollars in fines, seizure of the drone, and up to six months in jail.

On July 6, 2017 Antonelli Law successfully defended Mr. Jerrick Hakim, an FAA compliant Part 107 licensed commercial drone operator, from the City of Chicago. The city prosecuted the licensed drone pilot for supposedly violating the Chicago Drone Ordinance. Mr. Hakim won the case, which was to our knowledge the first time ever the City prosecuted an FAA licensed commercial drone pilot.

[http://dronelawsblog.com/wp-content/uploads/2017/08/Finding-of-Not-Liable-win-for-F-Jerrick-Hakim-7-6-17\\_Redacted.pdf](http://dronelawsblog.com/wp-content/uploads/2017/08/Finding-of-Not-Liable-win-for-F-Jerrick-Hakim-7-6-17_Redacted.pdf)

But it never should have happened.

## **The Drone Case That Never Should Have Happened**

The facts were on his side. Mr. Hakim never flew his small drone in a location over people.

fact, the single flight he flew in Chicago was flown over 99% of the time slowly over the lake away from any people at all. When he took off and landed, he flew briefly over the lakeside sidewalk trail when there weren't any people there for him to fly over. He followed the training provided during study for his FAA Part 107 small drone license. He won the case.

But while we are pleased at the outcome, Mr. Hakim never should have faced city prosecution at all. After all, it is the FAA that is responsible for policing the skies, not the cops of Chicago's beat cops. The doctrine of federal preemption prevents (or should have prevented in this case) states and local governments from regulating matters of federal aviation.

**But besides the fact that Mr. Hakim did nothing wrong, the case is an excellent example of why local authorities should not attempt to regulate aviation, which is left to the FAA.**

## **We Won, But The Case Shows a Failure of National Drone Policy**

This is a case that should never have been brought.

There are many reasons as to why ranging from the fact that the police have limited knowledge of aviation, to the fact that police ought to be more concerned with stopping crime on the street, especially in Chicago. But most importantly, the Chicago Drone Ordinance is largely, if not entirely, preempted by federal law. But Congress needs to make it easier for the little guy who doesn't have the purse or pocketbook for hiring an attorney. More on this shortly, but first some law on why cities aren't supposed to regulate flying.

In a somewhat famous US Supreme Court case (in aviation, anyway), the Supreme Court stated "The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *City of Burbank v Lockheed Air Terminal, Inc.* 411 U.S. 624 (1973).

In fact, Congress mandated the FAA to prescribe aircraft regulations for "navigating, protecting, and identifying aircraft," "protecting individuals and property on the ground," "ensur[ing] the efficient use of airspace." 49 U.S.C. § 40103(b). The U.S. Government, through the FAA, has exercised continual and exclusive sovereignty over U.S. airspace for a long time. See 49 U.S.C. § 40103(a)(1).

The flying of drones, officially called Small Unmanned Aircraft, or sUAS, is a part of aviation and a matter for federal and not city law. For city attorneys not familiar with aviation or federal preemption, the FAA even wrote up a memo regarding it.

[http://dronelawsblog.com/wp-content/uploads/2017/08/UAS\\_Fact\\_Sheet\\_Final.pdf](http://dronelawsblog.com/wp-content/uploads/2017/08/UAS_Fact_Sheet_Final.pdf)

## **Congress Can Protect the People - and the Domestic Drone Industry**

Fighting City Hall is very expensive and most drone pilots won't be able to afford a legal defense. But they should not have to. Cities and towns should know with bold letters that they do not have the legal authority to do what the City of Chicago is doing with its Chicago Drone Ordinance. And it's the job of Congress to make this happen.

Congress can make it crystal-clear to cities and towns across the country by including **"express" federal preemption** to this year's FAA bill, the 2017 FAA Reauthorization Act. Including that as statutory language would make it so clear to cities and towns trying to regulate drone aviation like Chicago, that they will think twice before risking a litany of consequences including being struck down in federal court.

Are you thinking that asking Congress to include "express" federal preemption is not necessary? Think again. The City of Big Shoulders appears to believe it can pay no heed to federal law, so what about the Supremacy Clause of the US Constitution. It even promotes itself as disregarding federal law as a Sanctuary City.

Chicago is not alone. Countless states and local governmental entities all over America are busy trying to regulate our national airspace. For example, Wilmette, IL requires a permit to fly over their parks. The Village of Manhattan, IL forbids flying drones weighing at least 55 pounds to fly over 100 feet. Franklin Lakes, NJ prohibits flying a drone lower than 400 feet above private land without permission.

[http://dronelawsblog.com/wp-content/uploads/2017/08/BOROUGH-OF-FRANKLIN-LAKES\\_Aircraft\\_Small\\_Unmanned.pdf](http://dronelawsblog.com/wp-content/uploads/2017/08/BOROUGH-OF-FRANKLIN-LAKES_Aircraft_Small_Unmanned.pdf)

## **Fighting City Hall Is An Unfair Fight**

It is important to note that things could have gone the other way, not because of anything

Mr. Hakim did wrong (he did nothing wrong), but because that's just how the system of justice can work. Innocent people are found guilty, incur fines, and go to jail. Especially if you cannot afford competent legal representation. And attorneys fees are thousands of dollars that many people just do not have.

The Chicago Drone Ordinance says, among other things, that flying a small drone over property you don't have permission to fly over can land you in jail for up to six months. about that the next time you fly Southwest out of Midway. And if you fly a toy radio-controlled airplane while using FPV goggles like some gamers use – controlling the aircraft while wearing goggles that display images transmitted from a camera mounted in the fuselage of the model aircraft – **you can be fined and go to jail under the City's ordinance**, even if you fly it in your own backyard.

<http://dronelawsblog.com/wp-content/uploads/2017/08/DronesSubstituteOrdinanceVersion2.pdf>

## Make Congress Fix This

FAA licensed pilots are not supposed to be defending themselves in a city court for violating city aviation regulations about flight operations. **That's a job for the feds, namely the**

But most people targeted by Chicago and other cities won't be able to hire a lawyer like Mr. Hakim did. With Chicago Police enforcing the Chicago Drone Ordinance, people are afraid to fly, even in the parks. To date, the City's Park District has failed to issue a permit to allow drone flying in the parks, despite it being nearly two years since the ordinance was passed. We know, – we recently asked the Chicago Park District about obtaining a permit to fly a drone in the city parks.

Please ask Congress to fix this problem and put a stop to countless stories like Mr. Hakim's.

**“[the only way to stop this ] ever-increasing pace of improper regulation by local governmental authorities across the country [is by] by adding the legal doctrine of “express federal preemption” to the 2017 FAA Reauthorization Act.** Doing so would make crystal-clear law stopping local and state governmental authorities from meddling with traditional federal regulation of our national airspace. Express federal preemption means that Congress has said only the feds can regulate drone airspace. Anything less, and you have

room for loopholes with local and state government lawyers arguing their side, and on other side a weaker legal argument called implied or field preemption.”

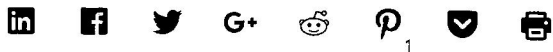
July’s “Legal View” in Rotor Drone Magazine, by Jeffrey Antonelli

Nothing in this article is legal advice. Consult an attorney for your circumstances.

The lawyers representing Mr. Hakim from Antonelli Law were Antonelli Law founder Jef Antonelli and co-counsel Gary Weiss.

Jeffrey Antonelli – Head of Antonelli Law Drone/UAS Practice Group

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**Jeffrey Antonelli**