

Drone News Updates

THE SINGER V. CITY OF NEWTON DECISION, THE DRONE FEDERALISM ACT, DRONE BANS, AND MORE

In a nutshell, the federal case of *Singer v. City of Newton* involved a challenge to the drone ordinance enacted by the city of Newton, Massachusetts. It was filed by Dr. Michael Singer, who, in addition to being a medical doctor, is a commercial drone pilot.

The District of Massachusetts federal court hears the *Singer v. City of Newton* challenge to local drone laws.



Jeffrey Antonelli
Antonelli Law

With a legal background in corporate outside counsel, civil litigation, insurance defense, and intellectual property and drone/UAV law, Jeffrey belongs to the FVAC radio-control club in St. Charles, Illinois. His interest in flying radio control led him to research new technologies, including first-person viewing (FPV) and drones.

The District of Massachusetts federal court found that three drone operational restrictions found in the City of Newton's municipal ordinance as well as its registration requirement were preempted by federal law:

- The ban on the use of a pilotless aircraft below an altitude of 400 feet over private property without the express permission of the owner of the private property.
- The ban on flying a drone beyond the visual line of sight of the operator.
- The ban on flying a drone over Newton city property without prior permission.

This was a terrific win. The case, however, was at the trial level, and the City of Newton might appeal it. And even if it is not appealed, while the case is useful for similar drone ordinance challenges across the country (yes, my law firm hopes to be sought out for this), it is not a binding precedent. In other words, since this is not an appellate or U.S. Supreme Court case, it is not yet "the law of the land." Other federal district courts located in other states could decide differently, even if faced with identical facts as those found with the City of Newton.

In addition, my reading of the Court's opinion suggests that federal legislation is needed to (1) make the jurisdiction of the Federal Aviation Administration (FAA) over drone airspace "express" for preemption purposes, and (2) make

clear what the limits are for local and state governments to restrict where drones can take off and land through their police powers: land use, zoning, privacy, trespass, and law-enforcement operations. What I believe others who have reported on the City of Newton case have missed is that the Court's opinion seems to imply in several places that if the city had circumscribed its restrictions rather than having outright bans, the restrictions might have passed muster with the court. Exactly how far those hypothetical restrictions can go is unclear. This is one of the areas where I believe the federal government has failed to demonstrate leadership by not proposing any legislation that would make clear what the limits are for local and state governments' police powers when it comes to drones, especially when it comes to restricting where drones can take off and land. Another is overflight restrictions: What if, for example, a city passed an ordinance that said outside of a hypothetical designated drone heliport for takeoffs and landings of drones, no drone could be flown lower than 100 above ground level above city land? Would this be OK? Whether it is or is not OK can be debated, and that is the point. We can no longer afford to have these issues remain as gray clouds of uncertainty for drone operators and their customers. We need clarity, and this comes from federal legislation. Not piecemeal litigation from different judges across the country that evolve in a haphazard and unpredictable way over the next several decades.



ALLOWING LOCAL POLICE TO ENFORCE FEDERAL AVIATION LAW OR LOCAL AVIATION ORDINANCES IS SIMPLY ASKING FOR TROUBLE.

AirMap, the Drone Federalism Act, and the Drone Innovation Act

Let me tell you my personal opinion. I am opposed to allowing local law enforcement to police the skies, period. I may be wrong, but I believe allowing local police and plausibly other local enforcement agencies, like township assessors, highway commissioners, and park rangers, to enforce federal aviation law or local aviation ordinances is simply asking for trouble. First, there are dangers to a patchwork of differing local interpretations of federal law if not just differing local aviation ordinances. The FAA is against this, as evidenced in its 2015 UAS (Unmanned Aircraft Systems) Fact Sheet advising state and local governments. Second, neither local police nor other types of local authorities are trained in the law and culture of aviation. Third, let's say that federal legislation is passed that would allow local authorities to keep the money from fines imposed on supposed violators. Can you imagine the practical effects? Just think about the corruption that has been found with red-light cameras in municipalities and large cities across the country. Do you trust your local government not to use drone regulations to feed the city budget? Or to do something analogous to shortening the time of the yellow light, as some cities did, just to increase the amount of red-light tickets and fines?

Recently, there have been reports that AirMap, which provides airspace information to many drone users, is actively supporting federal legislation that would allow local law enforcement to police the sky up to 200 feet above ground level. Some believe that AirMap's legislative activities, if successful, will earn the company millions of dollars while financially strangling small-business owners. How? Perhaps one way that AirMap could make money would be by collecting the possibly thousands of local drone laws in the future that might come about into one portal that AirMap controls. A UAS company that operates at more than one local jurisdiction would need an organization

like AirMap to help the company keep track of what would be a dizzying panoply of differing drone laws and regulations across the country. In this scenario, the small-business owner would have catastrophically high legal-compliance costs trying to deal with all the local permits, operating requirements, and possibly differing equipment standards. A second hypothetical scenario might involve a small drone business having to pay AirMap to obtain airspace authorizations from the FAA higher than 200 feet above ground level through a mandatory FAA Unmanned Traffic Management (UTM) system. AirMap describes itself as "the leading global provider of UTM technology for the drone ecosystem. Millions of drones and hundreds of partners rely on AirMap's data and services for safe and efficient drone flight." I personally have no idea what AirMap's reasons are for supposedly supporting federal legislation that would turn over the skies to local authorities up to 200 feet above ground level. I asked AirMap for a statement, but as of the deadline for this article's submission, I had not received one.

The Cook County, Illinois, Drone Ban

According to Wikipedia, Cook County is the second-most populous county in the United States after Los Angeles County, California. With a population of more than five million, 40 percent of all residents of Illinois live in Cook County, which includes the City of Chicago. And as a native of the Chicago area, I can tell you both Cook County and Chicago have long-standing reputations of sustaining a culture of pervasive political corruption.

In September 2017, Cook County passed an ordinance that bans all drones from taking off or landing from any land Cook County owns or leases or from any county facilities. I have described this ban as being akin to a state or local government preventing motorists from accessing the on-ramp to the federal interstate highway. In my opinion, local governments that do this, like Cook County, are preventing UAS pilots from accessing the national airspace. We would not tolerate this if a local government blocked access to the federal highway, and neither would the federal government. And we should not tolerate local governments from preventing or severely restricting access to the national airspace, either. The fine for violating the Cook County drone ordinance? \$2,500!

If express federal preemption is not passed by Congress or if the Drone Federalism Act or a similar bill is passed, you can expect to see many more cities and counties pass ordinances banning drones, like Cook County has done.

Successful Defense against Chicago Drone Ordinance

This is the drone case that never should have happened. In June 2017, Part 107-licensed drone pilot Jerrick Hakim flew his DJI Inspire 2 for one solitary flight on Chicago's lakefront. Taking 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. He was wrongly accused of flying over people in violation of the Chicago Drone Ordinance.

My law firm represented him in court, and we won. While we are pleased at the outcome, Mr. Hakim never should have faced city prosecution. After all, the FAA is responsible for policing the skies, not the City of Chicago's beat cops.



The doctrine of federal preemption prevents (or should have prevented, in this case) state and local government from regulating matters of federal law. Moreover, the text of the Chicago Drone Ordinance clearly shows an intent to exempt FAA-approved operations, as our client was doing. I raised this in court. But the judge said that she believed that under the City of Chicago Drone Ordinance, the FAA has to approve the actual flight plan to be exempted. For those of you with any aviation or Part 107 knowledge, you already know this is ridiculous since our client was in Class G airspace. This case is, therefore, an excellent example of why local authorities should not be allowed to regulate drone aviation, which is best left to the FAA.

This case illustrates why you don't want local governments regulating drones, and why we must stop Congress from giving local law enforcement the legal authority to police the skies, whether through enforcing FAA regulations or their own local drone laws. And please keep in mind that most people and companies could not afford a competent attorney to represent them and fight city hall. And under the Chicago Drone Ordinance, you can be put in jail for six months and your drone seized.

Drone Advocacy Group

Do you really want local law enforcement of our skies in any manner? I know I don't. If you don't either, call and visit your U.S. senators and representatives to tell them your opinion. The reality is that, if they don't hear your opposition, all they will know is what the other side's lobbyists are telling them. And that is probably not good

for you or your drone business.

As a result of living through the above and hearing many reports from the industry about the continued difficulties running a legally compliant drone business, it has become clear to me and others that new advocacy efforts are needed. To that end, I am starting a new drone advocacy group, with which I hope you'll become involved. Please stay tuned for details.

I have just seen enough congressional and FAA dithering on the subject, which is allowing a local and federal regulatory environment to emerge that has the potential, if left unchallenged, to allow only large and venture capital-backed factions to thrive and few others.

Creating an advocacy group will be difficult, especially as an outsider to the "swamp" of Washington, D.C. It is my belief, however, that the need is clearly there, which has been confirmed by a recent survey taken by my law firm, and I am told that help and money will become available for the effort. And more important, most of you who see things the same way I do don't live or do business in Washington, D.C.

In the meantime, please take a lesson from the efforts of drone advocates like Keith Kmiecik of Illinois, who helped convince the cities of Orchard Park, New York; Evanston, Illinois; and South Elgin, Illinois to change course in their local drone-law efforts. Individual actions matter, and you, too, can make a difference. Stop terrible federal legislation like the Drone Federalism Act and similar bills. Call and visit your federal representatives now, while the iron is hot. Our industry still has a chance. ✈️

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Disclaimer: None of the author's accounts or impressions of the FAA UAS Symposium has been reviewed by the FAA, and they are, therefore, just the author's opinion. And as always, none of this article constitutes legal advice. Please consult an attorney if you have legal questions.

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