

Drone Briefs

NEWS AND LEGAL UPDATES FOR MUNICIPAL UAV PROGRAMS – APRIL 2022

Your program documents may be inadvertently jeopardizing municipal immunity. Because it's not just what you say, but how you say it that counts

Municipal employees should not be so concerned about liability that they're afraid to make decisions. Therefore, Connecticut General Statutes § 52-557n grants immunity to municipalities for an employee's negligence in performing acts that require judgment or discretion. This means there is no immunity if the employee is engaged in an act that is **ministerial** rather than **discretionary**. Ministerial acts are those that are required to be performed in a prescribed manner, without the exercise of judgment. In other words, acts that are mandatory.

Depending on how they are drafted, drone program documents (standard operating procedures or "SOPs") can turn actions that are by law, discretionary, into ones that are mandatory. While this isn't necessarily problematic, it must be done intentionally and with forethought; because if the failure to comply with a mandatory requirement causes or contributes to an accident with resulting liability, municipal immunity may be unavailable as a defense.

For example, while the law allows pilots discretion to decide the amount of wind they can safely fly in, your SOPs may not. Let's say your SOPs prohibit flights in winds above 25 mph. If a young child is missing in the woods on a frigid winter's night with reported winds of 26 mph, you might decide the situation warrants flying despite the risks. But if you exercise discretion where your SOPs don't provide it, and a crash causing personal injury can be tied to wind speed, your municipality may face

significant liability with no immunity. Therefore, before turning discretionary acts into ministerial ones, carefully consider whether it makes sense to provide an out. If so, include parameters for exceptions such as limiting flights to sparsely-populated areas or requiring prior permission from the program manager. If, however, after careful consideration you decide it's appropriate to eliminate discretion, be sure your team is familiar with the requirement and understands they may not violate it under any circumstances.

Aside from specific provisions imposing mandatory requirements, another common way SOPs can jeopardize immunity is through inclusion of checklists. While America may run on Dunkin', aviation runs on checklists. Unfortunately, a checklist is the hallmark of non-discretionary action. It lists specific steps to be taken in a particular situation. There may, however, be circumstances where every step is not taken, or cannot be taken, for good reason. For instance, if a drone is in an uncontrolled descent, emergency procedures typically require notification of those nearby. While ideally that step should be taken, one can imagine situations where pilots may fail to do so because they are so focused on flying the drone and getting it safely on the ground that they fail to call out a warning. Those failures should not compromise municipal immunity.

Therefore, unless you believe there will never be a situation where a checklist item may be overlooked or omitted, the language preceding the checklist should be drafted to allow for exceptions or deviations. For instance, it might state that the steps shall be taken "to the best of the pilot's ability" or "if practicable" or language of similar meaning.

If your program operates under a Certificate of Authorization (“COA”), it’s critical to pay particular attention to its terms, as they typically include numerous requirements that don’t apply to Part 107 programs. Each one is a non-discretionary action or limitation which, if not complied with, can jeopardize immunity. (This is just one of many reasons COAs create significant liability and should be used only if truly necessary.)

Of course, actions required or limitations imposed by law should be mandatory in SOPs; but given the potentially grave consequences of deviating from mandatory provisions, all program participants should be very familiar with governing documents, particularly, provisions that are not discretionary.

Engaging an attorney experienced with drone legal requirements, municipal drone uses, and municipal law, to review your SOPs can help ensure that they include required information while avoiding these potential liability pitfalls.

Connecticut drones in the news and at work

Using a drone with thermal imaging at a structure fire, the Rocky Hill Fire Department was able to “see” the extreme heat level of the adjacent roof and wet it down it before that building caught fire as well. Publicizing the effectiveness of your drone program is critical to gaining public support. Photos that tell “if ... then” stories – “**if** it weren’t for the drone, **then** the adjacent building may have caught fire” – are an invaluable asset, particularly if they are shared with the press.



CT Municipal UAV Task Force News

The March meeting had great in-person attendance! Members brought drones and systems to share and discuss. **Next meeting: May 5th 1:00** at the Air National Guard 103rd Air Wing at Bradley Airport. Master Sgt. Jessica Roy, Air National Guard, Ass’t Security Director Steve Blindbury TSA and Sgt. Eric Hurley, State Police Aviation Unit will share valuable information on how to respond to drones with a dangerous payload or nefarious intent. Because sensitive information will be shared, this meeting is **in-person only** and advance registration is required.

Resources

Below is a list of public safety UAV educational resources we have found particularly helpful. It is by no means exclusive:

[DRONERESPONDERS](#) - news, podcasts, videos, research, monthly webinars with the FAA, form documents

[Airborne Public Safety Association](#) - newsletters, form documents, reports, videos

[Public Safety Flight](#) - flight safety guidance, research, podcasts with the FAA

[FAA](#) - general UAS information

[piXL Drone Show](#) - video interviews

[Skyfire Consulting](#) - educational videos, newsletter

Other useful links

[Drone Zone](#) - register your drone, file for waivers

[FAA UAS Facility Maps](#) - controlled airspace limits

[FAASTeam](#) - register for recurrent training

For more information or to join the mailing list, please contact:

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Jennifer is an instrument-rated private pilot with over 25 years of experience. She holds a part 107 remote pilot certificate, is an FAA Safety Team (FAASTeam) Drone Pro and a civilian representative to the TSA CT Rapid Incident Response Team.