

Parks & Recreation Commission



REGULAR MEETING AGENDA

Date: 9/23/2015
Time: 6:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

PLEASE NOTE CHANGE IN LOCATION

Call To Order

Roll Call – Cebrian, Cox, Harris (Vice Chair), Lane, Palefsky (Chair), Stanwood, Tafoya

A. Public Comment

Under “Public Comment,” the public may address the Commission on any subject not listed on the agenda. Each speaker may address the Commission once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Commission cannot act on items not listed on the agenda and, therefore, the Commission cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

B. Regular Business

- B1. Accept Commission minutes for the meeting of July 22, 2015 ([attachment](#))
- B2. Study session on Drone and RC aircraft at Bedwell-Bayfront Park ([attachment](#))
- B3. Review and recommend to City Council the approval of a partnership and sponsorship policy for Community Services Department events and programs ([attachment](#))

C. Informational Items

- C1. Review and update of the Commission goals and work planning session

D. Reports and Announcements

- D1. Community Services Director’s update and announcements ([attachment](#))

E. Adjournment

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At every Regular Meeting of the Commission, in addition to the Public Comment period where the public shall have the

right to address the Commission on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the Commission's consideration of the item.

At every Special Meeting of the Commission, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

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Parks & Recreation Commission



REGULAR MEETING MINUTES **DRAFT**

Date: 7/22/2015

Time: 6:30 p.m.

Onetta Harris Community Center
100 Terminal Ave., Menlo Park, CA 94025

PLEASE NOTE CHANGE IN LOCATION

Call to Order at 6:45 p.m.

Roll Call

Present: Lane, Palefsky, Stanwood Tafoya

Absent: Cebrian, Cox, Harris

A. Public Comment

Lynne Bramlett from the Library Commission introduced herself to the Commission.

B. Regular Business

- B1. Approve Commission minutes for the meeting of June 24, 2015 ([attachment](#))

ACTION: Motion/Second (Stanwood/Tafoya) to approve the minutes of June 24, 2015. Motion passed unanimously, with all present members in favor.

- B2. The purpose of this meeting is to tour parks and recreation facilities in Menlo Park and to familiarize commissioners on amenities and uses they provide to residents. The tour will include a tour of Belle Haven Pool and three playgrounds that were identified in a recent playground audit conducted in the City. These include the playgrounds in Willow Oaks Park, Burgess Park and Nealon Park. The public is welcome to join us on the tour if they wish to do so but must provide their own transportation. No action will be taken by the Commission while on the tour.

Adjourn after the tour. Times are approximate.

1. Belle Haven Pool, 100 Terminal Ave – 6:45 p.m.
2. Willow Oaks Park, Willow Road and Coleman Ave – 7:15 p.m.
3. Burgess Park, Laurel Street and Burgess Drive – 7:45 p.m.
4. Nealon Park, 800 Middle Ave – 8:15 p.m.

C. Director's Report ([Attachment](#))

Derek Schweigart gave the Commission the Director's update of the Community Services Department.

D. Informational Items

- D1. City Council Proclamation recognizing July as Parks and Recreation Month ([attachment](#))

Derek Schweigart mentioned the City Council Proclamation recognizing July as Parks and Recreation Month at the July 21, 2015 City Council meeting.

- D2. Summary of San Mateo County Boards and Commissions training held on June 27, 2015 ([attachment](#))

Derek Schweigart gave the Commission a summary of the San Mateo County Boards and Commissions training held on June 27, 2015.

- D3. Status update on Menlo Park playgrounds ([attachment](#))

Derek Schweigart gave the Commission a status update on the Menlo Park playgrounds.

D. Adjournment at 6:57 p.m.

Minutes prepared by Linda Munguia, Secretary.



STAFF REPORT

Parks and Recreation Commission

Meeting Date: 9/23/2015

Staff Report Number: 15-001-PRC

Study Session: Review and provide general direction to City staff on Drone and RC Aircraft Use at Bedwell-Bayfront Park

Recommendation

Staff recommends that the Commission review and consider Drone and RC Aircraft Use at Bedwell-Bayfront Park and provide staff feedback and general direction on possible next steps to address the issue.

Policy Issues

Any recommended change to current regulations on Drone and RC Aircraft at City parks will require action by City Council to modify existing Municipal Code.

Background

The issue of drones and Radio Controlled (RC) aircraft otherwise referred to as Unmanned Aircraft Systems (UAS) at Bedwell-Bayfront Park came to the attention of the City Council on November 9, 2013, when the Council received a letter from a concerned citizen about the risks to park users from model airplane fliers. The letter cited an article concerning the accidental death of a New York teen that was reported to have flown his model helicopter recklessly. The citizen expressed concern over the many UAS hobbyists flying models close to other park users and requested that the Council either prohibit them or require safe distances be enforced. The letter and article are contained in the Parks and Recreation Commission staff report for January 22, 2014 (Attachment A). After a lengthy discussion, the Commission took no action on this topic noting there have not been any documented complaints on the issue and any changes to existing City ordinances or park rules would require substantial enforcement for which capacity does not currently exist.

On March 11, 2015, the City's Department of Public Works was contacted by the San Carlos Airport Association (SCAA) which shared pilots' concerns about the increase in recreational drone activity at Bedwell-Bayfront Park and reported a "near miss" between a drone and a full-scale aircraft. It was learned that the park had become a hub for drone enthusiasts despite its proximity to the Palo Alto and San Carlos airports and their landing and take-off paths, both of which are critical flight phases. City staff met with representatives from the Federal Aeronautics Association (FAA) and the Palo Alto Airport and learned that the FAA is developing stricter regulations that would ban UAS within 5 nautical miles of an airport but representatives were unclear at that time about when new regulations would go into effect.

On May 27, 2015, the Parks and Recreation Commission received a staff presentation and public

comment on a proposal to ban UAS usage at Bedwell-Bayfront Park. Several members of the Radio Controlled (RC) aircraft hobbyist community were present and spoke in opposition to the ban, while members of the Friends of Bedwell-Bayfront Park urged the Commission to recommend it to the City Council. The Commission did not take action on this topic and requested staff provide additional information for their consideration at a future meeting. The staff report for this presentation is included as (Attachment B).

During this meeting, the Commission requested City staff provide the following:

1. Review original Bedwell-Bayfront Master Plan for its original design and purpose.
2. Review current City code and ordinances concerning UAS in City parks.
3. Provide information on locations around the bay area where UAS are allowed and what rules and restrictions govern their usage.
4. What impacts or concerns exist for wildlife at the park?
5. What is the history of complaints received by the Commission and the Menlo Park Police Department on this issue?
6. What are the legal concerns for the City regarding this issue?

Analysis

1. Bedwell-Bayfront Master Plan

In September 1974, the Bayfront Park Master Plan was prepared by Mr. Kaz Abey of Royston, Hanamoto, Alley and Abey, landscape architects. Although City staff was unable to locate the original Master Plan for Bedwell-Bayfront Park, there are documents that reference the master plan including the Environmental Impact Report and the Management Recommendations Report. According to these documents, "Bayfront Park will be a passive recreation area. There will not be any formal sports fields. It is designed for activities such as: bird watching, bicycling, hiking, kite-flying etc."

While identifying those activities that the park was meant to accommodate it was also necessary to determine what kinds of activities the City does not wish to occur at the park based on master plan assumptions. The first step was to review existing municipal code and determine if there were any revisions necessary. There are several sections in the municipal code pertinent to the operation of the Park but Title 8 was, and is, the most important for this discussion.

2. City Municipal Code

The Menlo Park Municipal Code is current through Ordinance 1000, passed June 11, 2013.

8.28.060 Sound Standard *In recognition of the rights of residents in the vicinity of parks to enjoy the comfort of their homes in normal peace and quiet, as well as the right of citizens to enjoy a reasonable peace and quiet in appropriately designed parks, the use of any radio receiving set, musical instrument, machine or device for producing or reproducing sound, or any device which produces noise in such a manner as to unreasonably disturb the peace, quiet, and comfort of persons is prohibited in all parks with the exception of Burgess and Kelly Parks. Use of said equipment in Burgess and Kelly Parks shall be subject to the following conditions: (1) No amplifiers with a power output exceeding thirty-five watts may be used; (2) Number, location, direction and hours of use of loudspeakers shall be subject to written approval*

of the director of recreation, as set forth in the permit hereafter referred to. (Ord. 685 § 1(a), 1983: Ord. 483 (part), 1969: Prior code § 18A.402).

8.28.130 Prohibited activity in parks or facilities

The following activities are prohibited in any park or recreational facility according to the Menlo Park Municipal Code Chapter 8.28 PARKS AND RECREATION Page 236/748:

- (3) Commercial activities for private profit except by express written permit and on payment of appropriate fee;
 - (5) Motor-driven vehicles or models, except in designated areas;
 - (13) To ride, drive, lead or keep a saddle horse, pony, mule, or other such animal;
 - (15) To cause, create, encourage, or threaten to cause any disturbance which may reasonably result in injury or property damage, or disturb the peace, comfort and security of the park patrons or employees.
- (Ord. 794 § 2, 1989; Ord. 685 § 1(b), 1983; Ord. 515 § 1, 1971; Ord. 483 (part), 1969: Prior code § 18A.7).

Although revisions are needed to update the current municipal code, the current regulations would apply to all of the City's parks, including Bedwell-Bayfront.

3. Bay Area UAS Field Locations

There are a number of UAS field locations in the Bay Area which can be found on RC aircraft club web sites and blogs (<http://bayrc.net/flying-sites>; <http://www.rcgroups.com/forums/index.php>), many of which appear to be self-regulated, including:

- Redwood Shores by Radio Road – Hiller Aviation Museum (special events only)
- San Mateo County Fairgrounds Parking Lot
- Bay Meadows Race Track
- Baylands Park, Sunnyvale

Two other locations have more formalized guidelines for UAS pilots:

- Santa Clara County Model Aircraft Skypark, Morgan Hill
- Rancho San Antonio Preserve, Cupertino

At Rancho San Antonio Preserve, for instance, UAS are welcome to fly in a designated area. The rules and conditions for flying model aircraft (listed below) were developed during a series of public meetings which included input from model flyers, adjacent neighbors and other park users such as hikers and equestrians.

1. Models must take off and land in designated areas only.
2. Pilots are required to stay within the designated area.
3. Models must stay within designated flight area, and maintain at least 100' vertical and horizontal clearance from parking lots, trails, structures, and visitors.
4. Maximum of 5 models flying at a time.
5. Maximum model weight - 5 lbs.
6. Maximum model speed - 50 mph.
7. Maximum model noise - 80 dB at 25' Front propeller models only.
8. Current Academy of Model Aeronautics (AMA) membership is required to fly.

9. Information is available at: <https://www.modelaircraft.org/joinrenew.aspx>
10. Gas powered models, rockets, and video piloting are prohibited.
11. Remote control helicopters are prohibited.

4. Environmental Impacts

One concern discussed at the May Commission meeting was the impact that UAS would have to park wildlife. Shortly after this meeting City staff received an email from Eileen McLaughlin of the Citizens Committee to Complete the Refuge (www.bayrefuge.org). Ms. McLaughlin reminded staff that Bedwell-Bayfront Park borders, on three sides, the Don Edwards National Wildlife Refuge and, on two sides, the Refuge lands that are part of the South Bay Salt Pond Restoration Project. The City of Menlo Park has been working in partnership with both the Refuge and the Project and this is expected to continue long into the future. Ms. McLaughlin pointed out that take-off and landing of UAS is prohibited on Refuge lands as they produce significant disturbance to wildlife, i.e. reacting to such craft as potential predators. This is true whether the disturbance occurs over to-be-restored ponds, the healthy marshes of Greco Island or within the Park. McLaughlin noted that there are wildlife in these areas year-round including the federally-endangered Ridgeway's Rail and the threatened Snowy Plover. The Refuge has the charge to protect wildlife if UAS fly over Refuge lands but would be jurisdictionally-constrained if the aircraft took off and landed within Bedwell-Bayfront Park. There are current regulations in place concerning the use of UAS over Refuge lands which are included in (Attachment C).

5. Complaint History

Concerns over UAS usage at the Park have recently come to the attention of City staff, likely due to the substantial increase of commercial and private drone usage being reported. In response to heightened concerns, the Menlo Park Police conducted periodic checks at the Park over a period of 4-5 weeks. During these checks there was no evidence of UAS activity outside of what is currently allowed. A number of users were approached and all appeared to be aware of nearby airport flight paths and were also aware of current FAA regulations governing drone usage. It was also evident that it is difficult to enforce maximum height regulations given current tools available to law enforcement.

6. Legal Concerns

Regarding legal concerns over UAS at the Park, there is existing California law providing some protection for the City from liability if a UAS or other remote control aircraft causes injury on the ground or the air. However, if the City prohibits their use, the City must take reasonable action to enforce its prohibition or this protection from liability is greatly reduced.

Concerning the City's jurisdiction and responsibility over land use and airspace of Bedwell-Bayfront Park, the City, through its land use regulatory authority, can: choose to ban take-off and landing of UAS from the Park; strictly regulate UAS; or take no action. However, any regulations the City adopts may be preempted by the FAA unless the City's regulations are more restrictive and the City cannot take action that conflicts with FAA regulations. Regulations around UAS are relatively new and are likely to change in the near future. Based on recent media statements emphasizing the FAA's responsibility over all civil airspace and its current and future oversight of UAS, it is likely any local regulation will be preempted by the FAA.

Discussion

Staff recommends the following questions to assist in guiding the Commission discussion:

1. Does the Commission have sufficient information to come to a decision on UAS usage at Bedwell-Bayfront Park? And, if not, what other questions or additional information does the Commission require?
2. What role would the Commission like to have if the issue continues to move forward?
3. How would the Commission like to proceed on the issue of UAS usage at Bedwell-Bayfront Park?
Some options may include:
 - Proposing a recommendation to the City Council on a ban of UAS at the Park with adequate regulation and enforcement of Municipal Code.
 - Proposing new regulations and restrictions to the City Council on UAS usage at the Park with adequate regulation and enforcement of Municipal Code.
 - Taking no action on this issue at this time.

Impact on City Resources

If Council approves changes to current UAS regulation at City parks, it is recommended that the Council approve a budget allocation that will provide for sufficient enforcement of the new regulations.

Environmental Review

This subject is not deemed a project under the California Environmental Quality Act.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. January 22, 2014 PRC Staff Report - Radio Controlled (RC) flying aircraft at Bedwell-Bayfront Park
- B. May 27, 2015 PRC Staff Report – Drones at Bedwell-Bayfront Park
- C. Memo – Current unmanned aircraft regulations over refuges

Report prepared by:
Derek Schweigart, Community Services Manager

Memo

To: Parks and Recreation Commission
From: Derek Schweigart, Assistant Director Community Services
Date: January 22, 2014
Re: Radio Controlled (RC) flying aircraft at Bedwell-Bayfront Park

OVERVIEW

Recently the City Council received a complaint from a park user at Bedwell-Bayfront Park regarding Radio Controlled (RC) helicopters and planes in City parks. The following are letters the City Council received:

November 9, 2013

Dear City Council members,

I am hoping you will look into the issue of risks to park users of Bayfront Bedwell park at end of Marsh Rd. There is no problem with most of the model airplane fliers. However there are a few irresponsible model helicopter fliers who insist on flying right along the walking path even when requested to move to the center of the field. The attached article described the accidental death of a New York teen in a park 2 months ago, whose head was sliced partially off by an out of control toy helicopter. Though rare, this is not the first, in US or Europe.

The article describes the danger of these model choppers when any slight thing goes wrong. It also states the overall organization of model fliers has a major principle of safe flying. Which means at a distance from the public.

Not necessary to prohibit them, but please consider making such 'safe distance' (maybe 50 yds?) an ordinance so it can be enforced if necessary. (If they are "not breaking any laws" they ignore passerby's requests to move away from the path.) If this url does not directly connect, you can google teen model helicopter death. It occurred Sept this year.

<http://abcnews.go.com/m/story?id=20182547>

Kathryn Sobieski MD
kasobie@bresnan.net
(307) 200-1825

Dear Counselors,

Happy Holidays to all. I hope you are on vacation and have a great new year.

I am just now waiting for the helicopter battery to run out so that I can proceed without worry as it swoops above the pathways and am thus prompted to jot this note. I know you are investigating the issue. I do hope a designated flying area (with over flight boundaries as well) can be chosen and posted. I understand there is a model flying club across the Dumbarton in Freemont which uses closed to public space for safety. They may have some info. No one wants an accident to be the instigating factor that creates safety for the pedestrians. Certainly chance of accident is small but consequence potentially horrific.

Please put this on your agenda for 2014.

Sincerely,
Kathryn Sobieski MD
Menlo Park

The ABC News story that the park user cited was regarding a New York teen that was fatally injured while piloting his remote-controlled helicopter that experienced a mechanical failure leading to the fatal crash. Many believe the crash was the result of reckless flying of the helicopter. It was also noted in the article that it was the second such death as a result of a remote-controlled helicopter in the United States. The full story can be found here:

<http://abcnews.go.com/m/story?id=20182547>

http://www.nytimes.com/2013/09/06/nyregion/remote-controlled-copter-fatally-strikes-pilot-at-park.html?_r=0

The sport of Radio Controlled (RC) flying aircraft is governed by the [Academy of Model Aeronautics National Model Aircraft Safety Code](#). Hobbyists participating in the activity are supposed to follow guidelines describing the manner in which the aircraft must be operated and include restrictions for locations where model aircraft activities are prohibited. In addition, there are a number of RC clubs throughout the San Francisco Bay Area which require that their members meet certain qualifications and follow additional regulations in flying their aircraft. There are several links to many of these RC clubs and organizations provided in this report for the Commission's consideration.

The City of Menlo Park is not aware of any reported injuries as a result of Radio-Controlled aircraft in City parks and there have not been other complaints or concerns expressed by park users regarding their use. Given the recent concern expressed by one City park user as well as the recent incident in New York, the Parks and Recreation Commission is being asked to consider the issue of Radio Controlled Aircraft (helicopters and planes) in City parks and to advise staff on how to proceed with the issue.

In addressing the issue at Bedwell-Bayfront Park, City staff has determined there are a few options to consider, all of which have their own pros and cons. There may

be other options and considerations and this is only a partial list for the purposes of this initial discussion.

Options	Pros	Cons
1. City ordinance to ban RC aircraft at Bedwell-Bayfront Park and other City parks.	This potentially eliminates the RC aircraft activity in the park.	<p>Difficult to enforce ordinance without the existence of a park ranger and limited capacity by the Menlo Park PD.</p> <p>Eliminates positive recreational experience by hobbyists.</p> <p>This action may not be warranted given the limited reporting of the activity in the park.</p>
2. City designates space at Bedwell-Bayfront Park for RC aircraft activity.	<p>Would reduce potential impact to other park users.</p> <p>Would provide rules and guidelines to RC aircraft hobbyists with the posting of pertinent information to promote safe use of the park.</p>	<p>Potential for Bedwell-Bayfront Park to become a destination for RC aircraft hobbyists which may have a negative impact on other park users.</p> <p>Potential liability exposure for the City to dedicate park space for activity.</p>
3. City takes no action.	No immediate financial impact to the City.	May not be an option since City is aware of the activity in one of its parks.

The following questions will help guide the discussion:

1. Given the pros/cons presented, what strategy should the City take in addressing the issue of RC aircraft, which may include providing designated space for the recreation activity, banning the activity in public parks by a City ordinance or taking no action?

2. What other information does the Commission require to move forward with a decision on the issue?
3. Does this issue require a public meeting, study session or park user survey?
4. What role would the Commission like to play in this issue moving forward?

The following are useful links to the sport of Radio Controlled (RC) flying aircraft which include the Academy of Model Aeronautics National Model Aircraft Safety Code and links to local RC clubs:

<http://www.modelaircraft.org/files/105.PDF>
<http://www.rc-airplane-world.com/california-rc-airplane-clubs.html>
<http://www.sacrc.org/>
<http://www.sccmas.org/>
<http://www.baysidercclub.com/>
<http://www.baysidercclub.com/club-info/field-rules/>
<http://wavemastersrc.org/>
<http://www.dvrc.org/>

ATTACHMENTS

[A. Academy of Model Aeronautics National Model Aircraft Safety Code](#)

Academy of Model Aeronautics National Model Aircraft Safety Code

Effective January 1, 2014

- A. **GENERAL:** A model aircraft is a non-human-carrying aircraft capable of sustained flight in the atmosphere. It may not exceed limitations of this code and is intended exclusively for sport, recreation, education and/or competition. All model flights must be conducted in accordance with this safety code and any additional rules specific to the flying site.
1. Model aircraft will not be flown:
 - (a) In a careless or reckless manner.
 - (b) At a location where model aircraft activities are prohibited.
 2. Model aircraft pilots will:
 - (a) Yield the right of way to all human-carrying aircraft.
 - (b) See and avoid all aircraft and a spotter must be used when appropriate. (AMA Document #540-D.)
 - (c) Not fly higher than approximately 400 feet above ground level within three (3) miles of an airport without notifying the airport operator.
 - (d) Not interfere with operations and traffic patterns at any airport, heliport or seaplane base except where there is a mixed use agreement.
 - (e) Not exceed a takeoff weight, including fuel, of 55 pounds unless in compliance with the AMA Large Model Airplane program. (AMA Document 520-A.)
 - (f) Ensure the aircraft is identified with the name and address or AMA number of the owner on the inside or affixed to the outside of the model aircraft. (This does not apply to model aircraft flown indoors.)
 - (g) Not operate aircraft with metal-blade propellers or with gaseous boosts except for helicopters operated under the provisions of AMA Document #555.
 - (h) Not operate model aircraft while under the influence of alcohol or while using any drug that could adversely affect the pilot's ability to safely control the model.
 - (i) Not operate model aircraft carrying pyrotechnic devices that explode or burn, or any device which propels a projectile or drops any object that creates a hazard to persons or property.
Exceptions:
 - Free Flight fuses or devices that burn producing smoke and are securely attached to the model aircraft during flight.
 - Rocket motors (using solid propellant) up to a G-series size may be used provided they remain attached to the model during flight. Model rockets may be flown in accordance with the National Model Rocketry Safety Code but may not be launched from model aircraft.
 - Officially designated AMA Air Show Teams (AST) are authorized to use devices and practices as defined within the Team AMA Program Document. (AMA Document #718.)
 - (j) Not operate a turbine-powered aircraft, unless in compliance with the AMA turbine regulations. (AMA Document #510-A.)
 3. Model aircraft will not be flown in AMA sanctioned events, air shows or model demonstrations unless:
 - (a) The aircraft, control system and pilot skills have successfully demonstrated all maneuvers intended or anticipated prior to the specific event.
 - (b) An inexperienced pilot is assisted by an experienced pilot.
 4. When and where required by rule, helmets must be properly worn and fastened. They must be OSHA, DOT, ANSI, SNELL or NOCSAE approved or comply with comparable standards.
- B. **RADIO CONTROL (RC)**
1. All pilots shall avoid flying directly over unprotected people, vessels, vehicles or structures and shall avoid endangerment of life and property of others.
 2. A successful radio equipment ground-range check in accordance with manufacturer's recommendations will be completed before the first flight of a new or repaired model aircraft.
 3. At all flying sites a safety line(s) must be established in front of which all flying takes place. (AMA Document #706.)
 - (a) Only personnel associated with flying the model aircraft are allowed at or in front of the safety line.
 - (b) At air shows or demonstrations, a straight safety line must be established.
 - (c) An area away from the safety line must be maintained for spectators.
 - (d) Intentional flying behind the safety line is prohibited.
 4. RC model aircraft must use the radio-control frequencies currently allowed by the Federal Communications Commission (FCC). Only individuals properly licensed by the FCC are authorized to operate equipment on Amateur Band frequencies.
 5. RC model aircraft will not knowingly operate within three (3) miles of any pre-existing flying site without a frequency-management agreement. (AMA Documents #922 and #923.)
 6. With the exception of events flown under official AMA Competition Regulations, excluding takeoff and landing, no powered model may be flown outdoors closer than 25 feet to any individual, except for the pilot and the pilot's helper(s) located at the flightline.
 7. Under no circumstances may a pilot or other person touch an outdoor model aircraft in flight while it is still under power, except to divert it from striking an individual.
 8. RC night flying requires a lighting system providing the pilot with a clear view of the model's attitude and orientation at all times. Hand-held illumination systems are inadequate for night flying operations.
 9. The pilot of an RC model aircraft shall:
 - (a) Maintain control during the entire flight, maintaining visual contact without enhancement other than by corrective lenses prescribed for the pilot.
 - (b) Fly using the assistance of a camera or First-Person View (FPV) only in accordance with the procedures outlined in AMA Document #550.
 - (c) Fly using the assistance of autopilot or stabilization system only in accordance with the procedures outlined in AMA Document #560.
- C. **FREE FLIGHT**
1. Must be at least 100 feet downwind of spectators and automobile parking when the model aircraft is launched.
 2. Launch area must be clear of all individuals except mechanics, officials, and other fliers.
 3. An effective device will be used to extinguish any fuse on the model aircraft after the fuse has completed its function.
- D. **CONTROL LINE**
1. The complete control system (including the safety thong where applicable) must have an inspection and pull test prior to flying.
 2. The pull test will be in accordance with the current Competition Regulations for the applicable model aircraft category.
 3. Model aircraft not fitting a specific category shall use those pull-test requirements as indicated for Control Line Precision Aerobatics.
 4. The flying area must be clear of all utility wires or poles and a model aircraft will not be flown closer than 50 feet to any above-ground electric utility lines.
 5. The flying area must be clear of all nonessential participants and spectators before the engine is started.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 27, 2015

Staff Report #: xx-xxx

REGULAR BUSINESS:

Review and consider the usage of drones at Bedwell-Bayfront Park with a recommendation to City Council to prohibit such use

RECOMMENDATION

Staff recommends the Parks and Recreation Commission to support a ban on drones at Bedwell Bayfront Park and recommend the ban to the City Council.

BACKGROUND

One of the roles and responsibilities of the Parks and Recreation Commission is to promote safety in all facilities and programs. In March, 2015 a safety concern was brought to the Department of Public Works.

On March 11, 2015 The Department of Public Works was contacted by the San Carlos Airport Association (SCAA). The SCAA representative stated that pilots were concerned about the increase in recreational drone activity at Bedwell-Bayfront Park and reported a “near miss” between a drone and full-scale aircraft.

An article published in PC World described Bedwell-Bayfront Park as “a popular weekend location for Silicon Valley drone enthusiasts despite its proximity to both Palo Alto and San Carlos airports” (Attachment A). Bedwell-Bayfront Park is located between the San Carlos Airport (SQL) and the Palo Alto Airport (PAO) (Attachment B). The location is near the landing path for SQL and the take-off path for PAO, the critical phases of flight for pilots. A YouTube search on May 18, 2015 revealed multiple videos of drones flying much higher than recommended, including one drone flying above 3,400 feet (Attachment C).

On April 23, 2015 Menlo Park staff met with staff from the FAA and the Palo Alto airport. The use of remote controlled devices including planes and quadcopters is banned at the City of Palo Alto’s Baylands Nature Preserve near PAO. FAA staff stated that stricter regulations were being developed to ban drones within 5 nautical miles of an airport, but it was unclear when the new regulation would be instated. Current guidelines require recreational drone users to notify the FAA prior to flying within 5 nautical miles of an airport. The FAA staff have never received notification from drone users at Bedwell-Bayfront Park and echoed safety concerns with recreational drone use at the Park.

ANALYSIS

Recreational drones flown at Bedwell-Bayfront Park are “aircraft” and subject to regulation by the FAA (Attachment D). They are categorized as “Model Aircraft” because they are:

- (1) Capable of sustained flight in the atmosphere;
- (2) Flown within visual line of sight of the person operating the aircraft; and
- (3) Flown for hobby or recreational purposes.

The FAA strongly encourages individuals flying for hobby to follow the safety guidelines below.

- Fly below 400 feet and remain clear of surrounding obstacles
- Keep the aircraft within visual line of sight at all times
- Remain well clear of and do not interfere with manned aircraft operations
- Don't fly within 5 miles of an airport unless you contact the airport and control tower before flying
- Don't fly near people or stadiums
- Don't fly an aircraft that weighs more than 55 lbs
- Don't be careless or reckless with your unmanned aircraft – you could be fined for endangering people or other aircraft

Currently, these safety measures are guidelines.

In April 2015, The Menlo Park Police Department began to regularly check drone activity at the Park. Officers on the assignment did not witness any users violating the FAA guidelines. When users were approached, they all seemed aware of the rules and nearby airports.

The FAA safety guidelines are recommendations. The 5 mile regulation under development by the FAA would eliminate drones within the majority of Menlo Park city limits, but it is not clear when the new regulations will be established (Attachment E). In order to address this pressing safety issue, staff recommends the proactive ban of drones at Bedwell-Bayfront Park. The ban will not impact flying kites at the Park. The ban will apply to unpiloted, remote controlled, aerial vehicles.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. PC World Article
- B. Aviation Map of the Area
- C. Screenshot of YouTube Search
- D. Law Enforcement Guidance for Suspected Unauthorized UAS Operations
- E. Map of FFA Five Mile Zones

Report prepared by:

Brian Henry

Public Works Superintendent



[Home \(/\)](#) / [Legal \(/Category/Legal/\)](#)

Facebook's impressive aerial photo highlights confusion over drone regulations

[Martyn Williams \(/author/Martyn-Williams/\)](#)

IDG News Service

Apr 24, 2015 1:40 PM

When Facebook expanded into a new campus in late March, the company released a stunning aerial photo of the site captured from a drone. In taking the picture, Facebook almost certainly broke two FAA regulations governing drone use.

The social network isn't alone in its carelessness. Drone use has taken off quickly among both businesses and individuals, and many people—even sophisticated technology companies—apparently are not fully aware of the rules.

The Facebook image was captured by a DJI drone at what appears to be several hundred feet above a corner of its new campus in Menlo Park, California. The building sits about 2 miles from Palo Alto Airport—easily within the 5-mile zone in which drone operators must obtain permission from an airport before conducting a flight.

Palo Alto Airport's air traffic control tower said it received no such request or notification of the flight.

Even if it had, current FAA regulations also prohibit any commercial use of drones unless a company has obtained a waiver, and Facebook isn't among the handful of companies that have.

Asked about the image, Facebook said “the photos were taken for non-commercial use on our property.” But the FAA is clear that only flights conducted for “purely hobby” purposes are permitted without a waiver. Whether the flight is over public or private land is irrelevant.

“There's a lot of confusion over the rules,” said Patrick Egan, who runs [sUAS News](http://www.suasnews.com/) (<http://www.suasnews.com/>), a website specializing in drone news.

There's confusion around the use of drones to shoot video as well. The FAA recently said it won't go after people who post drone flights on YouTube and collect advertising money from the site. Some had worried that would constitute commercial use.

But conversely, flights conducted by businesses aren't non-commercial just because no money changes hands.

A lawyer specializing in drone rules said she advises clients to be extremely conservative about how they conduct flights while the FAA is considering new, longer-term rules.

Perhaps as a result of the confusion, the list of illicit drone flights is getting longer by the week.

In December, fans attending a San Francisco Giants NFL game [flew a drone over Levi's Stadium](http://www.nbcbayarea.com/news/local/Drone-Operators-Get-Warning-After-Flying-Unmanned-Aircraft-Over-Levis-Stadium-286619331.html) (<http://www.nbcbayarea.com/news/local/Drone-Operators-Get-Warning-After-Flying-Unmanned-Aircraft-Over-Levis-Stadium-286619331.html>) in nearby Santa Clara. The airspace above most major sporting events is off limits to drones.

In January, a drunk federal worker [flew and crashed a drone](http://www.nytimes.com/2015/01/28/us/white-house-drone.html?_r=0) (http://www.nytimes.com/2015/01/28/us/white-house-drone.html?_r=0) into the White House lawn. The entire airspace of Washington, D.C., is federally restricted.

In March, a drone was [spotted flying at about 1,500 feet above a TV news helicopter](http://www.kirotv.com/news/news/faa-investigating-drone-flying-near-news-helicopter/nkYk7/) (<http://www.kirotv.com/news/news/faa-investigating-drone-flying-near-news-helicopter/nkYk7/>) in Seattle, and well above the allowed 400 feet maximum altitude.

For every flight that is noticed, it's likely that many take place that don't attract attention.

Indeed, Bedwell Bayfront Park near Facebook's campus is a popular weekend location for Silicon Valley drone enthusiasts despite its proximity to both Palo Alto and San Carlos airports. Some YouTube videos show drones flying from the park to over 3,000 feet—much higher than permitted and close to the altitude of jets on approach paths to nearby San Francisco International Airport.

The FAA has [proposed a new set of regulations](https://www.faa.gov/uas/nprm/) (<https://www.faa.gov/uas/nprm/>) that would allow companies to fly drones, but they are not expected to be enacted until late 2016 or early 2017. A public comment period on the proposal [ends on Friday](http://www.pcworld.com/article/2914892/friday-is-your-last-chance-to-comment-on-the-faas-drone-regulations.html) (<http://www.pcworld.com/article/2914892/friday-is-your-last-chance-to-comment-on-the-faas-drone-regulations.html>).

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Martyn Williams covers mobile telecoms, security, Silicon Valley, and general technology breaking news for the IDG News Service, and is based in San Francisco.

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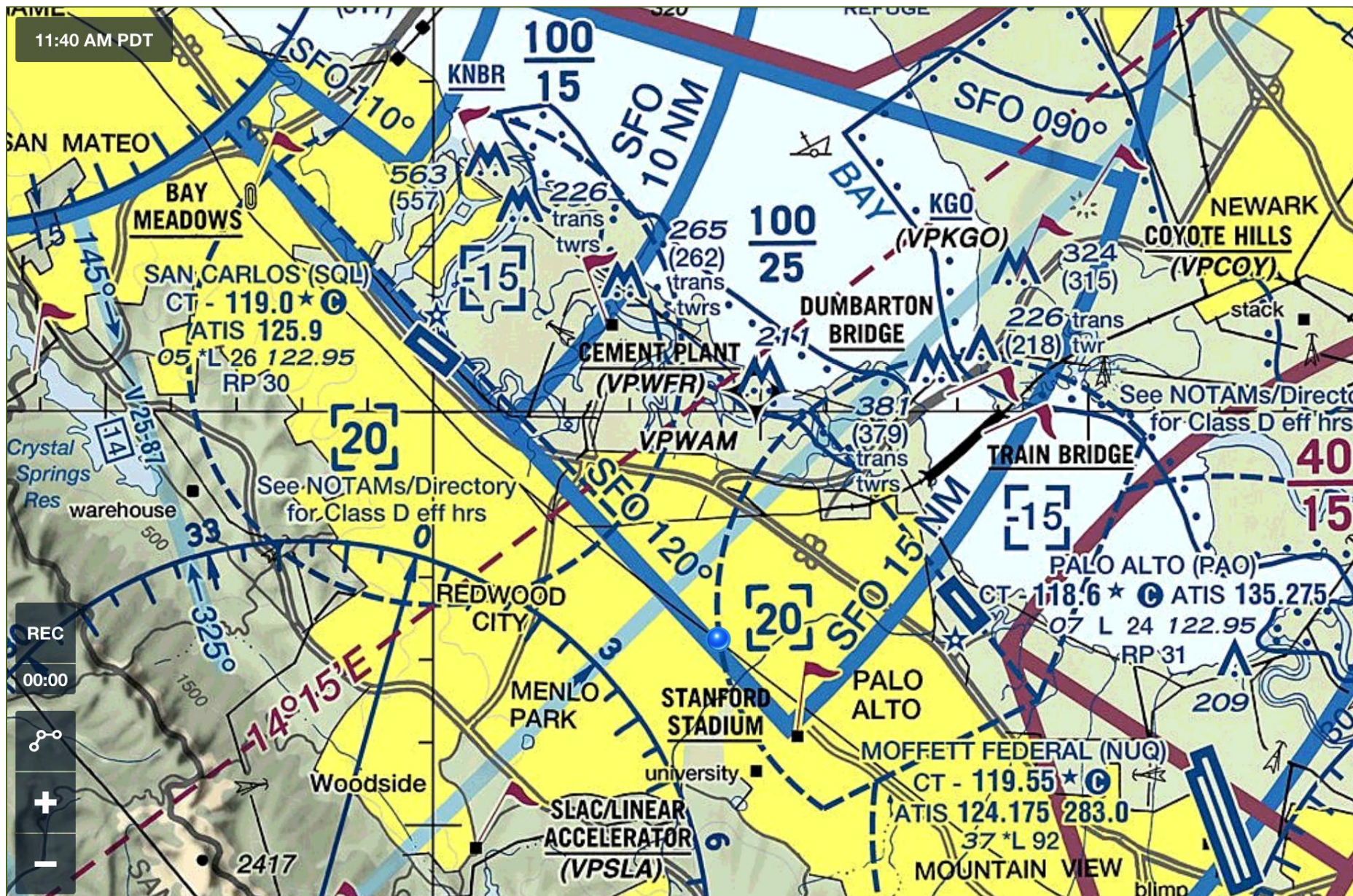
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Risks of Using Personal Mobile Devices at Work

Hewlett-Packard

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11:40 AM PDT





All

Channels

Playlists

RESULTS



FPV 3,432ft Above Bedwell
BayFront Park - Not Anot...

Jim Russell

1 year ago · 992 views



Aerial Footage of Bedwell
Bayfront Park - Menlo Park, CA

Peter Dinh

1 week ago · 62 views



Flying at Marsh Rd Bedwell
Bayfront Park # 2

mike Ponce de Leon

5 months ago · 60 views



Bedwell Bayfront Park Menlo
Park

Brandon Vaccaro

3 months ago · 16 views



FPV Over Bedwell Bayfront
Park

Jim Russell

1 year ago · 100 views



Radian FPV At Bedwell Bayfront





LAW ENFORCEMENT GUIDANCE FOR SUSPECTED UNAUTHORIZED UAS OPERATIONS

Issue

There is evidence of a considerable increase in the unauthorized use of small, inexpensive Unmanned Aircraft Systems (UAS) by individuals and organizations, including companies. The FAA retains the responsibility for enforcing Federal Aviation Regulations, including those applicable to the use of UAS. The agency recognizes though that State and local Law Enforcement Agencies (LEA) are often in the best position to deter, detect, immediately investigate,¹ and, as appropriate,² pursue enforcement actions to stop unauthorized or unsafe UAS operations. The information provided below is intended to support the partnership between the FAA and LEAs in addressing these activities.

Discussion

The general public, a wide variety of organizations, including private sector (e.g., commercial companies), non-governmental (e.g., volunteer organizations), and governmental entities (e.g., local agencies) continue to demonstrate significant interest in UAS. The benefits offered by this type of aircraft are substantial and the FAA is committed to integrating UAS into the National Airspace System (NAS). This introduction, however, must address important safety and security considerations. The increasing number of cases of unauthorized use of UAS is a serious concern for the FAA and, in terms of safety and security challenges, many of its interagency partners.

This document is intended to assist LEAs in understanding the legal framework that serves as the basis for FAA legal enforcement action against UAS operators for unauthorized and/or unsafe UAS operations (Section 1) and to provide guidance regarding the role of LEAs in deterring, detecting, and investigating unauthorized and/or unsafe UAS operations (Section 2).

SECTION 1.

Basic Legal Mandates

The FAA's safety mandate under 49 U.S.C. § 40103 requires it to regulate aircraft operations conducted in the NAS,³ which include UAS operations, to protect persons and property on the

¹ At least in terms of initial contact with the suspected offender.

² Applying any laws falling within the enforcement authority of the LEA in question.

³ The NAS is "the common network of U.S. airspace; air navigation facilities, equipment and services, airports or landing areas Included are system components shared jointly with the military." See FAA Pilot/Controller Glossary (Apr. 3, 2014), available at http://www.faa.gov/air_traffic/publications/media/pgc_4-03-14.pdf.

ground, and to prevent collisions between aircraft and other aircraft or objects. In addition, 49 U.S.C. § 44701(a) requires the agency to promote safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.⁴

A UAS is an Aircraft that Must Comply with Safety Requirements

A UAS is an “aircraft” as defined in the FAA’s authorizing statutes and is therefore subject to regulation by the FAA. 49 U.S.C. § 40102(a)(6) defines an “aircraft” as “any contrivance invented, used, or designed to navigate or fly in the air.” The FAA’s regulations (14 C.F.R. § 1.1) similarly define an “aircraft” as “a device that is used or intended to be used for flight in the air.” Because an unmanned aircraft is a contrivance/device that is invented, used, and designed to fly in the air, it meets the definition of “aircraft.” The FAA has promulgated regulations that apply to the operation of all aircraft, whether manned or unmanned, and irrespective of the altitude at which the aircraft is operating. For example, 14 C.F.R. § 91.13 prohibits any person from operating an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Model Aircraft Operations

An important distinction to be aware of is whether the UAS is being operated for hobby or recreational purposes or for some other purpose. This distinction is important because there are specific requirements in the FAA Modernization and Reform Act of 2012, Public Law 112-95, (the Act) that pertain to “Model Aircraft” operations, which are conducted solely for hobby or recreational purposes. While flying model aircraft for hobby or recreational purposes does not require FAA approval, all model aircraft operators must operate safely and in accordance with the law. The FAA provides guidance and information to individual UAS operators about how they can operate safely under current regulations and laws. Guidance may be found at: http://www.faa.gov/uas/publications/model_aircraft_operators/

Section 336(c) of the Act defines “Model Aircraft” as an unmanned aircraft that is –

- (1) Capable of sustained flight in the atmosphere;
- (2) Flown within visual line of sight of the person operating the aircraft; and
- (3) Flown for hobby or recreational purposes.

Each element of this definition must be met for a UAS to be considered a Model Aircraft under the Act. Under Section 336(a) of the Act the FAA is restricted from conducting further rulemaking specific to Model Aircraft as defined in section 336(c) so long as the Model Aircraft operations are conducted in accordance with the requirements of section 336(a). Section 336(a) requires that—

⁴ FAA action on these security concerns support and are informed by the national defense, homeland security, and law enforcement statutory responsibilities and authorities of our interagency partners.

- (1) The aircraft is flown strictly for hobby or recreational use;
- (2) The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- (3) The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- (4) The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- (5) When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

Model Aircraft that Operate in a Careless or Reckless Manner

Section 336(b) of the Act, however, makes clear that the FAA has the authority under its existing regulations to pursue legal enforcement action against persons operating Model Aircraft when the operations endanger the safety of the NAS, even if they are operating in accordance with section 336(a) and 336(c). So, for example, a Model Aircraft operation conducted in accordance with section 336(a) and (c) may be subject to an enforcement action for violation of 14 C.F.R. § 91.13 if the operation is conducted in a careless or reckless manner so as to endanger the life or property of another.

UAS Operations that are not Model Aircraft Operations

Operations of UAS that are not Model Aircraft operations as defined in section 336(c) of the Act and conducted in accordance with section 336(a) of the Act may only be operated with specific authorization from the FAA. The FAA currently authorizes non-hobby or recreational UAS operations through one of three avenues:

- (1) The issuance of a Certificate of Waiver or Authorization, generally to a governmental entity operating a public aircraft;
- (2) The issuance of an airworthiness certificate in conjunction with the issuance of a Certificate of Waiver or Authorization; or
- (3) The issuance of an exemption under part 11 of title 14, Code of Federal Regulations that relies on section 333 (Special Rules for Certain Unmanned Aircraft Systems) of the Act for relief from the airworthiness certificate requirement, also in conjunction with the issuance of a Certificate of Waiver or Authorization.

It is important to understand that all UAS operations that are not operated as Model Aircraft under section 336 of the Act are subject to current and future FAA regulation. At a minimum, any such flights are currently required under the FAA's regulations to be operated with an

authorized aircraft (certificated or exempted), with a valid registration number (“N-number”), with a certificated pilot, and with specific FAA authorization (Certificate of Waiver or Authorization).

Regardless of the type of UAS operation, the FAA’s statutes and the Federal Aviation Regulations prohibit any conduct that endangers individuals and property on the surface, other aircraft, or otherwise endangers the safe operation of other aircraft in the NAS. In addition, States and local governments are enacting their own laws regarding the operation of UAS, which may mean that UAS operations may also violate state and local laws specific to UAS operations, as well as broadly applicable laws such as assault, criminal trespass, or injury to persons or property.

UAS Compliance with Airspace Security Requirements

As an aircraft, UAS operations (including those involving Model Aircraft) must be conducted in accordance with the airspace-centric security requirements prescribed by the FAA’s regulations and various implementation tools used by the FAA, specifically including airspace with special flight rules and Notices to Airmen (NOTAM) that define Temporary Flight Restrictions (TFR). It is important that UAS operators and LEAs be familiar with the airspace restrictions respectively relevant to their operations and their enforcement area of responsibility.

Flight restrictions are used to protect, but are not limited to, special security events, sensitive operations (e.g., select law enforcement activity, space flight operations, etc.), and Presidential movement. The most up-to-date list of TFRs is available at <http://tfr.faa.gov/tfr2/list.html>.

See Attachment A for reference resources.⁵

SECTION 2.

The Role of Law Enforcement

The FAA promotes voluntary compliance by educating individual UAS operators about how they can operate safely under current regulations and laws. The FAA also has a number of enforcement tools available including warning notices, letters of correction, and civil penalties. The FAA may take enforcement action against anyone who conducts an unauthorized UAS operation or operates a UAS in a way that endangers the safety of the national airspace system. This authority is designed to protect users of the airspace as well as people and property on the ground.

However, as noted above, State and local Law Enforcement Agencies (LEA) are often in the best position to deter, detect, immediately investigate,⁶ and, as appropriate,⁷ pursue

⁵ Attachment A also includes a NOTAM concerning avoidance (including no loitering) over power plants, dams, refineries, industrial complexes, and military facilities. Although not a restriction, this TFR urges aircraft operators to avoid these locations.

⁶ At least in terms of initial contact with the suspected offender.

⁷ Applying any laws falling within the enforcement authority of the LEA in question.

enforcement actions to stop unauthorized UAS operations. Although the FAA retains the responsibility for enforcing FAA's regulations, FAA aviation safety inspectors, who are the agency's principal field elements responsible for following up on these unauthorized and/or unsafe activities, will often be unable to immediately travel to the location of an incident.

While the FAA must exercise caution not to mix criminal law enforcement with the FAA's administrative safety enforcement function, the public interest is best served by coordination and fostering mutual understanding and cooperation between governmental entities with law enforcement responsibilities. Although there are Federal criminal statutes that may be implicated by some UAS operations (see 49 U.S.C. § 44711), most violations of the FAA's regulations may be addressed through administrative enforcement measures. As with any other civil or criminal adjudication, successful enforcement will depend on development of a complete and accurate factual report contemporaneous with the event.

Although certainly not an exhaustive list, law enforcement officials, first responders and others can provide invaluable assistance to the FAA by taking the actions outlined below:

- (1) **Witness Identification and Interviews.** Local law enforcement is in the best position to identify potential witnesses and conduct initial interviews, documenting what they observed while the event is still fresh in their minds. In addition, local law enforcement is in an optimum position to secure all information necessary for our safety inspectors to contact these witnesses in any subsequent FAA investigation. Administrative proceedings often involve very technical issues; therefore, we expect our own safety inspectors will need to re-interview most witnesses. We are mindful that in many jurisdictions, state law may prohibit the transmission of witness statements to third parties, including the FAA. In those circumstances it is extremely important that the FAA be able to locate and conduct independent interviews of these individuals.
- (2) **Identification of Operators.** Law enforcement is in the best position to contact the suspected operators of the aircraft, and any participants or support personnel accompanying the operators. Our challenges in locating violators are marked in that very few of these systems are registered in any federal database and rarely will they have identifiable markings such as used for conventional manned aircraft. Likewise, information on few of the UAS operators will be archived in a pilot data base. Many operators advertise openly on the internet. However, in our enforcement proceedings, we bear the burden of proof, and showing who actually is operating the unmanned aircraft is critical. Therefore, evidentiary thresholds must be met even when using data or video acquired via the internet. Likewise, the purpose for the operation (such as in support of a commercial venture, to further some business interest, or to secure compensation for their services) may become an important element in determining what regulations, if any, may have been violated by the operation. Identification and interview of suspected operators early on will help immeasurably to advance enforcement efforts.
- (3) **Viewing and Recording the Location of the Event.** Pictures taken in close proximity to the event are often helpful in describing light and weather conditions, any damage or injuries, and the number and density of people on the surface,

particularly at public events or in densely populated areas. During any witness interviews, use of fixed landmarks that may be depicted on maps, diagrams or photographs immeasurably help in fixing the position of the aircraft, and such landmarks also should be used as a way to describe lateral distances and altitude above the ground, structures or people (e.g. below the third floor of Building X, below the top of the oak tree located Y, anything that gives reference points for lay witnesses).

- (4) **Identifying Sensitive Locations, Events, or Activities.** The FAA maintains a variety of security-driven airspace restrictions around the country to help protect sensitive locations, events, and activities through Temporary Flight Restrictions (TFR), Prohibited Areas, and other mechanisms such as the Washington, DC Flight Restricted Zone (DC FRZ). UAS operations, including Model Aircraft flights, are generally prohibited within these defined volumes of airspace. LEAs should become familiar with the steady-state airspace restrictions active within their area of responsibility, along with as-needed TFRs, which could be instituted to help protect sensitive events (e.g., major gatherings of elected officials) and activities (e.g., Presidential movements). If there is any question as to whether a TFR has been established in a given location, contact the nearest air traffic facility or flight service station for further information or visit <http://tfr.faa.gov/tfr2/list.html> for a graphic representation of TFRs locatable by state and effective dates.
- (5) **Notification.** Immediate notification of an incident, accident or other suspected violation to one of the FAA Regional Operation Centers (ROC) located around the country is valuable to the timely initiation of the FAA's investigation. These centers are manned 24 hours a day, 7 days a week with personnel who are trained in how to contact appropriate duty personnel during non-business hours when there has been an incident, accident or other matter that requires timely response by FAA employees. A list of these centers and telephone numbers is included as Attachment B to this letter.
- (6) **Evidence Collection.** Identifying and preserving any public or private security systems that may provide photographic or other visual evidence of UAS operations, including video or still picture security systems can provide essential evidence to the FAA. Many times these systems do not permanently store information but erase it as the system recycles at a given interval. Local law enforcement is in the best position to inquire and make initial requests to identify and preserve this form of evidence or obtain legal process for securing this evidence in the context of an investigation of a possible violation of state criminal law. In addition, some UAS may be marked with identification numbers ("N-numbers") signifying FAA registration. The presence or lack of these identification numbers may be significant in an FAA investigation. For example, an operator may state that he or she is conducting an approved commercial activity, which usually requires registered aircraft. However, the absence of registration markings on the UAS may indicate that the aircraft is not registered, meaning the operation may not be authorized. Note that identification numbers may not be conspicuous from a distance because of the size and non-traditional configuration of some UAS. The registered owners

of UAS bearing identification numbers can be found by searching for the N-number on the FAA's website: www.faa.gov.

Virtually all of the items listed above are already in the tool box for law enforcement officers. Other investigative methods also may prove useful, such as consensual examination of the UAS, equipment trailers and the like. However, other law enforcement processes, such as arrest and detention or non-consensual searches almost always fall outside of the allowable methods to pursue administrative enforcement actions by the FAA unless they are truly a by-product of a state criminal investigation. We do not mean to discourage use of these methods and procedures where there is an independent basis for them under state or local law. We simply wish to emphasize that work products intended for FAA use generally should involve conventional administrative measures such as witness interviews, "stop and talk" sessions with suspected violators, consensual examination of vehicles and equipment, and other methods that do not involve court orders or the potential use of force by law enforcement personnel.

It is extremely difficult to provide a "one size fits all" guide to cooperative investigation of unauthorized UAS operations considering the myriad jurisdictions and the associated statutory and constitutional restraints and requirements. State and local officials are always urged to use their governmental unit's legal resources and their own management chain to develop acceptable protocols for dealing with these instances. In some situations, there may be legal bars to the sharing of some information or the use of databases designed for conventional law enforcement. However, with appropriate data collection during first responses and early reporting to the FAA, Federal, State and local agencies will be in the best position to both collect and share information that may be of interest to each jurisdiction. FAA aviation safety inspectors are adept at coordination with our own legal resources to ensure unauthorized operators are properly accountable for the potential risk they create to both people and property. In addition, we have specially trained inspectors within the FAA UAS Integration office who can provide expertise in this area.

If you have any questions or your agency would like to pursue advance planning on how to address these situations, please feel free to contact your local FAA Law Enforcement Assistance Special Agent or the FAA's Law Enforcement Assistance Program Office at (202) 267-4641 or (202) 267-9411.

Attachment A.

Excerpts**Presidential
Movements**

FDC 4/7607 ZBW RI..AIRSPACE PROVIDENCE, RHODE ISLAND..TEMPORARY FLIGHT RESTRICTIONS. OCTOBER 16, 2014 LOCAL. THIS NOTAM REPLACES NOTAM 4/7600 DUE TO SCHEDULE CHANGE. PURSUANT TO 49 USC 40103(B) THE FEDERAL AVIATION ADMINISTRATION (FAA) CLASSIFIES THE AIRSPACE DEFINED IN THIS NOTAM AS 'NATIONAL DEFENSE AIRSPACE'. PILOTS WHO DO NOT ADHERE TO THE FOLLOWING PROCEDURES MAY BE INTERCEPTED DETAINED AND INTERVIEWED BY LAW ENFORCEMENT/SECURITY PERSONNEL. ANY OF THE FOLLOWING ADDITIONAL ACTIONS MAY ALSO BE TAKEN AGAINST A PILOT WHO DOES NOT COMPLY WITH THE REQUIREMENTS OR ANY SPECIAL INSTRUCTIONS OR PROCEDURES ANNOUNCED IN THIS NOTAM:

A) THE FAA MAY TAKE ADMINISTRATIVE ACTION, INCLUDING IMPOSING CIVIL PENALTIES AND THE SUSPENSION OR REVOCATION OF AIRMEN CERTIFICATES; OR

B) THE UNITED STATES GOVERNMENT MAY PURSUE CRIMINAL CHARGES, INCLUDING CHARGES UNDER TITLE 49 OF THE UNITED STATES CODE, SECTION 46307; OR

C) THE UNITED STATES GOVERNMENT MAY USE DEADLY FORCE AGAINST THE AIRBORNE AIRCRAFT, IF IT IS DETERMINED THAT THE AIRCRAFT POSE AN IMMINENT SECURITY THREAT.

...

C. THE FOLLOWING OPERATIONS ARE NOT AUTHORIZED WITHIN THIS TFR: FLIGHT TRAINING, PRACTICE INSTRUMENT APPROACHES, AEROBATIC FLIGHT, GLIDER OPERATIONS, SEAPLANE OPERATIONS, PARACHUTE OPERATIONS, ULTRALIGHT, HANG GLIDING, BALLOON OPERATIONS, AGRICULTURE/CROP DUSTING, ANIMAL POPULATION CONTROL FLIGHT OPERATIONS, BANNER TOWING OPERATIONS, SIGHTSEEING OPERATIONS, MAINTENANCE TEST FLIGHTS, MODEL AIRCRAFT OPERATIONS, MODEL ROCKETRY, UNMANNED AIRCRAFT SYSTEMS (UAS), AND UTILITY AND PIPELINE SURVEY OPERATIONS.

DC FRZ

FDC 0/8326 ZDC PART 1 OF 10 FLIGHT RESTRICTIONS, WASHINGTON, DC, EFFECTIVE 1012010401 UTC UNTIL FURTHER NOTICE. THIS NOTICE WILL REPLACE NOTAM 0/9477 DUE TO A CHANGE IN RESTRICTIONS. THIS NOTAM AND A NOTAM FOR THE LEESBURG MANEUVERING AREA SUPPLEMENT SUBPART V, 14 CFR PART 93 FOR THE WASHINGTON, D.C. SPECIAL FLIGHT RULES AREA (DC SFRA). PURSUANT TO 49 USC 40103(B), THE FAA HAS ESTABLISHED THE DC SFRA AREA AS 'NATIONAL DEFENSE AIRSPACE. ANY PERSON WHO DOES NOT COMPLY WITH THE REQUIREMENTS APPLICABLE TO THE DC SFRA MAY BE INTERCEPTED, DETAINED AND INTERVIEWED BY LAW ENFORCEMENT/SECURITY PERSONNEL. ANY OF THE FOLLOWING ADDITIONAL ACTIONS MAY ALSO BE TAKEN AGAINST A PILOT WHO DOES NOT COMPLY WITH THE REQUIREMENTS OR ANY SPECIAL INSTRUCTIONS OR PROCEDURES ANNOUNCED IN THIS NOTAM: A) THE FAA MAY TAKE ADMINISTRATIVE ACTION, INCLUDING IMPOSING CIVIL PENALTIES AND THE SUSPENSION OR REVOCATION OF AIRMEN CERTIFICATES; B) THE UNITED STATES GOVERNMENT MAY PURSUE CRIMINAL CHARGES, INCLUDING CHARGES UNDER TITLE 49 OF THE UNITED STATES CODE, SECTION 46307; C) THE UNITED STATES GOVERNMENT MAY USE DEADLY FORCE AGAINST THE AIRBORNE AIRCRAFT, IF IT IS DETERMINED THAT THE AIRCRAFT POSE AN IMMINENT SECURITY THREAT.

...

A. THE FOLLOWING OPERATIONS ARE NOT AUTHORIZED WITHIN THE DC FRZ: FLIGHT TRAINING, AEROBATIC FLIGHT, PRACTICE INSTRUMENT APPROACHES, GLIDER OPERATIONS, PARACHUTE OPERATIONS, ULTRA LIGHT, HANG GLIDING, BALLOON OPERATIONS, TETHERED BALLOONS, AGRICULTURE/CROP DUSTING, ANIMAL POPULATION CONTROL FLIGHT OPERATIONS, BANNER TOWING OPERATIONS, MAINTENANCE TEST FLIGHTS, **MODEL AIRCRAFT OPERATIONS, MODEL ROCKETRY, FLOAT PLANE OPERATIONS, UNMANNED AIRCRAFT SYSTEMS (UAS)** AND AIRCRAFT/HELICOPTERS OPERATING FROM A SHIP OR PRIVATE/CORPORATE YACHT. B. IT IS HIGHLY RECOMMENDED THAT A PILOT CONTINUOUSLY MONITOR VHF FREQUENCY 121.5 OR UHF FREQUENCY 243.0 FOR EMERGENCY INSTRUCTIONS WHEN OPERATING AN AIRCRAFT IN THE DC FRZ, EITHER IN AN AIRCRAFT THAT IS SUITABLY EQUIPPED, OR BY USE OF PORTABLE EQUIPMENT.

**Avoidance of Power
Plans Etc. (Applied to all
Aircraft, including UAS)**

FDC 4/0811 SPECIAL NOTICE. THIS IS A RESTATEMENT OF A PREVIOUSLY ISSUED ADVISORY NOTICE. IN THE INTEREST OF NATIONAL SECURITY AND TO THE EXTENT PRACTICABLE, PILOTS ARE STRONGLY ADVISED TO AVOID THE AIRSPACE ABOVE, OR IN PROXIMITY TO SUCH SITES AS POWER PLANTS (NUCLEAR, HYDRO-ELECTRIC, OR COAL), DAMS, REFINERIES, INDUSTRIAL COMPLEXES, MILITARY FACILITIES AND OTHER SIMILAR FACILITIES. PILOTS SHOULD NOT CIRCLE AS TO LOITER IN THE VICINITY OVER THESE TYPES OF FACILITIES.

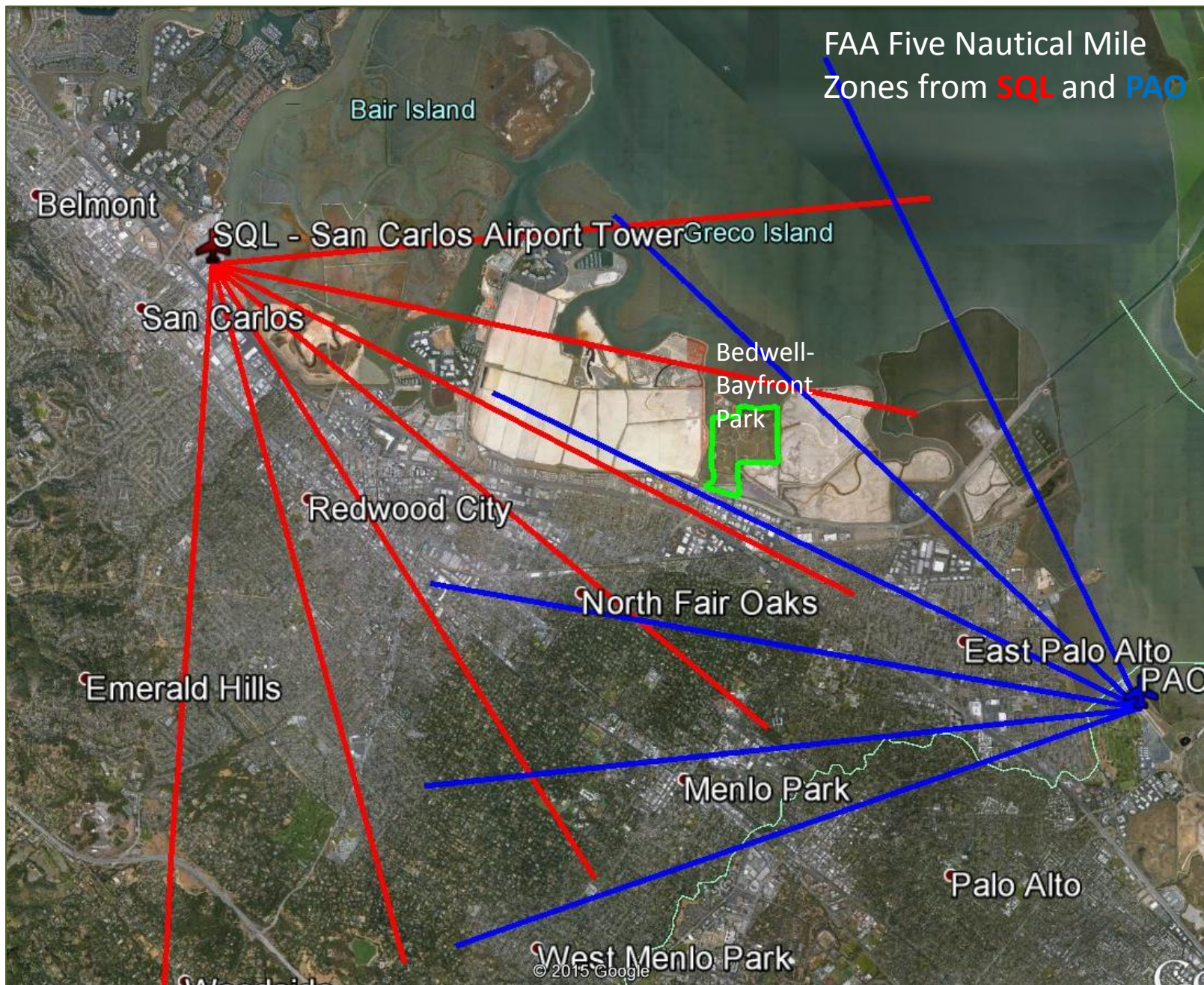
Select Sporting Events FDC 4/3621 FDC SPECIAL SECURITY NOTICE. SPORTING EVENTS. THIS NOTAM REPLACES FDC NOTAM 9/5151 TO REFLECT A TSA WEBSITE UPDATE AND ADDITIONAL INFORMATION CONCERNING AIRSPACE WAIVERS. FLIGHT RESTRICTIONS IN THIS NOTAM COMPLY WITH STATUTORY MANDATES DETAILED IN SECTION 352 OF PUBLIC LAW 108-7 AS AMENDED BY SECTION 521 OF PUBLIC LAW 108-199. PURSUANT TO 49 USC 40103(B), THE FEDERAL AVIATION ADMINISTRATION (FAA) CLASSIFIES THE AIRSPACE DEFINED IN THIS NOTAM AS 'NATIONAL DEFENSE AIRSPACE'. ANY PERSON WHO KNOWINGLY OR WILLFULLY VIOLATES THE RULES PERTAINING TO OPERATIONS IN THIS AIRSPACE MAY BE SUBJECT TO CERTAIN CRIMINAL PENALTIES UNDER 49 USC 46307. PILOTS WHO DO NOT ADHERE TO THE FOLLOWING PROCEDURES MAY BE INTERCEPTED, DETAINED AND INTERVIEWED BY LAW ENFORCEMENT/SECURITY PERSONNEL. PURSUANT TO 14 CFR SECTION 99.7, SPECIAL SECURITY INSTRUCTIONS, COMMENCING ONE HOUR BEFORE THE SCHEDULED TIME OF THE EVENT UNTIL ONE HOUR AFTER THE END OF THE EVENT. ALL AIRCRAFT OPERATIONS; INCLUDING PARACHUTE JUMPING, **UNMANNED AIRCRAFT AND REMOTE CONTROLLED AIRCRAFT**, ARE PROHIBITED WITHIN A 3 NMR UP TO AND INCLUDING 3000 F AGL OF ANY STADIUM HAVING A SEATING CAPACITY OF 30,000 OR MORE PEOPLE WHERE EITHER A REGULAR OR POST SEASON MAJOR LEAGUE BASEBALL, NATIONAL FOOTBALL LEAGUE, OR NCAA DIVISION ONE FOOTBALL GAME IS OCCURRING. THIS NOTAM ALSO APPLIES TO NASCAR SPRINT CUP, INDY CAR, AND CHAMP SERIES RACES EXCLUDING QUALIFYING AND PRE-RACE EVENTS. FLIGHTS CONDUCTED FOR OPERATIONAL PURPOSES OF ANY EVENT, STADIUM OR VENUE AND BROADCAST COVERAGE FOR THE BROADCAST RIGHTS HOLDER ARE AUTHORIZED WITH AN APPROVED AIRSPACE WAIVER. AN FAA AIRSPACE WAIVER DOES NOT RELIEVE OPERATORS FROM OBTAINING ALL OTHER NECESSARY AUTHORIZATIONS AND COMPLYING WITH ALL APPLICABLE FEDERAL AVIATION REGULATIONS. THE RESTRICTIONS DESCRIBED ABOVE DO NOT APPLY TO THOSE AIRCRAFT AUTHORIZED BY AND IN CONTACT WITH ATC FOR OPERATIONAL OR SAFETY OF FLIGHT PURPOSES, DEPARTMENT OF DEFENSE, LAW ENFORCEMENT, AND AIR AMBULANCE FLIGHT OPERATIONS. ALL PREVIOUSLY ISSUED WAIVERS TO FDC NOTAM 9/5151 REMAIN VALID UNTIL THE SPECIFIED END DATE BUT NOT TO EXCEED 90 DAYS FOLLOWING THE EFFECTIVE DATE OF THIS NOTAM. INFORMATION ABOUT AIRSPACE WAIVER APPLICATIONS AND TSA SECURITY AUTHORIZATIONS CAN BE FOUND AT [HTTP://WWW.TSA.GOV/STAKEHOLDERS/AIRSPACE-WAIVERS-0](http://www.tsa.gov/stakeholders/airspace-waivers-0) OR BY CALLING TSA AT 571-227-2071. SUBMIT REQUESTS FOR FAA AIRSPACE WAIVERS AT [HTTPS://WAIVERS.FAA.GOV](https://waivers.faa.gov)

Disney Theme Parks

FDC 4/XXXX ZZZ SECURITY SPECIAL NOTICE DISNEY WORLD THEME PARK ORLANDO FL THIS NOTAM REPLACES NOTAM 9/4985 TO REFLECT A TSA WEBSITE UPDATE AND ADDITIONAL INFORMATION CONCERNING AIRSPACE WAIVERS. FLIGHT RESTRICTIONS IN THIS NOTAM COMPLY WITH STATUTORY MANDATES DETAILED IN SECTION 352 OF PUBLIC LAW 108-7 AS AMENDED BY SECTION 521 OF PUBLIC LAW 108-199. PURSUANT TO 49 USC 40103(B), THE FEDERAL AVIATION ADMINISTRATION (FAA) CLASSIFIES THE AIRSPACE DEFINED IN THIS NOTAM AS 'NATIONAL DEFENSE AIRSPACE'. AN PERSON WHO KNOWINGLY OR WILLFULLY VIOLATES THE RULES PERTAINING TO OPERATIONS IN THIS AIRSPACE MAY BE SUBJECT TO CERTAIN CRIMINAL PENALTIES UNDER 49 USC 46307. PILOTS WHO DO NOT ADHERE TO THE FOLLOWING PROCEDURES MAY BE INTERCEPTED, DETAINED AND INTERVIEWED BY LAW ENFORCEMENT/SECURITY PERSONNEL. PURSUANT TO 14 CFR SECTION 99.7, SPECIAL SECURITY INSTRUCTIONS, **ALL AIRCRAFT FLIGHT OPERATIONS TO INCLUDE UNMANNED AND REMOTE CONTROLLED AIRCRAFT ARE PROHIBITED** WITHIN A 3 NMR OF 282445N/0813420W OR THE ORL238014.8 UP TO AND INCLUDING 3000 FT AGL. THE RESTRICTIONS DO NOT APPLY TO THOSE AIRCRAFT AUTHORIZED BY AND IN CONTACT WITH ATC FOR OPERATIONAL OR SAFETY OF FLIGHT PURPOSES, AND DEPARTMENT OF DEFENSE, LAW ENFORCEMENT, AND AIR AMBULANCE FLIGHT OPERATIONS. FLIGHTS CONDUCTED FOR OPERATIONAL PURPOSES OF ANY DISNEY WORLD EVENT AND VENUE ARE AUTHORIZED WITH AN APPROVED WAIVER. AN FAA AIRSPACE WAIVER DOES NOT RELIEVE OPERATORS FROM OBTAINING ALL OTHER NECESSARY AUTHORIZATIONS AND COMPLYING WITH ALL APPLICABLE FEDERAL AVIATION REGULATIONS. ALL PREVIOUSLY ISSUED WAIVERS TO FDC NOTAM 4/4985 REMAIN VALID UNTIL THE SPECIFIED END DATE BUT NOT TO EXCEED 90 DAYS FOLLOWING THE EFFECTIVE DATE OF THIS NOTAM. INFORMATION ABOUT AIRSPACE WAIVER APPLICATIONS AND TSA SECURITY AUTHORIZATIONS CAN BE FOUND AT [HTTP://WWW.TSA.GOV/STAKEHOLDERS/AIRSPACE-WAIVERS-0](http://WWW.TSA.GOV/STAKEHOLDERS/AIRSPACE-WAIVERS-0) OR BY CALLING TSA AT 571-227-2071. SUBMIT REQUESTS FOR FAA AIRSPACE WAIVERS AT [HTTPS://WAIVERS.FAA.GOV](https://waivers.faa.gov)

Attachment B.

Facility	States	Office	EMail
Western ROC	AK, AZ, CA, CO, HI, ID, MT, NV, OR, UT, WA and WY	425-227-1999	9-ANM-ROC@faa.gov
Central ROC	AR, IA, IL, IN, KS, LA, MI, MN, MO, ND, NE, NM, OH, OK, SD, TX and WI	817-222-5006	9-asw-operation-center@faa.gov
Southern ROC	AL, FL, GA, KY, MS, NC, PR, SC, TN and VI	404-305-5180	9-ASO-ROC@faa.gov
Eastern ROC	DC, DE, MD, NJ, NY, PA, VA and WV	718-553-3100	7-AEA-ROC@faa.gov
New England ROC	CT, MA, ME, NH, RI and VT	404-305-5156	7-ANE-OPSCTR@faa.gov
Washington WOC		202-267-3333	9-awa-ash-woc@faa.gov



INFORMATIONAL

NWRS-LE CHIEF'S MEMORANDUM

To: NORLET

Date: Aug 4, 2014

Re: Regulatory Authority and Guidance to Prohibit the Use of Unmanned Aircraft/"Drones"

As the use of unmanned aircraft/drones (UAS) has become more prevalent, and the cost of these UAS have become cheaper, the Refuge Law Enforcement (RLE) office at Headquarters has been receiving requests for guidance with regards to the influx of recreational use of UAS on and over National Wildlife Refuges. YouTube and other similar websites are filled with video taken with these UAS from on and off refuges. The Service currently has prohibitions on aircraft use on refuge lands. 50 C.F.R. § 27.34 prohibits "[t]he unauthorized operation of aircraft, including sail planes, and hang gliders, at altitudes resulting in harassment of wildlife, or the unauthorized landing or take-off on a national wildlife refuge, except in an emergency, is prohibited."

The recent court case of *FAA v. Pirker*, in short, argued the definition of UAS as "aircraft", in which the Administrative Law Judge (ALJ) sided with *Pirker*, that his 'drone' does not fall under the FAA's definition of "aircraft", stating that:

"To accept the [FAA]'s interpretive argument would lead to a conclusion that those definitions include as an aircraft all types of devices/contrivances intended for, or used for, flight in the air. The extension of that conclusion would then result in the risible argument that a flight in the air of, e.g., a paper aircraft, or a toy balsa wood glider, could subject the 'operator' to the regulatory provisions of FAA [regulations] . . . The reasonable inference is . . . that the FAA has distinguished model aircraft as a class excluded from the regulatory and statutory definitions."

In light of that case, RLE requested the DOI Solicitor to issue an Opinion on the Services definition of "aircraft" as it relates to UAS on refuges. (attached) As you can see in the attachment, UAS do in fact fall under the definition of "aircraft" within 50 C.F.R. Chapter I, Subchapter C, which covers the National Wildlife Refuge System. With this Opinion, Officers may continue to cite visitors who take-off and/or land UAS on and off refuges. However, it needs to be understood that Officers do NOT have jurisdiction over the airspace above refuges. Therefore, anyone who takes-off and lands a UAS outside of refuge boundaries, flies over a refuge and does not cause a disturbance or harasses wildlife, should not be cited under 27.34.

A common misunderstanding with aircraft and refuges that needs to be understood is the “2000’ rule”. The 2000’ rule, which many believe prohibits aircraft from buzzing/operating below 2000’ above ground level over refuges, is in fact an FAA “request”, not a “prohibition”. **AIM 7-4-6.b Flights Over Charted U.S. Wildlife Refuges, Parks, and Forest Service Areas**, states:

*“Pilots are **requested** to maintain a minimum altitude of 2,000 feet above the surface of the following: National Parks, Monuments, Seashores, Lakeshores, Recreation Areas and Scenic Riverways administered by the National Park Service, National Wildlife Refuges, Big Game Refuges, Game Ranges and Wildlife Ranges administered by the U.S. Fish and Wildlife Service, and Wilderness and Primitive areas administered by the U.S. Forest Service.”*

There may be a refuge special regulation that prohibits operation below 2000’, but that is a case by case basis. With that said, if an aircraft operating at any altitude over a refuge harasses wildlife, they may be cited under 27.34 or 27.51.

The attached Opinion also covers Airborne Hunting Act and other Disturbance/Harassment and commercial operation issues related to UAS use. We hope that this Opinion will help clarify any confusion as it relates to recreational use of UAS/drones on refuges.

It is advised that this Opinion be forwarded to your AUSA, or at a minimum be attached to any citation relating to UAS violations. Guidance will also be sent out to refuge management on how to handle requests for UAS use, and how to answer UAS related questions by the public.

As always, feel free to contact our office with any questions.

/s/ James Hall, Chief RLE

MEMORANDUM

To: Jeff Lucas, FWS

From: Emily Splitek and Kim Fondren, SOL

Date: June 27, 2014

Re: *FAA v. Pirker* and FWS' Regulatory Authority to Prohibit the Use of Unmanned Aircraft

You asked us to identify existing Fish and Wildlife Service ("FWS") regulations which pertain to unmanned aircraft/drone use on and over National Wildlife Refuges, in light of the decision in *FAA v. Pirker*. We have concluded that such use would be subject to several regulations and that FWS law enforcement officers may, when appropriate, cite drone users: (1) who fly at "altitudes resulting in harassment of wildlife" or who take-off and land drones within refuge boundaries under 50 C.F.R. § 27.34; (2) who use drones to harass wildlife under 50 C.F.R. § 27.51; or (3) who, without a permit issued in accordance with 43 C.F.R. Part 5, operate, launch from, or land on refuge-administered lands for the purpose of taking commercial photography under 50 C.F.R. § 27.71. Additionally, FWS has authority under the Airborne Hunting Act ("AHA")¹ to cite drone operators and those who knowingly assist them in using their aircraft to harass or shoot wildlife. Finally, because refuge lands are considered "closed" to recreational use unless the use has been determined to be compatible with refuge purposes,² it may be wise for FWS Refuge managers to review the compatibility findings for their refuges, and if they conclude that unmanned aircraft use is not compatible, clarify that such use is not a compatible activity and is prohibited.

I. Applicable Law

The National Wildlife Refuge System Administration Act of 1966, as amended, provides guidelines and directives for administration and management of all areas in the National Wildlife Refuge System, which includes "wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas."³ In managing the National Wildlife Refuge System, FWS must "assure that any present or future recreational use will be compatible with, and will not prevent accomplishment of, the primary purposes for which . . . conservation areas were acquired or established. . . ."⁴ Congress has authorized the Secretary of the Interior "to administer such areas or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use. . . ."⁵ Thus, wildlife refuges are considered "closed" to recreational uses unless and until a Refuge Manager makes a positive

¹ Codified at 16 U.S.C. § 742j-1.

² See 50 C.F.R. §26.41.

³ 16 U.S.C. § 668dd.

⁴ 16 U.S.C. § 460k.

⁵ *Id.* (emphasis added).

compatibility determination.⁶

“All national wildlife refuges are maintained for the primary purpose of developing a national program of wildlife and ecological conservation and rehabilitation.”⁷ Pursuant to its authority to limit recreational use of areas within the National Wildlife Refuge System, the FWS has promulgated regulations which prohibit refuge visitors from engaging in certain activities on refuge lands.

50 C.F.R. § 27.34 prohibits “[t]he unauthorized operation of aircraft, including sail planes, and hang gliders, at altitudes resulting in harassment of wildlife, or the unauthorized landing or take-off on a national wildlife refuge, except in an emergency, is prohibited.” Importantly, there is no definition of “aircraft” in the Refuge System regulations at 50 C.F.R. Chapter I, Subchapter C, which covers the National Wildlife Refuge System, and where 50 C.F.R. § 27.34 is found. However, the term is defined in Subchapter B, which covers wildlife and plants. In Subchapter B, “aircraft” is defined as “any contrivance used for flight in the air.”⁸ This definition is consistent with one dictionary’s definition of “aircraft” as “any machine supported for flight in the air by buoyancy or the dynamic action of air on its surfaces, especially powered airplanes, gliders, and helicopters.”⁹ Thus, the common meaning of the term aircraft is broad enough to include manned and unmanned aircraft.

50 C.F.R. § 27.51 prohibits “[d]isturbing, injuring, spearing, poisoning, destroying, collecting or attempting to disturb, injure, spear, poison, destroy or collect any plant or animal on any national wildlife refuge . . . except by special permit. . . .”

While 50 C.F.R. § 26.32 permits recreational uses, including “nature observation and photography” on refuge lands, but only after a finding by each Refuge Manager that the recreational uses are compatible with the purposes of that particular refuge.¹⁰ Visitors to refuge lands using unmanned aircraft while engaging in “commercial filming and still photography” must satisfy all applicable permit requirements set forth at 43 C.F.R. § 5.1, and failure to do so is a violation of 50 C.F.R. § 27.71. 43 C.F.R. § 5.12 defines “commercial filming” as “the . . . recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income.” Under these regulations, those required to obtain a permit for such commercial activities must pay a fee and agree to reimburse the government for any costs it incurs.¹¹

Finally, the AHA states that any person who: “(1) while airborne in an aircraft shoots or attempts to shoot for the purpose of capturing or killing any bird, fish, or other animal; or

⁶ 50 C.F.R. § 26.41.

⁷ 50 C.F.R. § 25.11(b).

⁸ 50 C.F.R. § 10.12.

⁹ Random House Dictionary 2014, available at: <http://dictionary.reference.com/browse/aircraft>.

¹⁰ 50 C.F.R. § 26.41.

¹¹ 43 C.F.R. § 5.8.

(2) uses an aircraft to harass any bird, fish, or other animal; or (3) knowingly participates in using an aircraft for any purpose referred to in paragraph (1) or (2); shall be fined not more than \$ 5,000 or imprisoned not more than one year, or both.”¹² The AHA defines “aircraft” as “any contrivance used for flight in the air.”¹³ Regulations at 50 C.F.R. Part 19, which govern airborne hunting, broadly define “harass” as “to disturb, worry, molest, rally, concentrate, harry, chase, drive, herd, or torment.”¹⁴

II. FAA v. Pirker

In *FAA v. Pirker*,¹⁵ National Transportation Safety Board administrative law judge (“ALJ”) vacated the FAA’s order assessing a \$10,000 penalty against Raphael Pirker for unlawfully operating a Ritewing Zephyr powered glider over the campus of the University of Virginia. Pirker had been hired to take aerial photographs of the campus. The FAA determined that Pirker was a commercial unmanned air system (“UAS”) operator and charged him with violating 14 C.F.R. § 91.13(a), which states that “[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

Pirker argued that the statutory and regulatory definitions of “aircraft” did not encompass so-called “model aircraft” and that consequently, the FAA lacked enforcement authority over his activities. Federal Aviation Regulations (“FARs”) at 14 C.F.R. § 1.1 define “aircraft” as “a device that is used or intended to be used for flight in the air.” 49 U.S.C. § 40102(a)(6), which governs aviation programs, similarly defines “aircraft” as “any contrivance invented, used, or designed to navigate, or fly in, the air.”

Pirker also argued that, in the absence of a rule specifically providing for FAR regulatory authority over model aircraft flight operations, the FAA did not have the authority to regulate the airspace in which he operated his powered glider.

In his March 14, 2014 decision, the ALJ held that Pirker’s power glider was, in fact, a model aircraft and that the definitions in 49 U.S.C. § 40102(a)(6) and 14 C.F.R. § 1.1 did not encompass such aircraft. In making this conclusion, the ALJ stated that the FAA had “historically exempted model aircraft from the statutory FAR definitions of ‘aircraft,’” pointing to FAA Advisory Circular (AC) 91-57, published by the agency in 1981.¹⁶ AC 91-57 outlined voluntary safety standards for operators of model aircraft. The ALJ found that because AC 91-57 distinguished model aircraft from aircraft regulated under the FAR, the FAA could not regulate Pirker’s activities.

¹² 16 U.S.C. § 742j-1(a).

¹³ *Id.* § 742j-1(c). This definition is also in the Subchapter C regulations at 50 C.F.R. § 10.12.

¹⁴ 50 C.F.R. § 19.4.

¹⁵ Available at: <http://www.kramerlevin.com/files/upload/PirkerDecision.pdf>.

¹⁶ Pirker Decision at 4. AC 91-57 is available at: [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/1acfc3f689769a56862569e70077c9c/c/\\$FILE/ATTBJMAC/ac91-57.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/1acfc3f689769a56862569e70077c9c/c/$FILE/ATTBJMAC/ac91-57.pdf).

The ALJ continued, “To accept the [FAA]’s interpretive argument would lead to a conclusion that those definitions include as an aircraft all types of devices/contrivances intended for, or used for, flight in the air. The extension of that conclusion would then result in the risible argument that a flight in the air of, e.g., a paper aircraft, or a toy balsa wood glider, could subject the ‘operator’ to the regulatory provisions of FAA [regulations] . . . The reasonable inference is . . . that the FAA has distinguished model aircraft as a class excluded from the regulatory and statutory definitions.”¹⁷

Finally, the ALJ held that various FAA’s policy statements and notices on UAS did not establish a jurisdictional basis for regulating Pirker’s model aircraft operation.¹⁸ “[A]t the time of Respondent’s model aircraft operation, as alleged herein, there was no enforceable FAA rule or FAR Regulation, applicable to model aircraft or for classifying model aircraft as an UAS,” the ALJ concluded.¹⁹

The FAA has filed a brief appealing the decision with the NTSB.²⁰ This appeal stays the effectiveness of the ALJ’s order.²¹ In its brief, the FAA argued that the statutory and regulatory definitions of “aircraft” at issue are not ambiguous and that they encompass drones. Even if they were ambiguous, the FAA argued, the ALJ should have deferred to the agency’s conclusion that Pirker’s powered glider was an aircraft. The appeal is currently pending.²²

III. Impact of the *Pirker* Case on FWS’ Authority to Regulate Aircraft

The ALJ in the *Pirker* case interpreted FAA regulations and statutory provisions applicable to the FAA. Although the FWS’ regulatory definition of “aircraft” is similar to FAA’s regulatory definition of “aircraft,” the FWS and FAA definitions are applied in wholly separate statutory, regulatory, and historical contexts. Thus, *Pirker* decision, even if maintained on appeal, will not impact the interpretation of FWS’ regulations.

The FAA’s mission is to “promote safe flight of civil aircraft,”²³ and it has statutory authority to “prescribe minimum safety standards.”²⁴ The FAA promulgated 14 C.F.R. § 91.13(a) pursuant to this authority.²⁵ On the other hand, as previously explained, FWS has a duty to manage wildlife refuges “for the primary purpose of developing a national program of wildlife and ecological conservation and rehabilitation,”²⁶ and it promulgated 50 C.F.R. § 27.34 pursuant to

¹⁷ *Pirker* Decision at 3.

¹⁸ *Pirker* Decision at 5-6.

¹⁹ *Pirker* Decision at 8.

²⁰ Available at: <http://www.suasnews.com/wp-content/uploads/2014/04/FAA-Appeal.pdf>.

²¹ 49 C.F.R. § 821.43.

²² It should be noted that the events at issue in the *Pirker* case preceded the FAA Modernization and Reform Act of 2012, in which Congress directed the FAA to initiate a rulemaking for the integration of UAS into the national airspace system. P.L. 112-95, § 332. Thus, its outcome will not ultimately impact FAA’s authority to regulate drones.

²³ 49 U.S.C. § 44701(a)

²⁴ *Id.* § 44701(b).

²⁵ *Shupert v. Cont'l Airlines, Inc.*, 2004 U.S. Dist. LEXIS 6214, 8 (S.D.N.Y. Apr. 12, 2004).

²⁶ 50 C.F.R. § 25.11(b).

this authority. Furthermore, the FAA's historic treatment of model aircraft was key to the ALJ's decision in *Pirker*.²⁷ The FWS has no such history.

Although the *Pirker* case sets no precedent with respect to FWS' interpretation of the term "aircraft," one aspect of the case it is worth noting. An agency's interpretation of its own regulations is "controlling unless 'plainly erroneous or inconsistent with the regulation,'"²⁸ and FAA has made an argument in its appeal brief that the ALJ failed to give the agency deference in interpreting its own regulations.

As long as the agency's interpretation "reflect[s] the agency's fair and considered judgment on the matter in question,"²⁹ courts will defer to it. FAA has argued in its appeal that the ALJ failed to examine whether it was reasonable for the FAA to interpret "aircraft" to include *Pirker*'s powered glider, and instead impermissibly "substituted [his] own interstitial lawmaking"³⁰ for that of the agency by going to great lengths to find the FAA's broad interpretation of "aircraft" absurd. "[The ALJ] uses . . . perceived absurdity as justification to limit the plain wording of both the statutory and regulatory definition of 'aircraft.' The ALJ does this even though there is no evidence before him to support his belief that the FAA will abuse its enforcement authority if he does not impose such a limitation."³¹

FWS is entitled to similar deference in interpreting the meaning of "aircraft" in its own regulations. The interpretation must be consistent with the regulations³² and reflect fair and considered judgment on the part of the agency. As previously discussed, "aircraft" is not defined in Subchapter C. Thus, the term is open to interpretation, and, in interpreting it, FWS could turn to the dictionary definition of "aircraft" or the definition of "aircraft" which appears in Subchapter B. Under these definitions, it would be quite reasonable for FWS to conclude that hobbyist drones and other unmanned aircraft are "aircraft," for the purposes of 50 C.F.R. § 27.34.

IV. FWS' Authority Under Existing Regulations to Limit Drone Use On or Over Wildlife Refuges

A. Aircraft Regulations: 50 C.F.R. § 27.34

Treating drones as aircraft under 50 C.F.R. § 27.34, FWS officers can cite drone operators for: (1) the unauthorized flying of drones at altitudes resulting in harassment to wildlife, or (2) the unauthorized landing or taking off of drones in a national wildlife refuge. Under the first

²⁷ While the FAA Modernization and Reform Act of 2012 gives FAA the authority to regulate UAS, it specifically prohibits the FAA from regulating so-called "model aircraft."

²⁸ *Auer v. Robbins*, 519 U.S. 452, 461 (U.S. 1997).

²⁹ *Id.* at 462.

³⁰ *Pirker Appeal Brief* at 7 (quoting *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 568 (1980)).

³¹ *Pirker Appeal Brief* at 7.

³² For example, the National Park Service ("NPS") regulations define "aircraft" as "a device that is used or intended to be used for human flight in the air, including powerless flight." 36 C.F.R. § 1.4. This definition, by its own terms, is limited to devices in which a human can fly.

authority, FWS officers could cite anyone operating a drone at an altitude at which they are harassing wildlife, even if take-off and landing took place off FWS property. Under the second authority, FWS officers could cite drone operators who land or take-off without a permit on a national wildlife refuge.

In order to ensure that it meets Due Process standards, the FWS should consider issuing an interpretive rule or policy statement explaining that it interprets the definition of “aircraft” in 50 C.F.R. § 27.34 to include drones. This announcement would not need to go through the notice and comment process, but it could be published in the Federal Register. Below is draft language, based on the definition of UAS adopted by Congress in Section 331 of P.L. 112-95, the FAA Modernization and Reform Act of 2012:

The Fish and Wildlife Service interprets the definition of “aircraft” in 50 C.F.R. § 10.12 to include any device that is used for flight in the air without the possibility of direct human intervention from within or on the device. All associated operational elements, including cameras, sensors, communication links, and all of the components that are required for the system operator to control the device are considered part of the device. The term “aircraft” includes all types of devices that meet this definition, including, but not limited to, model aircraft, quadcopters, drones, powered gliders, and other unmanned aircraft systems.

B. Harassment Regulations: 50 C.F.R. § 27.51

FWS can also cite drone operators under 50 C.F.R. § 27.51 if they “[d]isturb[] injur[e], spear[], poison[], destroy[], collect[] or attempt[] to [do the same to] any plant or animal on any national wildlife refuge” without a permit. Drone users who harass wildlife or attempt to harass wildlife could thus be cited under 50 C.F.R. § 27.51 (in addition to 50 C.F.R. § 27.34, as discussed above), even if they are taking off and landing outside the refuge.

C. Film Regulations: 50 C.F.R. § 27.71

A permit is required for “commercial filming and still photography on national wildlife refuges,”³³ and, to the extent that drone operators without required permits use drones to engage in such activities, they are subject to citation under 50 C.F.R. § 27.71.

Because the permit regulations in Part 5 cover “activities on lands and waters administered by . . . the U.S. Fish and Wildlife Service,”³⁴ 50 C.F.R. §27.71 does not apply to activities which occur solely within FAA-regulated airspace. Additionally, it may be difficult for officers to determine whether a drone operator intends to use film for a commercial use.

Because of these difficulties, FWS should be careful to only cite a drone operator under 50 C.F.R. § 27.71 if he: 1) clearly intends to use film or still photography for commercial use, and

³³ 50 C.F.R. § 27.71.

³⁴ 43 C.F.R. §5.1.

2) takes off, lands, or controls the aircraft within the boundaries of a national wildlife refuge or on lands administered by FWS.

D. Discretion

FWS officers should keep in mind that, while the primary purposes of the National Wildlife Refuge System are “wildlife and ecological conservation and rehabilitation.”³⁵ FWS’ authority to limit activities on refuge lands derives from its duty to ensure that these purposes are being met. Thus, FWS officers should be mindful that they have discretion in issuing citations. Before issuing a citation to a drone operator, FWS law enforcement officers should consider first and foremost whether the operator’s behavior was truly disruptive to wildlife. FWS should consider, for instance, whether the drone operator was flying at extremely low levels, whether the drone was particularly loud, and whether the operator appeared to be “chasing after” wildlife.

V. FWS Authority to Regulate Drones Under the Airborne Hunting Act

The AHA defines “aircraft” “any contrivance used for flight in the air.”³⁶ This broad definition has been adopted in the FWS regulations at 50 C.F.R. § 10.12. As previously discussed, the AHA authorizes the FWS to cite individuals for simply using an aircraft for the purpose of shooting or harassing wildlife.

There appears to be only one case in which a court has interpreted this definition. In *United States v. Red Frame Parasail*,³⁷ the U.S. district court in Arizona considered whether a powered parachute used to scout trophy antelope could be considered an “aircraft” under the AHA.³⁸ The operator of the powered parachute was a big game guide who flew the parachute “back and forth in a grid-like motion, at a very low altitude, and in a patter consistent with a search for wildlife.”³⁹ He also used the parachute to chase a large trophy buck.⁴⁰ The parachute operator argued, among other things, that Congress did not intend to include powered parachutes in the AHA’s definition of “aircraft.” Applying the “plain language” rule, the court held that the “broad definition [of ‘aircraft’ in the AHA] clearly and unambiguously includes . . . powered parachute[s].”⁴¹ Furthermore, the court concluded, it was clear that Congress intended to include powered parachutes, which are designed to fly at low altitudes, in the definition of “aircraft” because it was concerned about “unsportsmanlike behavior” on the part of some hunters.⁴² Thus, the court concluded, “the purpose of the AHA would not be best met by limiting the statute to airplanes and helicopters.”⁴³

³⁵ 50 C.F.R. § 25.11(b).

³⁶ *Id.* § 742j-1(c).

³⁷ 160 F. Supp. 2d 1048 (D. Ariz. 2001).

³⁸ *Id.* at 1052.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 1055.

⁴² *Id.* at 1054.

⁴³ *Id.*

FWS could employ the same logic as that employed by the court in *Red Frame Parasail* and conclude that drones are clearly and unambiguously “aircraft” under the plain language of the AHA. Furthermore, even if there was ambiguity in the AHA’s definition of “aircraft,” the FWS would get deference in interpreting the AHA.⁴⁴ FWS’ interpretation of “aircraft” would be upheld by a court as long as it is “based on a permissible construction of the statute.”⁴⁵

As previously discussed, under the AHA, the FWS can penalize any person who: “(1) while airborne in an aircraft shoots or attempts to shoot for the purpose of capturing or killing any bird, fish, or other animal; or (2) uses an aircraft to harass any bird, fish, or other animal; or (3) knowingly participates in using an aircraft for any purpose referred to in paragraph (1) or (2).”⁴⁶ Because drones are unmanned, the first prohibition does not apply to drone users. However, under the second prohibition, FWS could cite drone operators under the AHA for using a drone “to harass any bird, fish, or other animal.” Under the third prohibition, FWS could cite anyone who “knowingly participates” in using a drone to shoot or harass wildlife. “Knowing” participants could include an operator or anyone who assists him in using a drone to shoot or harass wildlife.

The definitional regulations in 50 C.F.R. Part 10 were derived from the AHA,⁴⁷ and if FWS were to issue an interpretive rule stating that it considers drones “aircraft” under 50 C.F.R. § 27.34, it could simultaneously state that it considers drones “aircraft” under the AHA and 50 C.F.R. § 10.12. Such notice would likely satisfy any Due Process obligations with respect to AHA citations.

VI. Recreational Use: 50 C.F.R. § 26.32

Recreational uses, including “nature observation and photography” are permitted on refuge lands, but only they have been found to be compatible with the purposes of a particular refuge.⁴⁸ It is unlikely that in making compatibility determinations, any refuge manager addressed the use of drones in finding that recreational photography was a compatible activity. Refuge managers may therefore wish to review those findings, and if they conclude that unmanned aircraft use is not compatible, clarify that such use is not a compatible activity and is prohibited.

⁴⁴ See *Chevron v. NRDC*, 467 U.S. 837 (1984).

⁴⁵ *Id.* at 842-43.

⁴⁶ 16 U.S.C. § 742j-1(a).

⁴⁷ See 50 C.F.R. § 19.4.

⁴⁸ 50 C.F.R. §26.41.



STAFF REPORT

Parks and Recreation Commission

Meeting Date: 9/23/2015

Staff Report Number: 15-002-PRC

Regular Business: Approve a Partnership and Sponsorship Policy for Community Services Department Events and Programs

Recommendation

Review and recommend that City Council approve the attached Community Services Department Partnership and Sponsorship Policy for Special Events and Programs.

Policy Issues

Council has established a User Fee / Cost Recovery Policy setting specific expectations for the level of cost recovery to be achieved by Community Services programs. Approval of a defined partnership and sponsorship policy will support the Department's efforts to improve the quality of community events and programs while meeting the Council's cost recovery policy targets.

Background

The Community Services Department supports over 100 individual programs, classes, services and over a dozen community events and activities each year. Since 2007, sponsorships for these events and activities have helped the Department achieve Council mandated cost recovery levels. Currently, sponsorships account for about \$16,000 in annual revenue to the Department, against a total budget of almost \$8 million, including monetary and other support for events such as 4th of July, Summer Concert Series, Breakfast with Santa, Egg Hunt and more.

As the Department continues to improve the scope and quality of special events while keeping events free or very low cost to promote community participation, sponsorships have become a more important revenue source as well as an opportunity for community based businesses and other partners to become involved and give back to their home town. A sponsorship policy approved by Council will support staff in increasing partnerships for special events such as Egg Hunt, Kite Day, and the Menlo Movie Series as well as for supporting scholarship programs in support of low-income participants, Senior Center Nutrition and Meal Program, and many more.

Analysis

Sponsorships are cash or in-kind monetary contributions or donations of products and services offered by sponsors with the clear expectation that the recipient is obliged to return something of value to the partner. The value is typically recognition and publicity or advertising highlighting the contribution of the partner or the partners' name, logo, message, products or services. The partner usually has specific marketing

objectives for the sponsorship such as the right to be the exclusive sponsor in some category of sales. The arrangement is typically formalized by a letter of agreement or contract detailing the particulars of the exchange. Sponsorships are different from donations in that donations come with no restrictions on how the money or in-kind resources are used. The attached policy addresses partnerships and sponsorships, the agreements for the procurement of resources and the benefits provided in return for securing those resources. Since donations or gifts come with no restrictions or expected benefits for the donor, a policy is generally not needed for them.

The attached policy, based on models from other area communities with a more formalized sponsorship process, defines the purposes of a sponsorship policy, the procedures to be followed when establishing a sponsorship relationship with a partner, the limitations and restrictions on the agreement, the value of the sponsorship (including how payments will be managed, pricing tiers and insurance requirements), and the recognition and benefits the partners will receive for their contribution.

Impact on City Resources

Currently, event and activity sponsorships generate about \$16,000 annually for Community Services. It is anticipated that, with a more defined and clearly articulated policy, partnerships will continue to grow as a revenue source. This year, \$35,000 was budgeted for sponsorships in the Council approved 2015-16 Budget.

Environmental Review

A sponsorship policy is not subject to California Environmental Quality Act requirements.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Proposed Community Services Department Partnership and Sponsorship Policy
- B.

Report prepared by:
Cherise Brandell, Community Services Director

COMMUNITY SERVICES DEPARTMENT

Partnership and Sponsorship Policy

701 Laurel Street, Menlo Park, CA 94025 (p) 650.330.2223 (f) 650.330.2242



Purpose

In an effort to maximize the community's resources, it is in the best interest of the City's Community Services Department to create and enhance relationship-based Partnerships. This may be accomplished by providing local, regional, and national commercial businesses and non-profit groups a method for becoming involved with the many opportunities provided by the Community Services Department. The Department delivers quality, life-enriching programs and activities to the broadest base of the community. This translates into exceptional visibility for sponsors and supporters. The goal of this policy is to create relationships and Partnerships with sponsors to support the financial health of the Department.

Partnerships

Partnerships are cash or in-kind products and services offered by sponsors with the clear expectation that an obligation is created. The recipient is obliged to return something of value to the Partner. The value is typically public recognition and publicity or advertising highlighting the contribution of the Partner and/or the Partner's name, logo, message, products or services. The Partner usually has clear marketing objectives, including, but not limited to, the ability to drive sales directly based on the Partnership, and, quite often, the right to be the exclusive sponsor in a specific category of sales. The arrangement is typically consummated by a letter of agreement or contractual arrangement detailing the particulars of the exchange. Some programs, such as the Menlo Park Summer Concert Series or Menlo Movie Series may have multiple sponsors in a specific category since these Partners sponsor a specific event although marketing collateral would be combined.

Donations

A donation comes with no restrictions on how the money or in-kind resources are used. This policy specifically addresses Partnerships, the agreements for the procurement of the resources, and the benefits provided in return for securing those resources. Since donations or gifts come with no restrictions or expected benefits for the donor, a policy is generally not needed.

Eligibility

Partners should be businesses, non-profits, or individuals promoting mutually beneficial relationships for the Community Services Department and the City of Menlo Park. All potentially sponsored programs or facilities should be reviewed in order to create synergistic working relationships regarding benefits, community contributions, knowledge, and political sensitivity. All sponsored programs should promote the goals and mission of the City of Menlo Park and the Community Services Department.

Partnership Contact Maintenance

The Community Services Director or designee, is responsible for maintaining an updated list of all current Partnerships, sponsored activities, and contacts related to Partnerships in order to:

- Limit duplicated solicitations of a single entity
- Allow decisions based on the most appropriate solicitations and level of benefits offered
- Keep a current list of Department supporters and contacts

- Help provide leads for new Partnerships, if appropriate
- Ensure sponsor mission and values are in line with the mission and values of the Menlo Park Community Services Department
- Confirm sponsorship agreement(s) are adequately fulfilled

Not a Public Forum

In adopting the Special Events Partnership Policy, it is the City of Menlo Park's declared intention and purpose to not permit any marketing Partnerships that individually or in combination would cause any real or personal property, facilities, vehicles, or communication media owned or controlled by the City to become a public forum for the dissemination, debate or discussion of public issues.

Procedures

1. Any new Partnership program, event or benefit by the Department must be approved by the Director or a designee.
2. Partnership levels vary and are established based on the Partners' level of exposure and fair market value.
3. Partnership opportunities can include donated product, in-kind services, and money to offset operating and material costs. The total sum of sponsorship funds offered for the specific event/series (monetary) and total estimated value of in-kind contributions (goods or services) will determine the sponsorship category of each Partner.
4. All Partnership values must be reviewed and approved by the Community Services Director or designee. All Partners will be provided an approved Partner packet with approved Partnership benefits, levels and values.
5. All marketing materials that include Partner logos or names (i.e. flyers, posters, t-shirts, press releases, web links, etc.) must be approved by the Director or designee.
6. All Partnership agreements must be signed by the Department Director or designee and use the approved agreement form.
7. All Partnership agreements that include logos, names, etc. on print materials require a minimum lead time of two months prior to the event or program start date. This time is needed in order to execute the agreement, receive payment and provide benefits to the Partner. All other agreements require a minimum lead time of two weeks prior to the event or program start date. Sponsorship agreements submitted after the established deadlines will not be accepted; negotiations or subsidized sponsorships will not be made.

Limitations/Restrictions:

1. The Department may refuse a Partnership if the organization promotes a program or service that is competitive with the Department's own programs and services; the organization is associated with religious, political, alcohol, tobacco, firearms, pornographic, scandalous, or "adult" themed products and services; or the Partnership would create a conflict of interest with City policy. This is because the City has a reasonable interest in maintaining a position of neutrality.
2. Final approval of all Partner provided content, graphics and layout must be given by the Director or designee.

3. The City retains full control of how a program, event or service will be delivered, managed and operated.
4. This policy is not applicable to gifts, grants or unsolicited donations in which no benefits are granted to the donor and where no business relationship exists.
5. The City may cancel a program or event (i.e. budget reduction, City Council action, weather conditions, etc.). Partners will be provided written notice of the cancellation and pro-rated/full refunds issued or materials will be returned.
6. The City of Menlo Park has the right to inspect a Partner booth at any time prior to or during an event. Restrictions on what a Partner may distribute or display at an event will be provided prior to the event. Partners must distribute only their own organization's marketing materials and cannot distribute materials for other organizations. All Partners wanting to share or give their booth to other organizations have approval of the Director or designee.
7. The City's logo may not be used by a Partner in any way without the permission of the Department Director or designee. If permission is granted, all materials must be reviewed and approved.
8. Distribution of or advertising in any format that is political, offensive, or issue oriented is prohibited.
9. Marketing materials provided by the Partner should be accurate, well-organized and clearly identifiable as a commercial marketing collateral piece. Materials stating that the City of Menlo Park endorses a commercial entity are strictly prohibited.
10. All Partnership agreements are with the listed or defined commercial or non-profit entity. Any subsidiary or affiliate of the Partner must either obtain permission of the City of Menlo Park to be included in the Partnership arrangement benefits or create a separate Partnership arrangement.
11. Partners must submit high-quality digital artwork/logo by the established deadline for each event or risk their logo not being included in marketing materials. The City will not alter Partner logos with the exception of re-sizing. Partner logos may not contain contact information such as numbers, e-mails, or website unless it is part of the sponsor name/brand (ie. Amazon.com, Pets.com, etc.).
12. The City will make all reasonable attempts to include the Partner's name/logo through the marketing and promotional activities associated with an event or program in which a Partner's name/logo is included or where the Partner's marketing materials are presented. Examples include: printed materials, t-shirts, promotional products, website content, email communication/e-blasts, advertising, newsletters, calendars, social media, banners, and on-site display booths.
13. Only one organization will be allowed a Title Sponsorship per event, program or series. Series events will be capped to one sponsor per event date where an exclusive sponsorship exists. All other sponsorship categories will remain open until their cutoff date, unless otherwise identified by staff.

Partnership Value:

1. All Partnership values will be reviewed on an annual basis by the Department's leadership team. New events or programs that are added during the year must follow the valuation guidelines. Final Partnership values and corresponding benefits must be approved by the Director or designee.

2. Partnership values are established by the Community Services Department based on the estimated attendance and marketing for each event or program, or other criteria determined by the Director or designee, such as anticipated community benefit.

Payments:

1. All Partner payments including in-kind goods or services **must** be received prior to the event or program being delivered. Benefits may only be delivered if the payment terms of the agreement are met. Any exceptions must be approved by the Director or designee.
2. Partners may pay with Visa, Mastercard, check, or cash.

Special Event Pricing Tiers:

Attendance	Pricing Tier	Title	Platinum	Gold	Silver	Bronze
4000+	3	\$10,000	\$7,500	\$5,000	\$2,500	\$1,000
1000-3999	2	\$7,500	\$1,000	\$750	\$500	\$250
Under 999	1	\$5,000	\$750	\$500	\$250	\$100

Current Special Event Tiers:

Event / Program	Attendance	Pricing Tier
4th of July Parade & Celebration	5000	3
Summer Concert Series	3000	2
Egg Hunt	2750	2
Halloween Hoopla	2000	2
Menlo Movie Series	1250	2
Kite Day	600	1
MA PAC Programs	492	1
Breakfast with Santa	400	1

Insurance:

1. Partners will be required to provide proof of insurance with the City of Menlo Park listed as an additional insured if the Partnership includes the following:
 - Utilization of City facility, park, or equipment not in conjunction with a City sponsored event
 - Any promotion or activity at a City sponsored event that goes above and beyond what is normally provided by the City (i.e. rides, games, other activities)
 - As required through the approval of a permit or facility use agreement
 - Certificate of Liability Insurance must include:
 - The renter's name must be listed as the one "insured."
 - The policy must not expire before the planned event date.
 - The policy must be for \$1,000,000.
 - The "description" should list the rental location, day, and event planned.
 - The City of Menlo Park at 701 Laurel Street, Menlo Park, CA 94025 must be noted as "additional insured."

Recognition & Benefits:

1. Partnership benefits should follow the benefit tiers detailed in each event sponsorship packet.
2. All Partnership benefits that include complimentary services (tickets, wristbands, etc.) should not exceed 20% of the total value of the sponsorship for that individual program.
3. All Partners will receive a letter of appreciation and digital photos of the event or program.
 - Summary of the event or program including attendance estimates can be provided on request
4. For events that include title sponsors or capped sponsorships (ie. Summer Concert Series and Menlo Movie Series), the previous year sponsor(s) will be granted first right of contract based on the following order:
 - Title sponsors
 - Platinum Sponsors
 - Gold Sponsors
 - Silver Sponsors
 - Bronze Sponsors

Community Services Director
Cherise E. Brandell, PhD

Date Approved

City Manager
Alex D. McIntyre

Date Approved



STAFF REPORT

Parks and Recreation Commission

Meeting Date: 9/23/2015

Staff Report Number: 15-003-PRC

Informational Item: Community Services Director's update and announcements

Recommendation

Staff recommends that the Commission receive the Community Services Director's update and announcements.

Policy Issues

City policies are not affected.

Background

I. City partners with Media Center at Special Events

This past summer, the Community Services Department partnered with the Midpen Media Center (MC) on both the Fourth of July Parade & Celebration and Menlo Film Contest.

The MC livestreamed our Fourth of July Celebration online, in addition to broadcasting the event on Channel 28 with the help of Community Youth for the MC / MC Sports Team. The footage was edited and can be viewed [online](#).

Menlo Park designed a program intended to socially engage the community and showcase our quality of life through community parks. The Menlo Film Contest encouraged community members to voice their passion for parks by answering, "How do parks make life better in Menlo Park?" in a short video then submitting it during the month of July. Top videos were showcased at the Menlo Movie Series on Sept 4th. An encore showing will also be played at the City's [Frozen Sing-along!](#) on October 3rd at the Menlo-Atherton Performing Arts Center. The winning videos can be viewed on the Special Events [Facebook](#) page or by visiting these links:

1st Place: [Team Skyrocket Presentations](#)

2nd Place: [Team Alexander Lazich](#)

3rd Place: [Team Cohen](#)

To support this program, the MMC offered a free filmmaking workshop. One of the students who attended the workshop received the Second Place award. Judging was conducted by representatives from Blue Village Film, Medpen Media Center, and Community Services.

II. Use Permit granted for Menlo Movie Series

In order to create another Downtown attraction, Community Services staff organized the “Menlo Movie Series,” which took place during the first three Friday evenings of September 2014 on the Chestnut Paseo. This “soft launch” featured three family-friendly movies and attendees were encouraged to bring portable chairs and food from downtown merchants.

The El Camino Real/Downtown Specific Plan allows for public improvement pilot programs as “the basis for review and consideration of a permanent installment,” and will provide the City with the opportunity to assess the level of public interest in similar permanent improvements on Santa Cruz Avenue, while also supporting the City Council’s goals of generating foot-traffic Downtown. The Menlo Movie Series events were a successful pilot use of this space.

The Menlo Movie Series will allow for a maximum of eight public events (increased over time) to occur annually on the last Fridays in August and September. Currently, four movies are scheduled for Fall 2015:

9/4/15 - 7:45 pm - Guardians of the Galaxy (2014)

9/11/15 - 7:30 pm - Planes Fire & Rescue (2014)

9/18/15 - 7:30 pm - Big Hero 6 (2014)

9/25/15 - 7:15 pm - Cinderella (2015)

Due to the success of the 2014 Menlo Movie Series, its alignment within the Downtown Specific Plan, and support from the Parks & Recreation and Planning Commissions, the Community Services Department looks forward to creating a new community tradition in Menlo Park.

III. Menlo Mavericks compete in USA Water Polo Junior Olympics

For the second year in a row, the Menlo Mavericks have qualified for USA water polo's Junior Olympics. The Mavericks were able to qualify two teams, 14-and-under girls and 10-and-under coed. The 10-and-under coed team achieved a big win that put them in the "platinum" division of the tournament, which is the highest bracket. They placed 23rd overall and third in their zone. The future looks bright for this group with many of the younger competitors gaining more experience in next year's tournament. The 14-and-under girls are making big strides with several group members competing last year in the 12-and-under team. The girls developed friendships with many of the other teams and came away more inspired to improve and qualify to compete next year. The Menlo Mavericks want to thank Menlo Swim and Sport, BBAF, Project 2020 and the City of Menlo Park for the continued support in making their team goals possible.

IV. Menlo Park summer camps wrap up another successful season

As the summer ends, the popular Menlo Park summer camps also must come to a close. Both Camp Menlo and Menlo Palooza had a successful two months. With great attendance numbers, the children participated in traditional camp activities and field trips; however this year the camps focused a bit more on staying active outdoors. Camp Menlo started each day with a Healthy Mile challenge. The participants were challenged to run, walk or skip, around the track for 1 mile each day with those who completed the challenge throughout the entire camp receiving a prize at the end. The Menlo Palooza camp hosted weekly relays and obstacle courses where participants split into groups and challenged each other for the fastest times. Though some obstacles were messy, the children enjoyed the challenge and raved about the activities each day.

V. Paseo on Chestnut Street to host pop-up park pilot program

For six weeks, the City of Menlo Park is piloting a pop-up park on the Paseo on Chestnut Street at Santa Cruz Avenue. Pop-up parks are one of the techniques used in many cities to enliven downtown areas and provide residents with a new way to enjoy the urban environment. These techniques are also referred to as tactical urbanism. First debuted last year for the Mayor's "State of the City" event, the Paseo pop-up park was well received and supports one aspect of the open space goals identified in the Specific Plan. The City intends to use this pilot as a way to assess community interest in permanent public improvements in the area. The Paseo will be programmed with passive and active uses during this time, so come check out lawn games, exercise classes or just relax and enjoy Menlo Park's great weather – with a treat from one of our downtown merchants of course!

VI. AAU brings youth basketball tournaments to Menlo Park

Menlo Park will host 8 to 10 Amateur Athletic Union youth basketball tournaments this year at the Arrillaga Family Gymnasium. Local AAU organizations manage the tournaments, which feature both boys and girls from grades 3-12. Each weekend more than 20 teams will give it their all in attempting to win the division championship. Visiting teams come from around the Bay Area, as well as other parts of the state. The AAU was founded in 1888 to establish standards and uniformity in amateur sports. During its early years, the AAU served as a leader in international sport representing the U.S. in the international sports federations. The AAU worked closely with the Olympic movement to prepare athletes for the Olympic Games. After the Amateur Sports Act of 1978, the AAU has focused its efforts into providing sports programs for all participants of all ages beginning at the grass roots level. The philosophy of "Sports for All, Forever," is shared by over 650,000 participants and over 100,000 volunteers.

VII. Onetta Harris Community Center hosts a Community Open House

On Thursday, September 24th from 6:00-8:00 p.m. the Onetta Harris Community Center will host its first ever Community Open House. The event will showcase the classes and programs offered at the community center as well as other Community Services programs and other services offered by various community partners. There will be free food, door prizes and much more to round out the evening.

Analysis

Analysis is not required.

Impact on City Resources

There is no impact on City resources.

Environmental Review

Environmental review is not required.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

None

Report prepared by:
Derek Schweigart, Community Services Manager