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ACLU of Massachusetts
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October 27, 2014
City Council Meeting

SUPPORT FOR REGULATING GOVERNMENT USE OF DRONES

Dear Mayor Maher, Vice Mayor Benzan, and members of the Council:

On behalf of the ACLU of Massachusetts and our more than 1,400 members in Cambridge, and as a 15-year Cambridge resident, I write to address the issue of drones. I am grateful to Councilors Kelley, Cheung and Mazen for bringing this issue forward. This effort to grapple with drone use in Cambridge is important and timely. We need to establish rules and standards for their operation, protections for individual privacy, and transparent public oversight.

As this technology develops and its presence in our skies grows to seem inevitable, considering the public policy implications may seem overwhelming. Despite the many burgeoning commercial and personal uses of drones, I urge you to **focus your inquiries and actions where you can have the greatest impact: on use of drones by government entities, particularly law enforcement.**

Unregulated, warrantless drone operations could interfere with residents' reasonable expectation of privacy, chill First Amendment-protected activities, and lead to discriminatory targeting. The drones that are likely to take to Massachusetts skies in the near future are powerful tools, and the technology is evolving rapidly. Currently in development are drones small enough to fly into houses undetected¹, as quiet as a mouse². They can hover and observe people's activity secretly, silently, and constantly³. Furthermore, drones can be equipped with a host of sophisticated surveillance technologies, including cell phone "sniffers" that intercept cell tower data⁴ and invasive biometric tracking tools that acquire information on everyone in a given area, whether or not they are intended surveillance targets⁵.

Drones are not like helicopters or any other police vehicle. They aren't subject to the same limitations as helicopters, which are costly and require trained, human pilots, launch pads and flight and ground crews. Rather, drones are cheap, small and quiet, and – unlike helicopters – the City of Cambridge could conceivably afford to fly a small fleet of drones. Because of these

¹ Elisabeth Bumiller and Thom Shanker, War Evolves With Drones, Some Tiny as Bugs, June 19, 2011, The New York Times, available at http://www.nytimes.com/2011/06/20/world/20drones.html?pagewanted=all&_r=0

² Robert Beckhusen, Super-Silent Owl Drone Will Spy on You Without You Ever Noticing, July 19, 2012, Wired Magazine, available at <http://www.wired.com/dangerroom/2012/07/owl/>

³ Ryan Gallagher, Could the Pentagon's 1.8 Gigapixel Drone Camera Be Used for Domestic Surveillance?, February 6, 2013, Slate, available at http://www.slate.com/blogs/future_tense/2013/02/06/argus_is_could_the_pentagon_s_1_8_gigapixel_drone_camera_be_used_for_domestic.html

⁴ Declan McCullagh, DHS built domestic surveillance tech into Predator drones, March 2, 2013, CNET, available at http://news.cnet.com/8301-13578_3-57572207-38/dhs-built-domestic-surveillance-tech-into-predator-drones/

⁵ Noah Shachtman, Army Tracking Plan: Drones That Never Forget a Face, September 28, 2011, Wired Magazine, available at <http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/>

fundamental differences, they are particularly well-suited to secret surveillance, so they need specific legal controls.

The ACLU has serious concerns about the use of unmanned aerial vehicle surveillance technology to collect information about individuals suspected of no crime. The pace at which surveillance technology has evolved in recent years has far outstripped the pace at which laws have adapted to protect individuals' privacy. Congress has required the Federal Aviation Administration (FAA) to open domestic airspace more widely to drones by 2015, yet the FAA has indicated that its mandate is airspace safety, not privacy. Therefore, it is incumbent upon elected leaders to protect our privacy and ensure that this emerging technology is used responsibly in Cambridge – not for warrantless surveillance of our ordinary, day to day lives. It is a core value in our society that we do not watch innocent people just in case they do something wrong.

Please consider adopting safeguards like those proposed in a piece of state legislation filed last year, House Bill 1357, attached for your reference.⁶ H.1357 strikes the right balance by permitting law enforcement use of drones only in emergencies or with a probable cause warrant issued by a judge. It requires data minimization by prohibiting law enforcement from identifying anyone other than the target that justified the warrant and drone deployment, and requires that data on bystanders be deleted promptly. When drones are used for purposes other than authorized criminal investigations by law enforcement, the data they collect would be prohibited from being introduced as evidence in court.

In addition, this legislation would explicitly bar the use of drones to monitor First Amendment expression. Antiwar activists and Tea Party members alike should be free to petition their government without risking being monitored or catalogued by the police.

These are sensible, constitutionally-protective provisions that Cambridge should not hesitate to adopt.

Finally, I would urge the Council to follow its own wise precedent set in the context of surveillance cameras. In October 2013, one year ago, the City Council adopted a policy order requiring a vote of the Council before the network of surveillance cameras over the city is activated. The principle behind that order was simple: Cambridge should not expose its residents to new surveillance without a public and democratic process.

In the case of drones, **the Council should require a public process and approving city council vote before any city entity acquires, or obtains the use of, any drone technology,** and should require law enforcement to engage in regular reporting to keep the Council and the public informed about drone use in Cambridge. Transparency is key in a democratic society, and technology shouldn't change that.

Before drones become ubiquitous in our airspace, we need clear rules so that we do not needlessly sacrifice our privacy and liberty. The ACLU offers ourselves as a resource as the Council and City Manager move forward on this critical issue.

⁶ The ACLU of Massachusetts notes appreciatively that Councilor Toomey, in his role as State Representative for the 26th Middlesex district, signed on to this legislation as an original co-sponsor.

HOUSE No. 1357

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to regulate the use of unmanned aerial vehicles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Ryan C. Fattman</i>	<i>18th Worcester</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>

HOUSE No. 1357

By Ms. Garry of Dracut, a petition (accompanied by bill, House, No. 1357) of Colleen M. Garry and others relative to the use of information derived from unmanned aerial vehicles as evidence in judicial, regulatory or other government proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to regulate the use of unmanned aerial vehicles.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 272 of the General Laws is hereby amended by inserting after
2 section 99B the following section:—

3 Section 99C.

4 (a) As used in this section, the following words shall have the following meanings:—

5 “Unmanned aerial vehicle”, an aircraft that is operated without the possibility of direct
6 human intervention from within or on the aircraft.

7 (b) Any use of an unmanned aerial vehicle shall fully comply with all Federal
8 Aviation Administration requirements and guidelines. Unmanned aerial vehicles may not be
9 equipped with weapons. The acquisition, purchase, or procurement of unmanned aerial vehicles
10 shall be authorized, in the case of a unit of state or county government, by the Secretary of Public
11 Safety, or, in the case of a municipality, by the city council or other governing body, subject to
12 approval by the Secretary of Public Safety.

13 (c) It is unlawful for a government entity or official to operate an unmanned aerial
14 vehicle except as follows—

15 (1) in order to execute a warrant issued under section 2 of chapter 276.

16 (2) for purposes unrelated to criminal investigation or other law enforcement
17 purposes, provided that information derived from such operation shall not be received in

18 evidence in any criminal trial, hearing, or grand jury proceeding, or maintained, shared, or used
19 for any intelligence purpose.

20 (3) in case of emergency when there is reasonable cause to believe that a threat to the
21 life or safety of a person is imminent, subject to the following limitations:

22 i. the operator shall document the factual basis for the emergency; and

23 ii. not later than 48 hours after the unmanned aerial vehicle is initially deployed, a
24 supervisory official shall file an affidavit describing the grounds for the emergency access.

25 (d) The lawful operation of unmanned aerial vehicles described in subsection (b) and
26 the disclosure of information acquired by the operation of such vehicles shall be subject to the
27 following limitations:

28 (1) When operated pursuant to a warrant, unmanned aerial vehicles shall collect data
29 only on the warrant subject and avoid data collection on individuals, homes, and areas other than
30 the warrant subject.

31 (2) Facial recognition and other biometric matching technology shall not be used on
32 data collected by an unmanned aerial vehicle, except to identify the subject of a warrant.

33 (3) Under no circumstances shall unmanned aerial vehicles be used to track, collect
34 or maintain information about the political, religious or social views, associations or activities of
35 any individual, group, association, organization, corporation, business or partnership or other
36 entity unless such information relates directly to investigation of criminal activity, and there are
37 reasonable grounds to suspect the subject of the information is involved in criminal conduct.

38 (e) Data collected on an individual, home, or area other than the target that justified
39 deployment shall not be used, stored, copied, transmitted, or disclosed for any purpose, except
40 with the written consent of the data subject. Such data shall be deleted as soon as practical, and
41 in no event later than 24 hours after collection.

42 (f) Information acquired by government use of an unmanned aerial vehicle and
43 information derived therefrom shall not be received in evidence in any judicial, regulatory, or
44 other government proceeding if:

45 (1) the use of the unmanned aerial vehicle was unlawful;

46 (2) the unmanned aerial vehicle was used for an unlawful purpose or in an unlawful
47 manner; or

48 (3) the disclosure would be in violation of the data retention limits in subsection (e).

49 (g) A government office or public official may include in its application for a warrant
50 a request for an order delaying the notification required under subsection (g) for a period not to
51 exceed 90 days, and the court shall issue the order if it determines there is reason to believe that
52 notification of the existence of the warrant may have an adverse result as defined in section 1B
53 of chapter 276. Upon expiration of any period of delay granted under this subsection, the
54 government office or public official shall provide the warrant subject a copy of the warrant
55 together with notice required under, and by the means described in, subsection (h).

56 (h) Not later than seven days after information is collected by an unmanned aerial
57 vehicle pursuant to subsection (c)(1) of this section, the government entity or official shall serve
58 upon, or deliver by registered or first-class mail, electronic mail, or other means reasonably
59 calculated to be effective as specified by the court issuing the warrant to the subject of the
60 warrant a copy of the warrant, a copy of the application for the warrant, and notice that informs
61 such individual:—

62 (1) of the nature of the law enforcement inquiry with reasonable specificity;

63 (2) that information regarding the warrant subject was collected, the dates on which
64 the information was collected, and a description of that information;

65 (3) whether notification was delayed pursuant to subsection (g); and

66 (4) the judicial official authorizing any delay in notification.

67 (i) On the second Friday of January of each calendar year, any judge issuing or
68 denying a warrant under subsection (c)(1) during the preceding calendar year shall report on each
69 such warrant to the office of court management within the trial court:

70 (1) the fact that the warrant was applied for;

71 (2) the identity of the government entity or official making the application;

72 (3) the offense specified in the warrant or application therefor;

73 (4) the place where the information was to be obtained;

74 (5) the fact that the warrant was granted as applied for, was modified, or was denied;

75 and

76 (6) the number and duration of any extensions of the warrant.

77 In June of each year, beginning in 2013, the court administrator in the office of court
78 management within the trial court shall transmit to the legislature a full and complete report
79 concerning the number of applications for warrants authorizing the use of unmanned aerial
80 vehicles pursuant to subsection (c)(1) of this section. Such reports shall include a summary and

81 analysis of the data required to be filed with that office. Such reports shall be filed with the
82 offices of the clerk of the house and the senate and shall be public records. The court
83 administrator in the office of court management within the trial court shall issue guidance
84 regarding the form of such reports.