



April 16, 2013

Via Electronic Mail and United States Mail

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Re: April 16, 2013 meeting of the Redding City Council, Agenda Item 9A
Drone Test Site

Dear Honorable Members of the Redding City Council:

The American Civil Liberties Union of Northern California writes in regard to item 9A on this evening's City Council agenda. Staff has recommended that the City Council authorize execution of a Letter of Intent that would pave the way for the Redding airport to become a testing ground for "unmanned aircraft systems," more commonly known as drones, in the event Ventura County is designated a drone test site by the Federal Aviation Administration. ***We urge you not to approve the Letter of Intent at this juncture because it is a blank check.*** It fails to address any of the many substantial privacy questions that should be answered before the City Council makes the weighty decision to unleash drones in the skies above Redding. No such authorization should be granted unless and until meaningful privacy safeguards are in place. We explain below our concerns about drones and identify some key issues that should be addressed up front, to ensure that drones are not used for warrantless mass surveillance.

1. Drones pose enormous threats to privacy.

Drones pose dramatically greater threats to privacy than traditional forms of aerial surveillance for three main reasons, cost, surreptitiousness, and technological advances.

First, manned aircraft are expensive to purchase, operate, and maintain. This expense has traditionally imposed a natural limit on the government's aerial surveillance capability and thus serves as a deterrent to abuse. But when technological advances dramatically lower the cost of collecting data, the natural deterrent to abuse is removed and the need for strong legal safeguards becomes paramount.

Second, drones are intended to operate surreptitiously. A nude sunbather enjoying a sunny afternoon in the privacy of her backyard can run for cover to protect her modesty when a helicopter flies overhead, but might never know if a drone were flying overhead and recording her naked image for unknown uses.

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Third, the amount of highly personal information that can be collected is nothing short of staggering. Small, hovering platforms, drones can explore hidden spaces or peer into windows. They can be equipped with high powered, night-vision cameras. So called “see-through imaging” can monitor people on the inside of a building. Through distributed video, a number of drones working in concert like a swarm of insects can scoop up information to provide comprehensive surveillance. Video analytics then allows processing of the information collected to recognize and track specific people, events, and objects.

To be sure, drones may have beneficial uses like emergency search and rescue. But far too often, the government rushes to acquire and deploy the latest gadget – touting safety and other benefits – without a meaningful weighing of the benefits and costs – both in terms of dollars and privacy. Without a meaningful discussion, we risk wasting taxpayer dollars on equipment that does not deliver its promised benefits or risks infringing more privacy than we as a society are prepared to accept. Take for example, the “naked scanners” installed at airports across the country in 2010. They were supposed to keep us safer, but in the process subjected passengers to virtual strip searches by revealing detailed images of their bodies. Purchase and implementation hurtled forward over privacy objections, and even though the United States’ Government Accountability Office questioned the scanners’ effectiveness.¹ But earlier this year, the Transportation Security Administration announced that it will be removing all 174 of the machines currently in use because the manufacturer did not deliver on promised privacy safeguards.² A more thoughtful cost-benefit analysis – including an analysis of financial as well as privacy costs – *before* the scanners were acquired could have saved taxpayers \$45 million and avoided invading the privacy of thousands of travelers.

2. The Redding City Council should not write a blank check.

The decision whether to make Redding a drone testing site is highly consequential and should be undertaken through a process that is participatory and meaningful. Given the importance of this issue, the community should have a robust opportunity to participate in the decision-making process. Moreover, the decision should be undertaken only with full information. At this juncture, far too much information is lacking.

Staff has recommended that the City Council authorize execution of a Letter of Intent. But the proposed Letter of Intent is nothing more than a blank check, leaving key terms of the agreement to be negotiated at a future juncture entirely by staff. In particular, there is *no* indication as to what, if any, privacy safeguards will be in place or whether staff will seek any

¹ See United States Government Accountability Office, Statement for the Record To the Committee on Homeland Security, House of Representatives, January 27, 2010, available at http://www.wired.com/images_blogs/threatlevel/2011/03/GAO-report-on-body-scanners.pdf, and David Kravets, “Airport ‘Nude’ Body Scanners: Are They Effective?” *Wired*, March 8, 2011, available at <http://www.wired.com/threatlevel/2011/03/scanners-part3/>.

² See Mike Flacy, “TSA to Yank Controversial ‘Naked’ Full-Body Scanners Out of Airports,” *Digital Trends*, January 20, 2013, available at <http://www.digitaltrends.com/lifestyle/tsa-will-finally-remove-controversial-naked-full-body-scanners/>.

indication as to what, if any, privacy safeguards will be in place or whether staff will seek any privacy safeguards in future negotiations with Ventura. Nor is there any indication that the community or City Council will have input into any privacy safeguards.

Without knowing what privacy safeguards will be in place, the Redding community cannot make an informed decision on this important issue. The City Council should not authorize execution of a Letter of Intent that leaves the Council and the community entirely in the dark about privacy. The proposed Letter of Intent fails to provide any assurance that the City Council and community will be able to evaluate or establish privacy safeguards.

3. The Redding City Council should not authorize Redding to become a drone testing site without first ensuring that meaningful privacy safeguards are in place.

Given the potential privacy invasions, the City Council should not set into motion any process that would lead to drone deployment in the Redding skies unless meaningful privacy safeguards are in place. As a general matter, privacy safeguards should be in place at three main junctures – deployment, data collection, and data retention and dissemination. Testing sites raise the latter two issues in particular. It is also essential to understand whether the Redding City Council will have any ability to shape privacy safeguards.

We urge you to obtain further information about the following issues so that you can ensure that meaningful privacy safeguards are in place.

- ***Deployment:*** For what purposes and under what circumstances should drones be deployed? This is primarily an issue when the government, for example, the police department, seeks to acquire a drone for its own use rather than when, as here, the City is considering becoming a testing site. But we raise it now to alert you to the type of questions that should be raised about drones in general. Absent emergency situations raising an immediate threat to life or safety, drones should only be deployed by criminal law enforcement agencies with a warrant based on probable cause.
- ***Data collection and third party impact:*** What protocols will be in place to minimize collection of third party data? The stated purpose of the drone deployment is testing. Presumably, testing will not entail collection of data about Redding residents or property. If no data about Redding residents will be collected, this should be clarified. This clarification would likely address many of the concerns Redding residents have raised to date. But if the testing program will entail collection of data about Redding residents, this should also be clarified so that the Council and community can make an informed decision. Further, protocols should be in place to minimize impact on Redding residents. For example, what flight route will the drones follow from the Redding airport to military air space? Will cameras begin recording while within Redding city limits, or only after the drone has reached military airspace?

- ***Data retention and dissemination:*** Absent requirements that data be promptly deleted and prohibitions against data dissemination, drones could be used for warrantless mass surveillance. In other words, data collected ostensibly for testing purposes could be reviewed and analyzed by law enforcement to gather information about Redding residents. What protocols will be in place to ensure that this does not occur?
- ***Role of Redding City Council:*** While it is essential for the local community to have the opportunity through their civilian elected leaders to weigh in on these important privacy issues, it is entirely unclear whether the arrangement with Ventura County will allow for this to occur or whether the FAA will dictate its own protocols. This issue should be clarified.

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In short, the ACLU urges the City Council not to write a blank check. The proposed Letter of Intent provides the community with no assurances whatsoever that their privacy will not be invaded, and it provides the City Council with no role in overseeing the process of transforming Redding into a drone test site. Drone proponents have emphasized that the integration of drones into domestic airspace is inevitable. While that may be the case, it is therefore all the more essential that Redding, under the leadership of its City Council, take this opportunity to advance not only technology, but also civil rights, privacy, and core values of our constitution.

Very truly yours,



Linda Lye
Staff Attorney