



John A. Carey
Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

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Use of Drones by Government Agencies

Government entities need to know the rules before purchasing and employing drones.

Unmanned aerial vehicles or drones have experienced an explosion in commercial, private, and government use during the last decade. As of July 12, 2021, there are 870,911¹ drones registered with the Federal Aviation Administration (FAA). The FAA regulates the use of drones and navigable airspace.



Florida first adopted drone legislation in 2013, known as the *Freedom from Unwarranted Surveillance Act*, §934.50, Florida Statutes. The Act prohibited a law enforcement agency's use of a drone to "gather evidence or other information," with limited exceptions. The enumerated exceptions provided that a law enforcement agency² could use drones to counter a high risk terrorist attack; pursuant to a search warrant; or if swift action is needed to prevent imminent danger to life or serious damage to property, forestall the imminent escape of a suspect or destruction of evidence, or to search for a missing person. In 2015, the Florida legislature amended the Act to prohibit state agencies and political subdivisions³ from using a drone to record privately owned real property or individuals with the intent to conduct surveillance in violation of the individuals' reasonable expectation of privacy without their written consent.

Effective July 1, 2021, the Act was amended⁴ (Ch. 2021-165, Laws of Florida). The following exceptions applicable to law enforcement were added⁵ by the amendment:

- To provide aerial perspective of a crowd of 50 people or more, provided that the agency has policies and procedures in accordance with §934.50(4)(d).
- For traffic management, but images and video captured by a drone may not be used to issue a traffic infraction citation.

¹ United States Department of Transportation, Federal Aviation Administration. (2021, June 30). UAS by the Numbers. https://www.faa.gov/uas/resources/by_the_numbers/

² "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws. §934.50(2)(d), F.S.

³ The law applies to state agencies and political subdivisions as defined in §11.45, F.S.

⁴ CS/CS/SB 44: Use of Drones by Government Agencies

⁵ For a full listing of exceptions for use of drones, see §934.50(4), F.S.

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- Facilitate the collection of evidence at a crime scene or traffic crash.

Additionally, the statute added language permitting use of drones for:

- State agencies and political subdivisions to assess damage due to flood, wildfire, or other natural disaster that is the subject of a declared state of emergency.
- Vegetation or wildlife management on publicly owned land or water by state agencies and political subdivisions.
- Certified fire department personnel to perform tasks within scope and practice authorized by their certifications.

Drone Purchase and Operations



An important change to the Act is a new requirement that limits drone purchases and use by a governmental agency⁶ to approved manufacturers. By January 1, 2022, the Florida Department of Management Services (DMS) shall publish a list of approved manufacturers for use by governmental agencies. Upon publication of the list, governmental entities may only purchase drones from approved manufacturers.

Additionally, by January 1, 2023, all governmental agencies must discontinue the use of drones not produced by an approved manufacturer.

Suggestions

We recommend that local government agencies consult their legal counsel and review all drone policies and procedures for compliance with §934.50, Florida Statutes, including:

1. Prohibited and permissible drone use.
2. Guidelines for the proper storage, retention, and release of drone images or video.
3. Purchasing procedures to include a check of DMS approved drone manufacturers.
4. Review the inventory of current drone assets, and develop a plan to surplus or dispose of unapproved drones.



⁶ "Governmental agency" means any state, county, local, or municipal governmental entity or any unit of government created or established by law that uses a drone for any purpose. §934.50(7)(a)2.