

What Localities and States Can Do About Drones

Charlottesville, Va., passed a resolution that urged the state of Virginia to adopt a two-year moratorium on drones (which it did), urged both Virginia and the U.S. Congress to prohibit information obtained from the domestic use of drones from being introduced into court, and to preclude the domestic use of drones equipped with "anti-personnel devices, meaning any projectile, chemical, electrical, directed-energy (visible or invisible), or other device designed to harm, incapacitate, or otherwise negatively impact a human being," and pledged that Charlottesville would "abstain from similar uses with city-owned, leased, or borrowed drones."

St. Bonifacius, Minn., passed a resolution with the same language as Charlottesville plus a ban on anyone operating a drone "within the airspace of the city," making a first offense a misdemeanor and a repeat offense a felony.

Evanston, Ill., passed a resolution establishing a two-year moratorium on the use of drones in the city with exceptions for hobby and model aircraft and for non-military research, and making the same recommendations to the state and Congress as Charlottesville and St. Bonifacius.

Northampton, Mass., passed a resolution urging the U.S. government to end its practice of extrajudicial killing with drones, affirming that within the city limits "the navigable airspace for drone aircraft shall not be expanded below the long-established airspace for manned aircraft" and that "landowners subject to state laws and local ordinances have exclusive control of the immediate reaches of the airspace and that no drone aircraft shall have the 'public right of transit' through this private property," and urging the state and Congress and the FAA "to respect legal precedent and constitutional guarantees of privacy, property rights, and local sovereignty in all matters pertaining to drone aircraft and navigable airspace."

See full text of all resolutions at warisacrime.org/resolutions

Other cities, towns, and counties should be able to pass similar resolutions. Of course, stronger and more comprehensive resolutions are best. But most people who learned about the four resolutions above just learned that these four cities had "banned drones" or "passed an anti-drone resolution." The details are less important in terms of building national momentum against objectionable uses of drones. By including both surveillance and weaponized drones, as all four cities have done, a resolution campaign can find broader support. By including just one issue, a resolution might meet fewer objections. Asking a city just to make recommendations to a state and the nation might also meet less resistance than asking the city to take actions itself. Less can be more.

Localities have a role in national policy. City councilors and members of boards of supervisors take an oath to support the Constitution of the United States. Cities and towns routinely send petitions to Congress for all kinds of requests. This is allowed under Clause 3, Rule XII, Section 819, of the Rules of the House of Representatives. This clause is routinely used to accept petitions from cities, and memorials from states. The same is established in the Jefferson Manual, the rulebook for the House originally written by Thomas Jefferson for the Senate. In 1967, a court in California ruled (*Farley v. Healey*, 67 Cal.2d 325) that "one of the purposes of local government is to represent its citizens before the Congress, the Legislature, and administrative agencies in matters over which the local government has no power. Even in matters of foreign policy it is not uncommon for local legislative bodies to make their positions known." Abolitionists passed local resolutions against U.S. policies on slavery. The anti-apartheid movement did the same, as did the nuclear freeze movement, the movement against the PATRIOT Act, the movement in favor of the Kyoto Protocol, etc. No locality is an island. If we become environmentally sustainable, others will ruin our climate. If we ban assault weapons, they'll arrive at our borders. And if the skies of the United States are filled with drones, it will become ever more difficult for any city or state to keep them out.

How to pass a local resolution: Every city or county is different, but some rules of thumb are applicable. To the extent possible, build understanding of the issues. Invite speakers, screen films, hold conferences. To the extent possible, educate and win over elected officials. Make the case that localities have a responsibility to speak on national issues to represent the interests of local people. Make the case that the time to act is before the problem expands out of control. Most states are considering drone legislation, so refer to that activity in your state. Make clear that you are aware of countless benevolent and harmless uses of drones but that you are prioritizing Constitutional rights



and want exceptions made for uses that do not endanger self-governance rather than drones being made the norm and restrictions the exception. The Congressional Research Service says drones are incompatible with the Fourth Amendment. The U.N. Special Rapporteur says drones are making war the norm. If possible, propose the weakest resolution you can, and ask the local government to put it on the agenda for consideration; then propose the strongest possible resolution you dare. You may end up with a compromise, as happened in Charlottesville. Work the local media and public. Pack the meeting(s). Take advantage of every opportunity for the public to speak. Unlike at the state or national levels, you are unlikely to face any organized opposition. Make your most persuasive case, and make a great show of public support. Equate a "No" vote with support for cameras in everyone's windows and armed drones over picnics. Equate a "Yes" vote with prevention of racial profiling, activist profiling, and the targeting of all sorts of groups that can be recruited into your campaign.

STATES: See full text of all resolutions at warisacrime.org/resolutions

Oregon has passed a law banning weaponized drones in all cases and banning drone use by law enforcement unless they have a warrant, they have probable cause without a warrant, or for search and rescue, or for an emergency, or for studying a crime scene, or for training (and the Fourth Amendment be damned).

Virginia has passed a law banning local and state (but not federal or National Guard) government drone use for two years unless various color-coded alerts are activated or there is a search or rescue operation or for training exercises or for drone-training schools, and strictly banning (for two years) any state or local weaponized drones.

Florida has passed a law banning law enforcement agencies from using drones to gather information unless they think they have some sort of reason to do so (and the Fourth Amendment be damned).

Idaho has passed a law banning drone surveillance "absent reasonable, articulable suspicion of criminal conduct" except in pursuit of marijuana in which case no such suspicion is needed (and the Fourth Amendment be damned).

Illinois has passed a law banning drones except for law enforcement agencies that have a warrant or when the Secretary of Homeland Security shouts "terrorism!" or they are reasonably suspicious it's needed or are searching for a missing person or are photographing a crime scene or traffic crash scene (and the Fourth Amendment be damned).

Tennessee has passed a law banning law enforcement drones unless the Sec. of Homeland Security shouts "terrorism!" or there's a warrant or there's suspicion without a warrant (and the Fourth Amendment be damned).

Texas has passed a law banning the capturing of images with drones except for ... too many exceptions to list.

Congressman Grayson passed an amendment to a DHS funding bill banning DHS from using weaponized drones, a step that must be repeated each year for this and other agencies unless a full national or international ban is put in place.