



Peace and Justice Commission

ACTION CALENDAR

February 24, 2015

To: Honorable Mayor and Members of the City Council
 From: Peace & Justice Commission
 Submitted by: Noah Sochet, Chairperson, Peace & Justice Commission
 Subject: Establishing a Two Year Moratorium on Drones in Berkeley

RECOMMENDATION

Adopt a Resolution adopting a two year moratorium on drones in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

At its regularly scheduled meeting on June 9, 2014, the Peace and Justice Commission approved a recommendation that the City Council adopt a Resolution establishing a two year moratorium on Drones in Berkeley.

M/S/C: (/Meola/Bohn)
 Ayes: Bohn, Grace (*temporary appointee*), Kenin, Lippman, Meola, Nicely
 Noes: Peirotas
 Abstain: None.
 Absent: Maran (excused), Sochet (excused)

BACKGROUND

On December 18, 2012, the Berkeley City Council reviewed a resolution submitted to it by the Berkeley Peace and Justice Commission to "Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect."¹ The Council referred the issue of drones, or unmanned aerial vehicles, in Berkeley back to the Peace and Justice Commission, the Berkeley Police Review Commission, and the Berkeley Disaster and Fire Commission for further review and study, and asked them to report back to Council for further consideration of the issues and a Council Workshop.

¹ "Proclaim Berkeley a No Drone Zone and Enact an Ordinance to That Effect." City of Berkeley. N.p., n.d. Web. <http://www.ci.berkeley.ca.us/Clerk/City_Council/2012/12Dec/Documents/2012-12-18_Item_05_Proclaim_Berkeley_a_No_Drone.aspx>.

Council asked those commissions to review a proposal to permit police use of drones upon approval of City Manager, or upon approval of the Chief of Police in emergency situations when the City Manager isn't available, in the following circumstances:

- 1) In the case of a disaster;
- 2) To assist in locating missing persons;
- 3) To assist in rescue efforts;
- 4) To assist in police pursuit of known suspects who have committed serious or violent crimes.

Since that time, four cities [Charlottesville, Virginia, St. Bonifacius, Minnesota, Evanston Illinois, and Iowa City, Iowa] have banned drones. Other cities and at least thirty-one states are considering similar legislation. In Seattle, Washington, in February, 2013, Mayor Mike McGinn ordered the Seattle Police Department to abandon its plan to use drones after residents and privacy advocates protested and McGinn said the two drones purchased by the city with federal funds would be returned to their vendors.

On May 1, 2013, the Peace and Justice Commission and the Police Review Commission jointly held a "Town Hall on Drones: Informing Policy in Berkeley." The Town Hall meeting provided opportunities for individuals and organizations to address the Commissions and the public on various aspects of drone usage. The Town Hall focused on:

- 1) Technical Aspects of and Limitations of Drones
- 2) Public Safety (what might drones be good for?)
- 3) Civil Liberties Concerns; and
- 4) Moral and Political Consequences of Drones.

Representatives of the following organizations made presentations to the Commissions: American Civil Liberties Union (ACLU), the Electronic Frontier Foundation (EFF), the Association for Unmanned Vehicle Systems International (AUVSI), Alameda County Against Drones (ACAD), the Bill of Rights Defense Committee (BORDC), Berkeley Copwatch, and Clinical Professor Jennifer Urban from the University of California School of Law's Technology & Public Policy Clinic. Unfortunately, neither the Berkeley Police Department (BPD) nor the Berkeley Fire Department (BFD) accepted invitations to send their representatives to participate in any way in the Town Hall on Drones. An invitation for co-sponsorship was also extended to the Berkeley Disaster and Fire Safety Commission but was declined.

Each presenter answered questions from Commissioners, and ample time was devoted to public comment. Of all of the presenters, only the presenter from AUVSI, a drone industry advocacy and trade group, favored the use of drones in Berkeley. Of the approximately twenty comments from the public, eighteen speakers expressed strong

opposition to the use of drones in Berkeley, while two expressed willingness to see drones used in emergency situations with appropriate safeguards. One person expressed a desire for Berkeley to use a drone to search for his granddaughter in an emergency situation and another person expressed his desire for "some use of drones." Many speakers urged commissioners to pursue a "No Drone Zone" policy in Berkeley.

On April 29, 2014, the City Council convened a work session on a Drone Policy in the City of Berkeley. Following the work session, the matter was referred to the Council Agenda Committee, where no additional action has taken place.

ENVIRONMENTAL SUSTAINABILITY

A moratorium on drones will eliminate the heightened risk of negative environmental effects associated with the unregulated use of drones, including potential mid-air collisions with other such objects and wildlife and inadvertent crash landings of such unmanned vehicles.

RATIONALE FOR RECOMMENDATION

The Peace and Justice Commission urges the Berkeley City Council to pass a two year moratorium on drones in Berkeley pending the development of a comprehensive city-wide approach restricting the use of drones.

ALTERNATIVE ACTIONS CONSIDERED

A range of approaches to addressing the constitutional and other issues raised by drones was considered. Pending the development of a comprehensive city-wide approach, as originally proposed by the Commission on December 18, 2012, other possible partial limitations on drones was considered. Based on the Commission's analysis, including input provided at the public forum, partial and limited restrictions on drones were deemed insufficient in addressing the privacy and other constitutional issues posed by drones.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Bob Meola, Commissioner, Peace & Justice Commission, (510) 644-1102
Eric Brenman, Secretary, Peace & Justice Commission, (510) 981-5114

Attachments:

1. Resolution
2. Letter regarding Drone Policy

RESOLUTION NO. –N.S.

TWO YEAR MORATORIUM ON DRONES IN BERKELEY

WHEREAS, the Berkeley Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code (BMC) Chapter 3.68.070); and

WHEREAS, the Berkeley City Council is not yet ready to implement a comprehensive policy on drones in Berkeley, including an ordinance addressing the use of drones in Berkeley; and

WHEREAS, at Council's request, the Peace and Justice Commission and the Police Review Commission researched drone policy, including holding a community forum, and collected expert and community testimonies from various perspectives, noting a strong preference for a No Drone Zone and caution and regulation before the use of drones is allowed; and

WHEREAS, the rapid implementation of drone technology throughout the United States poses a serious threat to the privacy and constitutional rights of the American people, including the residents of Berkeley; and

WHEREAS, the federal government and the State of California have not yet provided reasonable legal restrictions on the use of public or private drones within the United States; and

WHEREAS, police departments throughout the country have begun implementing drone technology absent any guidance or guidelines from law makers.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council encourages our legislative representatives to propose a two year moratorium on drones in the state of California.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley calls on the United States Congress and the legislature of the State of California to adopt legislation prohibiting the use of drones in criminal investigations without a valid court warrant prompted by a showing of probable cause, prohibiting information obtained from the domestic use of drones from being introduced into a Federal or State court, and precluding the domestic use of drones equipped with anti-personnel devices, including any projectile, chemical, electrical, directed-energy (visible or invisible), or other device designed to harm, incapacitate, or otherwise negatively impact a human being.

BE IT FURTHER RESOLVED that the City of Berkeley and its agencies will refrain, for two years, from purchasing drones or entering into contracts to lease or borrow drones or receiving drones as gifts or using drones.

Letter to Berkeley City Council and the Council Agenda Committee re Drone Policy

Dear Berkeley City Council Agenda Committee:

The Peace and Justice Commission wishes to remind you that we are looking forward to the establishment of a process to craft a comprehensive Berkeley Policy on Drones. The recommendation we submitted for Council Action has not been placed on the City Council Agenda prior to or following the Council Workshop on Drones.

Our original recommendation was on the Council agenda on December 18th, 2012. We have a subcommittee on drones. We held our Town Hall on Drones on May 1, 2013. The Council Workshop on Drones was held on April 29, 2014 and no specific timeline was given for the continuation of hearing our recommendation on a City Council Agenda Action Calendar or establishing a Council sub-committee to further research a policy on drones for the City of Berkeley.

Given the fact that it will take an undeclared and unknown amount of time before Council does further work on a Drone Policy for Berkeley and given the fact that it is and will be easier to regulate drones before they fill Berkeley's skies than after they are already in Berkeley's skies, we are submitting an additional recommendation to be utilized, in the meantime, while Berkeley studies the subject in greater depth, in order to secure the safeguards for civil liberties and safety that were expressed at the City Council Workshop on Drones.

Our temporary solution, while the details are worked out by Council for a more comprehensive Policy on Drones, is to implement a Two Year Moratorium on Drones in Berkeley [as has been done in other cities]. Our "Resolution Proposing a Two Year Moratorium on Drones in Berkeley" accompanies this letter. Also, provided at this link, <http://warisacrime.org/resolutions> are bans on drones legislated by other cities and states.

Please put this new Resolution on an upcoming City Council Agenda and let us know what steps the Council is taking to craft a more comprehensive and permanent policy on drones.

Thank you for your attention to the matter of a Drone Policy in Berkeley.

Sincerely,

Berkeley Peace and Justice Commission
cc: Berkeley City Council

