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## RESOLUTION

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RELATING TO THE INCLUSION IN THE 2017 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE OF A PROPOSAL THAT WOULD REGULATE OPERATORS OF UNMANNED AIRCRAFT SYSTEMS.

WHEREAS, unmanned aircraft systems, are becoming increasingly popular in Hawaii and the rest of the United States; and

WHEREAS, unmanned aircraft systems ("UAS", and hereinafter used in both singular and plural sentence construction), more popularly known as drones, are aircraft that are operated without an onboard human operator and include the aircraft's associated elements, such as communication links and ground-based components that control the unmanned aircraft; and

WHEREAS, UAS have a host of applications that may provide public benefits, including search and rescue operations, land surveillance, wildlife tracking, disaster response, targeted fertilizer application, invasive species detection and control, aerial photography and videography, and motor vehicle traffic management; and

WHEREAS, notwithstanding these benefits, UAS also have the capacity to monitor and track individuals' movements, store images and data, record phone and text communications, and take photographs and film individuals without regard to the distinction between public and private spaces, all of which present potential privacy concerns; and

WHEREAS, the U.S. government has exclusive sovereignty of the navigable airspace in the USA, and the Federal Aviation Administration ("FAA") is authorized to regulate aircraft in navigable airspace; and

WHEREAS, the FAA's Office of Chief Counsel has released a document entitled "State and Local Regulation of Unmanned Aircraft Systems Fact Sheet", dated December 17, 2015, that:

- Provides guidance regarding the federal regulatory framework for use by states and local governments when considering proposed legislation or ordinances that would affect the use of UAS;
- Affirms that UAS are aircraft subject to regulation by the FAA to ensure flight safety and the safety of people and property on the ground; and



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- Acknowledges that laws traditionally related to state and local police power, including land use, zoning, privacy, trespass, and law enforcement operations, are generally not subject to federal regulations; and

WHEREAS, the FAA further states that it is within state and local government purview for such governments to enact certain UAS-related legislation, including legislation requiring police to obtain a warrant prior to using a UAS for surveillance, legislation prohibiting attaching firearms or similar weapons to UAS, or legislation specifying that UAS may not be used for voyeurism; and

WHEREAS, the Council finds that unmanned aircraft systems (drones) have already posed safety and privacy issues and concerns within our communities, including a nationally publicized incident on December 28, 2015 where a drone was intercepted flying near a Presidential motorcade on Oahu; and

WHEREAS, approval of all counties is required to include a proposal in the 2017 Hawaii State Association of Counties (HSAC) legislative package; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it approves, for inclusion in the 2017 HSAC legislative package, a proposal attached as Exhibit A, that would, if enacted, establish laws relating to unmanned aircraft systems that addresses traditional state and local police powers such as privacy, harassment, and voyeurism, which also ensures public safety; and



**RESOLUTION**

BE IT FINALLY RESOLVED that a copy of this Resolution be transmitted to the President of the Hawaii State Association of Counties.

INTRODUCED BY:

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DATE OF INTRODUCTION:

**SEP 1 2016**

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Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

## EXHIBIT A



# S.B. NO.

1 "Department" means the department of commerce and consumer  
2 affairs.

3 "Director" means the director of commerce and consumer  
4 affairs.

5 "Operator" means any person using or operating an unmanned  
6 aerial vehicle.

7 "Personal information" means all information that:

- 8 (1) Describes, locates, or indexes information or data  
9 relating to a person, including but not limited to  
10 physical location, social security number, driver's  
11 license number, government-issued identification  
12 number, student identification number, real or  
13 personal property holdings identified in tax filings,  
14 educational records, financial transactions, medical  
15 history, ancestry, religious affiliation, political  
16 ideology or affiliation, criminal record, or  
17 employment history;
- 18 (2) Affords a basis for inferring personal  
19 characteristics, such as facial recognition and other  
20 biometric identification technology, fingerprints,  
21 voiceprints, or photographs; or

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1           (3) Indicates a person's membership in or association with  
2                    an organization, participation in an activity, or  
3                    admission or entrance to an institution or facility.

4            "Unmanned aerial vehicle" means a powered vehicle that does  
5 not carry a human operator, uses aerodynamic forces to provide  
6 vehicle lift, can fly autonomously or be piloted remotely, and  
7 can be expendable or recoverable. "Unmanned aerial vehicle"  
8 does not include a remote controlled airplane.

9           § -2 Powers and duties of the director. In addition to  
10 any other powers and duties authorized by law, the director  
11 shall:

- 12           (1) Adopt, amend, or repeal rules as the director deems  
13                    proper to fully effectuate this chapter;  
14           (2) Impose a fine on an operator for any cause prescribed  
15                    by this chapter, or for any violation of this chapter  
16                    or any rule adopted pursuant to this chapter; and  
17           (3) Investigate the use of any unmanned aerial vehicle  
18                    reported to be in violation of this chapter or any  
19                    rule adopted pursuant to this chapter.

20           § -3 Prohibited acts; penalty. (a) No person shall  
21 operate an unmanned aerial vehicle:

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- 1           (1) In violation of chapter 263 or any applicable federal  
2           law and Federal Aviation Administration regulations  
3           relating to the operation of unmanned aerial vehicles;
- 4           (2) Within five miles of an airport;
- 5           (3) Within five hundred feet of an emergency response  
6           vehicle or first responder during an emergency, unless  
7           the unmanned aerial vehicle is operated pursuant to  
8           section     -4(b);
- 9           (4) To intentionally collect personal information or  
10          intentionally publish or distribute personal  
11          information acquired through the operation of an  
12          unmanned aerial vehicle without express written  
13          consent from the person whose personal information is  
14          acquired;
- 15          (5) At an altitude higher than four hundred feet above  
16          ground level;
- 17          (6) Outside the visual line of sight of the operator. The  
18          operator shall use natural vision to maintain at all  
19          times an unobstructed view of the unmanned aerial  
20          vehicle without the use of vision enhancing devices,  
21          including but not limited to binoculars, night vision

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- 1 goggles, powered vision magnifying devices, or similar  
2 devices;
- 3 (7) In a manner that interferes with, or fails to give way  
4 to, any manned aircraft;
- 5 (8) Whenever weather conditions impair the operator's  
6 ability to safely operate the unmanned aerial vehicle;
- 7 (9) Over any open air assembly unit, school, school yard,  
8 hospital, place of worship, prison, or police station  
9 without the property owner's written consent and  
10 subject to any restrictions that the property owner  
11 may impose on the operation of the unmanned aerial  
12 vehicle;
- 13 (10) (A) Within five hundred feet of any water intake  
14 facility or any electric generating facility,  
15 substation, or control center;
- 16 (B) Within one hundred feet of any electric  
17 transmission facility; or
- 18 (C) Within twenty-five feet of any electric  
19 distribution facility or of any overhead cable,  
20 wire, conveyor, or similar equipment for the  
21 transmission of sounds or signals, or of heat,

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1                   light, or power, or of data, upon or along any  
2                   public way within the city,  
3                   without the facility or equipment owner's written  
4                   consent and subject to any restrictions that the  
5                   facility or equipment owner may impose on the  
6                   operation of the unmanned aerial vehicle;  
7           (11) While under the influence of any intoxicating liquor  
8                   as defined in section 281-1, intoxicating compound as  
9                   defined in section 712-1240, or other drug, or any  
10                   combination thereof;  
11           (12) With the intent to use the unmanned aerial vehicle or  
12                   anything attached to it to cause harm to persons or  
13                   property;  
14           (13) In a reckless or careless manner; or  
15           (14) In violation of any federal or state law.  
16           (b) All data and personal information collected through  
17                   the use of an unmanned aerial vehicle shall not be used or  
18                   repurposed for any purpose other than the original purpose for  
19                   which the data or personal information was collected.

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1           (c) Any person who operates an unmanned aerial vehicle in  
2 violation of this chapter shall pay a civil penalty of  
3 \$           for each separate offense.

4           (d) All penalties collected by the department shall be  
5 deposited into the compliance resolution fund under section  
6 26-9(o) for the purpose of enforcing this chapter.

7           § -4 Prohibited uses by law enforcement agencies;  
8 exceptions. (a) No law enforcement agency shall use an  
9 unmanned aerial vehicle to gather evidence or other information  
10 pertaining to criminal conduct or conduct in violation of a  
11 statute, ordinance, or administrative rule without first  
12 obtaining a warrant.

13           (b) Notwithstanding subsection (a) and in addition to the  
14 authorized activities under section -5, a law enforcement or  
15 public safety agency may deploy an unmanned aerial vehicle for  
16 the following purposes:

17           (1) When there is a reasonable belief that an emergency  
18 situation exists, whether or not the situation  
19 involves criminal activity, and the use of an unmanned  
20 aerial vehicle is necessary to prevent immediate

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1 danger of death or serious physical injury to any  
2 person;

3 (2) To conduct a search and rescue operation where the use  
4 of an unmanned aerial vehicle is determined to be  
5 necessary to alleviate an immediate danger to any  
6 person;

7 (3) To respond to a hostage situation; or

8 (4) To conduct training exercises related to any of the  
9 purposes in this subsection.

10 § -5 Public agency exceptions. Nothing in this chapter  
11 shall prohibit the use of unmanned aerial vehicles by a public  
12 agency:

13 (1) To conduct environmental or disaster response,  
14 including but not limited to disaster relief, victim  
15 recovery or search and rescue, and monitoring,  
16 inspection, underwater repair, or structural damage  
17 assessments;

18 (2) To dispose of a suspected or actual explosive device;

19 (3) To monitor plant or animal populations;

20 (4) To conduct atmospheric testing or monitoring;

21 (5) For farming and agricultural uses;

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1 (6) To review traffic congestion and conditions;

2 (7) To survey or inspect public lands and property; or

3 (8) To survey the ocean and coastline.

4 § -6 Weapons; prohibited. In no case shall a person or  
5 public agency equip an unmanned aerial vehicle with a weapon or  
6 deploy an unmanned aerial vehicle that is equipped with a  
7 weapon.

8 For the purpose of this section, "weapon" means any device  
9 designed to harm or incapacitate a human being by use of a  
10 projectile, explosive, biological or chemical agent,  
11 electricity, visible or invisible directed energy, radiation, or  
12 any other means.

13 § -7 Civil cause of action; remedies. (a) An  
14 individual shall have a civil cause of action against any person  
15 that collects, publishes, or distributes the individual's  
16 personal information in violation of this chapter.

17 (b) In any civil action brought under this section, if the  
18 court finds a violation, the court may award:

19 (1) Injunctive relief;

20 (2) Equitable relief;

21 (3) Compensatory damages;

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- 1 (4) Punitive damages, except as prohibited by section
- 2 662-2;
- 3 (5) Costs of the action; and
- 4 (6) Reasonable attorney's fees."

5 SECTION 3. Chapter 711, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8 "§711- Unmanned aerial vehicles; prohibited acts. (1)  
9 It shall be unlawful for any person to intentionally, knowingly,  
10 or recklessly use an unmanned aerial vehicle to record or  
11 photograph a person in a private place without the consent of  
12 the person for the purpose of spying on the person or invading  
13 the privacy of another person with an unlawful purpose, under  
14 circumstances in which a reasonable person in the private place  
15 would not expect to be observed.

16 (2) Violation of this section is a misdemeanor. In  
17 addition to any penalties the court may impose, the court may  
18 order the destruction of any recording or photograph made in  
19 violation of this section."

20 SECTION 4. Section 711-1100, Hawaii Revised Statutes, is  
21 amended as follows:

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1           1. By adding a new definition to be appropriately inserted  
2 and to read:

3           "Unmanned aerial vehicle" means a powered vehicle that  
4 does not carry a human operator, uses aerodynamic forces to  
5 provide vehicle lift, can fly autonomously or be piloted  
6 remotely, and can be expendable or recoverable."

7           2. By amending the definition of "record" to read:

8           "Record", for the purposes of sections 711-1110.9 [and],  
9 711-1111, and 711-\_\_\_\_\_ , means to videotape, film, photograph, or  
10 archive electronically or digitally."

11           SECTION 5. Section 711-1110.9, Hawaii Revised Statutes, is  
12 amended by amending subsection (1) to read as follows:

13           "(1) A person commits the offense of violation of privacy  
14 in the first degree if, except in the execution of a public duty  
15 or as authorized by law:

16           (a) The person intentionally or knowingly installs or  
17 uses, or both, in any private place, without consent  
18 of the person or persons entitled to privacy therein,  
19 any device, including an unmanned aerial vehicle, for  
20 observing, recording, amplifying, or broadcasting

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1 another person in a stage of undress or sexual  
2 activity in that place; or

3 (b) The person knowingly discloses an image or video of  
4 another identifiable person either in the nude, as  
5 defined in section 712-1210, or engaging in sexual  
6 conduct, as defined in section 712-1210, without the  
7 consent of the depicted person, with intent to harm  
8 substantially the depicted person with respect to that  
9 person's health, safety, business, calling, career,  
10 financial condition, reputation, or personal  
11 relationships; provided that:

12 (i) This paragraph shall not apply to images or  
13 videos of the depicted person made:

14 (A) When the person was voluntarily nude in  
15 public or voluntarily engaging in sexual  
16 conduct in public; or

17 (B) Pursuant to a voluntary commercial  
18 transaction; and

19 (ii) Nothing in this paragraph shall be construed to  
20 impose liability on a provider of "electronic  
21 communication service" or "remote computing

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1 service" as those terms are defined in section  
2 803-41, for an image or video disclosed through  
3 the electronic communication service or remote  
4 computing service by another person."

5 SECTION 6. Section 711-1111, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of violation of privacy  
8 in the second degree if, except in the execution of a public  
9 duty or as authorized by law, the person intentionally:

10 (a) Trespasses on property for the purpose of subjecting  
11 anyone to eavesdropping or other surveillance in a  
12 private place;

13 (b) Peers or peeps into a window or other opening of a  
14 dwelling or other structure adapted for sojourn or  
15 overnight accommodations for the purpose of spying on  
16 the occupant thereof or invading the privacy of  
17 another person with a lewd or unlawful purpose, under  
18 circumstances in which a reasonable person in the  
19 dwelling or other structure would not expect to be  
20 observed;

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- 1           (c) Trespasses on property for the sexual gratification of  
2           the actor;
- 3           (d) Installs or uses, or both, in any private place,  
4           without consent of the person or persons entitled to  
5           privacy therein, any means or device, including an  
6           unmanned aerial vehicle, for observing, recording,  
7           amplifying, or broadcasting sounds or events in that  
8           place other than another person in a stage of undress  
9           or sexual activity;
- 10          (e) Installs or uses outside a private place any device,  
11          including an unmanned aerial vehicle, for hearing,  
12          recording, amplifying, or broadcasting sounds  
13          originating in that place which would not ordinarily  
14          be audible or comprehensible outside, without the  
15          consent of the person or persons entitled to privacy  
16          therein;
- 17          (f) Covertly records or broadcasts an image of another  
18          person's intimate area underneath clothing, by use of  
19          any device, including an unmanned aerial vehicle, and  
20          that image is taken while that person is in a public  
21          place and without that person's consent;

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1 (g) Intercepts, without the consent of the sender or  
2 receiver, a message or photographic image by  
3 telephone, telegraph, letter, electronic transmission,  
4 or other means of communicating privately; but this  
5 paragraph does not apply to:

6 (i) Overhearing of messages through a regularly  
7 installed instrument on a telephone party line or  
8 an extension; or

9 (ii) Interception by the telephone company, electronic  
10 mail account provider, or telephone or electronic  
11 mail subscriber incident to enforcement of  
12 regulations limiting use of the facilities or  
13 incident to other operation and use;

14 (h) Divulges, without the consent of the sender or the  
15 receiver, the existence or contents of any message or  
16 photographic image by telephone, telegraph, letter,  
17 electronic transmission, or other means of  
18 communicating privately, if the accused knows that the  
19 message or photographic image was unlawfully  
20 intercepted or if the accused learned of the message

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1           or photographic image in the course of employment with  
2           an agency engaged in transmitting it; or

3           (i) Knowingly possesses materials created under  
4           circumstances prohibited in section 711-1110.9."

5           SECTION 7. This Act does not affect rights and duties that  
6           matured, penalties that were incurred, and proceedings that were  
7           begun before its effective date.

8           SECTION 8. Statutory material to be repealed is bracketed  
9           and stricken. New statutory material is underscored.

10          SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

## JUSTIFICATION SHEET

**PROPOSER:** Hawaii State Association of Counties

**TITLE:** A Bill for an Act Relating to Unmanned Aerial Vehicles

**PURPOSE:** The proposed bill will establish laws relating to the operation of unmanned aerial vehicles that complement federal rules and regulations.

**MEANS:** Creates a new chapter in the Hawaii Revised Statutes (HRS), creates a new section in HRS Chapter 711 HRS, Amends HRS Section 711-1110.9, and HRS Section 711-1111.

**JUSTIFICATION:** The proposed bill will establish laws relating to unmanned aerial vehicles to ensure privacy and public safety and prevent harassment and voyeurism.

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

**RESOLUTION 16-239**

Introduced: 09/01/16 By: BRANDON ELEFANTE Committee: COUNCIL

Title: RESOLUTION RELATING TO THE INCLUSION IN THE 2017 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE OF A PROPOSAL THAT WOULD REGULATE OPERATORS OF UNMANNED AIRCRAFT SYSTEMS.

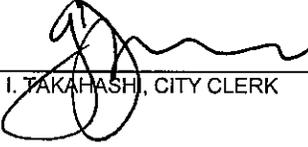
Voting Legend: \* = Aye w/Reservations

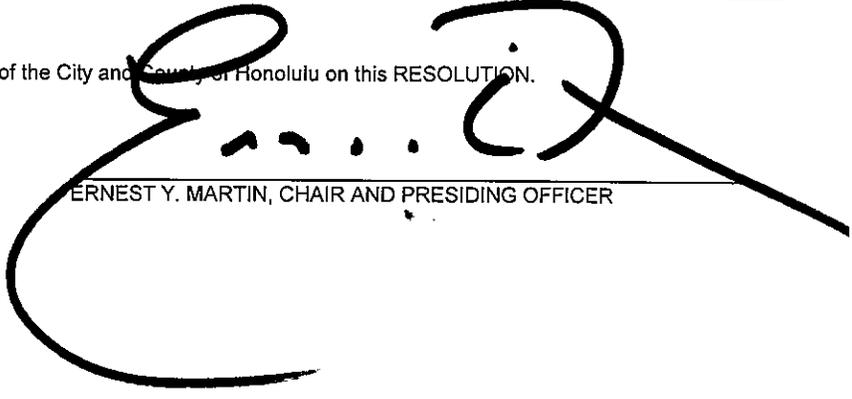
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09/07/16 COUNCIL RESOLUTION 16-239 WAS ADOPTED.  
9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN,  
MENOR, OZAWA, PINE.

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
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GLEN I. TAKAHASHI, CITY CLERK

  
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ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER