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The Wild West of Commercial Drones— Why 2015 Could Be a Pivotal Year in California

By Steven Miller and Nicole Witt*

Editor's Note: Commercial drone regulation is developing quickly and this article is current as of March 3, 2015. The intent and objective of this article is to provide public law practitioners with an overview of drone technology and the regulatory context.

I. INTRODUCTION

Search the word “drone” on Google as recently as a year ago and one might see a news article discussing secret military attacks in Yemen. No longer. Now, the top result is “Shop For Drones.” Commercial use of drones is exploding at such a rate that the reader of this article will likely be aware of potential uses that

had not even been publicized at the time the article was written. Drones smaller than a book are now capable of surveying crops and livestock, monitoring utility installations, creating advertisements and promotional videos, reporting the news, delivering anything from a burrito to high speed internet, and assisting public safety and law enforcement in a wide variety of ways.

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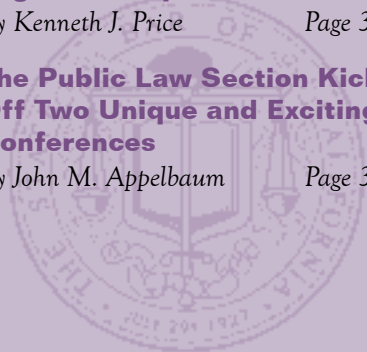
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All of these commercial uses present novel legal issues; yet the law has not kept pace with industry and commercial drone use in California. But 2015 may well be the year of change, as clarity may soon be provided to a number of legal uncertainties. At the same time, even as the law begins to develop in the area of regulating commercial drone use, more legal uncertainties may be created as the commercial drone industry continues to innovate faster than regulators and legislators can keep up.

This article will first provide a short background on existing federal law and recently-issued proposed federal regulations, the first step in what will surely be a multi-year rulemaking process. It will then describe legislative efforts in California in the last legislative session and the prospect for further efforts in the current session. Finally, the article will consider local municipal efforts, both existing and hypothetical, to regulate commercial drone use given the uncertain federal and State landscape.

II. FEDERAL STATUTORY AND REGULATORY FRAMEWORK

On February 14, 2012, President Obama signed into law the FAA Modernization and Reform Act of 2012 (“Act”). Under the Act, Congress charged the Federal Aviation Administration (“FAA”) with developing a comprehensive plan for integrating civil unmanned aircraft systems, or “UAS,” (this article will

sometimes use the more colloquial term “drone” when referring to UAS) into the national airspace system.¹

The Act prohibits the FAA from regulating model aircraft that meet certain specifications.² An initial threshold question was whether the FAA had jurisdiction over commercial use of drones, or whether such



Commercial uses of drones present novel legal issues.

use was within the exemption for model aircraft. This question has now been settled. On November 18, 2014, the National Transportation Safety Board (“NTSB”), reversed an earlier decision by an administrative law judge and held that a drone was an aircraft subject to FAA regulation even though a drone might also be a “model aircraft” under the Act.³ The NTSB found that Title 14 of the Code of Federal Regulations § 91.13(a), which forbids careless or reckless operation of aircraft, applies to remote operation of drones.⁴ The NTSB’s decision was not appealed.⁵

The Act requires the FAA to enact regulations that provide for the integration of commercial drones into the national airspace system by no later than September 31, 2015.⁶ However, pending the rulemaking process required by the Act, the FAA has

already granted a number of authorizations for commercial drones using its authority under Section 333 of the Act.⁷ As of February 17, 2015, the FAA reported it had granted 28 such waivers, for uses including motion picture filming, agriculture analysis, and aerial surveys inspection of off-shore oil rigs, bridges, and National Parks and Forests.⁸ These individual waivers are not a substitute for the broader rule-making process required by the Act and discussed in the next paragraph.

On February 15, 2015, the FAA issued the long-awaited proposed regulation, titled “Operation and Certification of Small Unmanned

Aircraft Systems (“Rule”).⁹ The proposed regulation describes a number of operational limitations including the following:¹⁰

- Drones must be under 55 pounds;
- Flights must take place during daylight hours;
- Flights must take place within a visual line of sight of the operator;
- Operators may work with a visual observer, but the operator still must be able to maintain a visual line of sight;
- Drones may not be flown over individuals not involved in the flight;
- The drone must be registered and aircraft markings are required;
- Operators must be at least 17 years old, pass an aeronautical knowledge test, hold an FAA UAS operator certificate, and pass a TSA background check;

- Aeronautical knowledge testing must be renewed every 24 months (no private pilot license or medical rating would be required);
- Operators must ensure their aircraft is safe for flight (a preflight inspection conducted by the operator, checking communications links and equipment will be sufficient);
- Operators must report an accident to the FAA within 10 days of any operation that results in injury or property damage;
- Drones may not be used in a “careless or reckless” manner; and
- Operators may not drop any object from a drone.

As the above list indicates, many commercial uses of drones will be difficult if not impossible if the final Rule contains the same prohibitions as the proposed Rule—for instance, the use of drones to facilitate delivery of goods would almost certainly violate the line-of-sight rule, the ban on flying over individuals not involved in the flight, as well as the prohibition against dropping anything from a drone. An important question that is too early to answer with certainty is the extent to which the FAA final Rule will preempt State and local regulations. However, it seems almost certain that the FAA will take the position that regulation of United States airspace is reserved exclusively to the Federal Government.

The focus of the proposed Rule is on safety and security. While the proposed Rule is silent on issues relative to privacy, on the same day that the FAA released its proposed Rule, President Obama issued a Presidential Memorandum—essentially an Executive Order—that addressed privacy issues left unstated in the FAA proposed rule.¹¹ The President’s order requires federal agencies to implement

guidelines and publicize policies by February 15, 2016.¹² Such guidelines and policies must be updated every three years. These policies apply only to use of drones by the government and do not directly impact commercial drone use.

The immediate response to the proposed Rule has been mixed as of the date of this article. FAA Administrator Michael Huerta touted the rule as “probably the most flexible regime for unmanned aircraft 55 pounds or less that exists anywhere in the world.”¹³ The Association for Unmanned Vehicle Systems International called the proposed Rule “a good first step” while raising concerns regarding the testing requirement.¹⁴ Despite challenges raised by the proposed regulation, Amazon.com has indicated it will not shelve its new delivery model and has called on the FAA to move efficiently through the formal rule-making process to address the needs of its customers.¹⁵

The rulemaking process is likely to elicit considerable comment from commercial drone manufacturers and operators, especially because the regulations impact commercial uses that have already commenced. Any final Rule is not likely to be issued before 2017.

III. CALIFORNIA LAW AND LEGISLATION

In California, three bills relating to the commercial use of drones were considered in the last legislative session. Only one of the three measures emerged from the legislative process as enacted law.

SB 15 passed the Senate but died in the Assembly. It would have amended the definition of constructive invasion of privacy to include the use

of an unmanned aircraft system to obtain images or recordings of an individual.¹⁶ Any use of drones by law enforcement agencies, even pursuant to a warrant, would not have been permitted under the statute.¹⁷ The bill also would have disallowed using drones to secretly eavesdrop on or record confidential conversations, to observe a person in a private location, to look under or through a person’s clothes, or to secretly record a person in a state of partial or full undress.¹⁸ If adopted, the legislation would have proscribed attaching a weapon to a drone as well as prohibited law enforcement agencies from using a drone to conduct a search without a warrant.¹⁹ Public agencies would only have been permitted to use drones for purposes within their authorized duties and responsibilities and any data collected could not have been disseminated to law enforcement without a warrant.²⁰ Public agencies using drones were instructed to avoid data collection and retention and local agencies were required to provide reasonable public notice prior to the acquisition of a drone.²¹

AB 1327 passed the Assembly and Senate but was vetoed by Governor Brown on September 28, 2014. It would have curbed the use of drones, and the associated collection or sharing of data collected by drones, by law enforcement agencies without first obtaining a warrant, subject to certain emergency exceptions such as an oil spill, a brush fire, or a situation involving an armed gunman.²² The bill would have prevented public agencies from using drones or contracting to use drones except in specific circumstances such as an emergency²³ or in order to achieve a core mission of the agency as long as it



Despite the regulatory uncertainty of commercial drones, they are available for sale and Amazon.com has indicated it will not shelve its commercial drone projects.

was not law enforcement related.²⁴ Finally, similar to SB 15, the bill would have provided that no drone could be weaponized.²⁵

AB 1327 was opposed by most law enforcement organizations.²⁶ In his veto message, the Governor noted that AB 1327's exceptions to the warrant requirement were too narrow and could have extended beyond the requirements of the Fourth Amendment of the U.S. Constitution and the California Constitution.²⁷ Accordingly, the Governor's veto means that, for now, traditional Fourth Amendment jurisprudence will continue to determine when and whether a warrant will be required for drone use by law enforcement. To date, no court in California has considered facts specifically involving warrantless use of drone technology.

The only measure involving drones to be enacted in the last legislative session was AB 2306, signed by the Governor on September 30, 2014. AB 2306 amended California Civil Code Section 1708.8 to provide that a

person is liable for invasion of privacy for using *any* device—presumably including a drone—to capture an image or recording of an individual engaging in a personal or familial activity for which the individual has a reasonable expectation of privacy.²⁸ Of particular relevance to commercial drone use, physical trespass is not necessary if the use of the device was necessary to obtaining the image or recording.²⁹ As a result of AB 2306, a person is now subject to a private cause of action for invasion of privacy resulting from photographs or recordings taken by a drone-mounted camera. The law was particularly aimed at the relentless pursuit of celebrities by paparazzi.³⁰ But, with the intention to expand to cover new technologies, this cause of action presumably could be utilized by a larger segment of the population in the future.

In the current legislative session, two very similar bills (both to each other and to AB 1327) have already been introduced by Assemblymembers Nora Campos and Bill Quirk. In acknowledging that AB 1327 had been vetoed just months prior, Assemblymember

Campos stated, “[D]rones are here to stay and my bill will be a vehicle for finding the right balance.”³¹ It may be that without the context of a pending election, the Governor will sign one of these measures should either of them be presented to him.

It is too soon to have a complete picture of legislative action in the current session. SB 142 (Jackson), introduced on January 26, 2015, would outlaw the unauthorized use of unmanned aerial vehicles in airspace directly over private property (but below the 400 foot altitude clearly regulated by the FAA).³² AB 14 (Waldron) would create the Unmanned Aircraft Task force, which would be responsible for formulating a comprehensive plan for state regulation of drones for submission to the legislature by the end of 2017.³³ Just days after the FAA issued its proposed Rule, two new bills were introduced pertaining to the regulation of drones. SB 271 (Gaines) would make it an infraction to operate a drone on or above a school with K-12 students.³⁴ SB 262 would authorize law enforcement agencies' use of drones, as long as the use complies with Constitutional protections against unreasonable searches and California law regarding law enforcement agencies' use of surveillance technology.³⁵ Clearly, commercial drone use has the legislature's attention.

IV. LOCAL EFFORTS TO REGULATE COMMERCIAL DRONE USE

The laws and regulations described in Sections II and III above focus primarily on safety (in the case of FAA regulations) and privacy (in the case of the limited State legislative efforts) concerns. But there is presently a vacuum of comprehensive regulation in the area of commercial

drones. Given the absence of law at the federal and State level, municipalities in California are starting to take notice of commercial drone use in their jurisdictions and are beginning to explore local regulation of commercial drone use. For example, cities as varied as Evanston, Illinois, St. Bonifacius, Minnesota, and Northampton, Massachusetts have enacted ordinances and resolutions regulating commercial drone use.³⁶ Such local regulation outside of California is beyond the scope of this article, though it provides context for the authors' belief that 2015 will see increased activity at the local level within California.

As of the date of this article's publication, only two California cities have even considered ordinances concerning local regulation of commercial drone use. One has very recently taken action.

On February 24, 2015, the City of Berkeley became the first city in California to regulate drone use when its City Council adopted a resolution implementing a one year moratorium on the use of drones by the police department.³⁷ The City Council also committed to develop a policy on police use of drones.³⁸ The original proposed moratorium was for a two year period and applied to all city agencies, but the time period was reduced to allow for continued consideration of policy on law enforcement's use of drones.³⁹ The moratorium does not prevent the Berkeley Fire Department from using drones for disaster response purposes.⁴⁰ The city's action is silent on private use of drones.⁴¹

Berkeley's limited action regulating police use came after a number of proposals to regulate and even ban, commercial drone use. In 2012, the

City Council considered a broad-reaching resolution and subsequent ordinance that would have restricted drones from the city's airspace, and blocked use or acquisition of drones by any city agency in the city's airspace.⁴² The 2012 proposed ordinance exempted use of drones by hobbyists in specific areas so long as the drones did not contain any surveillance equipment.⁴³ Had it been adopted, violators would have been subject to penalties of up to a year in jail and a fine of no more than \$10,000.⁴⁴

In 2014, Berkeley considered not only banning private drones from city airspace, but also forbidding any agency of the city from acquiring or using a drone.⁴⁵ No officer or employee of the city would be permitted to use drones or data collected by drones in their duties.⁴⁶ No officer or employee would be permitted to accept, handle, analyze, or transmit any data collected by third parties using drones.⁴⁷ No city officer or employee would be permitted to use drones to monitor any person.⁴⁸ Personally identifying information captured by drones could not be retained or shared with any agency.⁴⁹ A city employee or officer's failure to comply with this ordinance would be considered malfeasance in office.⁵⁰ The City Council did not adopt the 2014 ordinance as the Council felt additional inquiry was needed into the details of a drone policy. The recently adopted moratorium is a stop-gap measure while such additional inquiry is undertaken.

In addition to the City of Berkeley, the City of Rancho Mirage considered an ordinance that would prohibit the flying of drones in airspace below 400 feet in any residentially-zoned area of the city.⁵¹ The ordinance contains exemptions for lawful use by a law en-

forcement agency and use of a drone to film a single residence with the owner's consent and a drone use permit from the city.⁵² Violators would be found to have committed an infraction of the Rancho Mirage Municipal Code.⁵³ According to a press report, the City Attorney planned to recommend that Rancho Mirage table the proposal pending State action on legislation to regulate drone use.⁵⁴

Other local agencies are also grappling with their own use of drones. Three recent examples in December, 2014, demonstrate the political controversy surrounding efforts by local agencies to use drones. First, the City of San Jose purchased a drone and was immediately hit with a flood of criticism from an array of civic groups, as well as the American Civil Liberties Union, that stopped any use of the drone before it began.⁵⁵ Second, the City of San Francisco backed down from use of drones after it was discovered that its Recreation and Parks department had purchased nine drones for maintenance purposes.⁵⁶ Finally, the Alameda County Sheriff caused a controversy when it was discovered that he had purchased two drones for use by his department.⁵⁷ The lesson from these examples is that any effort by local agencies to use drones must be transparent and subject to public scrutiny.

Cities may not only be interested in privacy rights impacted in the growing use of drones, but may look to the Constitutional police power as a source of authority to regulate commercial drone use by private entities in a number of areas.⁵⁸ In this regard, any city efforts will likely be in reaction to the expanding creative uses to which commercial drones are being put. As commercial drone use expands in areas from real estate to advertising,

from journalism to delivery services, impacts on cities will inevitably occur. These impacts raise legal questions to which there are as yet no firm answers. Given the uncertainty regarding the preemptive nature of any federal regulation (or as-yet enacted State law), it is especially unclear the extent to which a local agency will be able to regulate the manner in which drones are used within their jurisdictions. To what extent may a city rely on safety or aesthetic concerns to limit the time and location where commercial drones may be used? Will a city be able to require a business license from anyone seeking to operate a drone for commercial purposes? Will a city be able to regulate the media's use of drones as a replacement, or addition, to helicopters? May a local agency enact privacy protections beyond those included in any State law?

Answers to these questions may be forthcoming in the coming months, and will be of interest not only to municipal law practitioners, but also to those in the commercial drone industry. At the federal, State, and local level, 2015 should be an interesting year for those who seek both to use, and regulate the use of, commercial drones in California.



* Steven Miller is a partner in Hanson Bridgett LLP's Government and Public Agency Group. He has a varied practice which includes representation of public agencies as General Counsel, and representation of private entities in the public arena, with a focus on technology and contracts/procurement. He blogs at www.hoverlaw.com and updates about drone law can be found at this website. He also maintains an election law and ethics practice. He teaches Legal Writing and Research at U.C. Hastings, College of the Law. Nicole Witt is a J.D. Candidate at U.C. Hastings College of the Law, 2015, and a Law Clerk in Hanson Bridgett's Government and Public Agency Practice Group.

Endnotes

- 1 FAA Modernization and Reform Act of 2012, 126 Stat. 73 (2012).
- 2 *Id.*
- 3 *Administrator v. Pirker*, NTSB Order No. EA-5730 (2014) at 7.
- 4 *Id.*
- 5 In January of 2015, the parties settled (Mr. Priker's attorney noted that his client decided to settle in part "to assist the commercial drone industry in its regulatory struggle"). Jack Nicas, *U.S. Federal Aviation Administration Settles With Videographer Over Drones*, THE WALL STREET JOURNAL, (Jan. 22, 2015), available at <http://www.wsj.com/articles/u-s-federal-aviation-administration-settles-with-videographer-overdrones-1421960972> (last visited March 3, 2015).
- 6 FAA Modernization and Reform Act of 2012, 26 Stat. 73 (2012).

- 7 *Id.* at 75-76.
- 8 See the FAA's list of permits as of January 23, 2015 available at https://www.faa.gov/uas/legislative_programs/section_333/ (last visited March 3, 2015).
- 9 See Operation and Certification of Small Unmanned Aircraft Systems, (proposed Feb. 15, 2015) available at http://www.faa.gov/regulations_policies/rulemaking/recently_published/media/2120-AJ60_NPRM_2-15-2015_joint_signature.pdf (last visited March 3, 2015).
- 10 *Id.*; see also the FAA's "Overview of Small UAS Notice of Proposed Rulemaking," available at http://www.faa.gov/regulations_policies/rulemaking/media/021515_sUAS_Summary.pdf (last visited March 27, 2015).
- 11 See Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems, available at <http://www.whitehouse.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safeguarding-privacy-civil-rights-and-civil-liberties-in-domestic-use-of-unmanned-aircraft-systems> (last visited March 3, 2015).
- 12 *Id.*
- 13 Jack Nicas and Andy Pasztor, *Drone Rules Cheered But Not By All*, THE WALL STREET JOURNAL, (Feb. 16, 2015), available at <http://www.wsj.com/articles/drone-rules-cheered-but-not-by-all-1424135687> (last visited March 3, 2015).
- 14 Kevin Robillard, *FAA Issues Its Small Drone Rule*, POLITICO, Feb. 15, 2015), available at <http://www.politico.com/story/2015/02/faa-small-drone-rules-115207.html> (last visited March 3, 2015).
- 15 *Id.*
- 16 SB 15, 2013-14 Reg. Sess. (Cal. 2013).
- 17 *Id.*
- 18 *Id.*



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- 20 *Id.*
- 21 *Id.*
- 22 AB 1327, 2013-14 Reg. Sess. (Cal. 2014).
- 23 *Id.*
- 24 *Id.*
- 25 *Id.*
- 26 STAFF OF SENATE RULES COMMITTEE, Senate Floor Analyses, available at http://www.leginfo.ca.gov/pub/13-14/billasm/ab_1301-1350/ab_1327_cfa_20140825_212857_sen_floor.html (last visited March 3, 2015).
- 27 Governor Edmund G. Brown Jr., Veto Message AB 1327, available at http://gov.ca.gov/docs/AB_1327_Veto_Message.pdf (last visited March 3, 2015).
- 28 CAL. CIV. CODE § 1708.8(b) (2014).
- 29 *Id.*
- 30 *Id.*
- 31 Josh Rishman, *Campos Aims to Curb Police Militarization*, Drones, POLITICAL BLOTTER: IN THE BAY AREA AND BEYOND, (Dec. 1, 2014), available at <http://www.ibabuzz.com/politics/2014/12/01/campos-aims-to-curb-police-militarization-drones/> (last visited March 3, 2015).
- 32 SB 142, 2015-2016 Reg. Sess. (Cal. 2015).
- 33 AB 14, 2015-2016 Reg. Sess. (Cal. 2015).
- 34 SB 271, 2015-2016 Reg. Sess. (Cal. 2015).
- 35 SB 262, 2015-2016 Reg. Sess. (Cal. 2015).
- 36 EVANSTON, ILL., 27-R-13, (2013), available at <https://www.cityofevanston.org/assets/27-R-13%20Unregulated%20Drone%20Technology.pdf>; ST. BONIFACIUS, MINN., Resolution 2013-8, (2013), <http://blogs.mprnews.org/statewide/files/legacy/St.%20Bonifacius.pdf>; ST. BONIFACIUS, MINN., Ordinance No. 115, (2013), <http://blogs.mprnews.org/statewide/files/legacy/St.%20Bonifacius.pdf>; NORTHAMPTON, MASS., Resolution on Drone Aircraft, (2013), <http://www.northamptonma.gov/DocumentCenter/View/1103>; SEATTLE, WASH., Council Bill Number 1 17707, (2013), [http://www.deertrailcolorado.com/drones.html](http://clerk.seattle.gov/~scripts/nph-brs.exe?d=ORDF&s1=117707.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbory.htm&r=1&f=G; TOWN OF DEER TRAIL, COLO, An Ordinance to Defend the Sovereign Airspace of the Town of Deer Trail, Colorado, and that of its Citizens, their Homes, Businesses, Related Properties and Interests from Unwanted Incursions by Small Unmanned Aerial Vehicles, (2014), <a href=) (last visited March 3, 2015).
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- 39 *Id.*
- 40 *Id.*
- 41 *Id.*
- 42 BERKELEY, CAL., Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect (2012), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0CDkQFjAE&url=http%3A%2F%2Fwww.ci.berkeley.ca.us%2FClerk%2FCity_Council%2F2012%2F12Dec%2FDocuments%2F2012-12-18_Item_05_Proclaim_Berkeley_a_No_Drone.aspx&ei=nXbKViLOG5O1oQSHjYGACQ&usg=AFQjCNHQUKhS77Jxqzr78RnltUMcMiFEOW (last visited March 3, 2015).
- 43 *Id.*
- 44 *Id.*
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- 46 *Id.*
- 47 *Id.*
- 48 *Id.*
- 49 *Id.*
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- 52 *Id.*
- 53 *Id.*
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- 55 Robert Salonga, *San Jose: Drone Debate Continues as SJPd Details Proposed Use Guidelines*, SAN JOSE MERCURY NEWS, (Dec. 6, 2014), available at http://www.mercurynews.com/crime-courts/ci_27083927/san-jose-drone-debate-continues-sjpd-details-proposed (last visited March 3, 2015).
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- 57 Henry Lee, *Alameda County Sheriff Reveals that He’s Bought 2 Drones*, SF GATE, (Dec. 3, 2014), available at <http://www.sfgate.com/crime/article/Alameda-County-sheriff-reveals-that-he-s-bought-5930981.php> (last visited March 3, 2015).
- 58 CAL. CONST. art. XI, § 7.

- context, per the California Constitution (as opposed to the Federal Constitution). See *Lamar Central Outdoor, LLC v. City of Los Angeles*, Superior Court of Los Angeles, October 14, 2014 Decision and Order Granting Writ of Mandate.
- 13 *White, supra*, 900 F.2d at pp. 1424-26.
 - 14 Government Code Section 54954.3(a) (emphasis added).
 - 15 *White, supra*, 900 F.2d at p. 1425 (“speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing” but the moderator “certainly may stop him if his speech becomes irrelevant or repetitious”). Irrelevant speech that is also obscene may be limited on the additional ground that obscene speech may be limited, although this is a narrowly limited class of speech. See, e.g., *Roth v. United States* (1957) 354 U.S. 476, 485-87.
 - 16 *Baca, supra*, 936 F.Supp. at pp. 728-29; *Norse v. Santa Cruz* (9th Cir. 2010) 629 F.3d 966, 975.
 - 17 *Leventhal v. Vista Unified School Dist.* (S.D. Cal. 1997) 973 F.Supp. 951; *Baca, supra*, 936 F.Supp. at pp. 730-31.
 - 18 *Acosta v. City of Costa Mesa* (2013) 718 F.3d 800, 811.
 - 19 Government Code Section 54957.9. Members of the press may remain unless they participated in the disturbance.
 - 20 In light of First Amendment protections, courts have construed this section in a limited way, holding that Penal Code Section 403 authorizes imposition of criminal sanctions only when the defendant’s activity itself, not the content of the activity’s expression, substantially impairs the effective conduct of a meeting. In addition, in order to be guilty of such a misdemeanor, a defendant must substantially impair the conduct of meeting by intentionally committing acts in violation of implicit customs or usages or of explicit rules for governance of the meeting of which he knew or as a reasonable man should have known. In *Re Kay* (1970) 1 Cal.3d 930, 942-43; see also *McMahon v. Albany Unified School District* (2002) 104 Cal. App. 4th 1275 (dumping gallons of garbage on floor of schoolroom during school board meeting was conduct sufficient to support an arrest for disturbing a public meeting).
 - 21 *White, supra*, 900 F.2d at pp. 1425-26.
 - 22 *Acosta v. City of Costa Mesa* (2013) 718 F.3d 800.
 - 23 *Norse, supra*, 629 F.3d at p. 976. For this reason, a limitation on “disorderly, insolent, or disruptive behavior” did not pass muster, because it did not limit restricted conduct to that involving actual disruption. *Acosta, supra*, 718 F.3d at p. 815.
 - 24 *Norse, supra*, 629 F.3d at pp. 975-76.
 - 25 *Dowd v. City of Los Angeles* (C.D. Cal. 2013) 2013 WL 4039043.
 - 26 *Acosta, supra*, 718 F.3d at p. 828. See also *Kindt v. Santa Monica Rent Control Bd.* (9th Cir. 1995) 67 F.3d 266 (holding it was permissible to remove a man who had disrupted the same meeting earlier when his frequent partner in disruption made an obscene gesture which threatened to start the disruption again).
 - 27 *McMahon*, 104 Cal. App. 4th 1275.
 - 28 *White, supra*, 900 F.2d at p. 1425; 78 Ops. Cal. Atty. Gen. 224 (1995).
 - 29 *Dowd v. City of Los Angeles* (C.D. Cal. Aug. 7, 2013) 2013 WL 4039043.
 - 30 *Dowd*, 2013 WL 4039043 at *21. The Brown Act also explicitly prevents the legislative body from prohibiting “public criticism of the policies, procedures, programs, or services of the agency, or the acts or omissions of the legislative body.” Cal. Gov’t Case § 54954.3(c).
 - 31 *Dowd v. City of Los Angeles* (C.D. Cal. May 23, 2014) 2014 WL 2937478. In *Dowd*, Magistrate Judge Segal awarded the plaintiffs over \$600,000 in attorneys’ fees in a case against the City of Los Angeles, even though the jury awarded only nominal damages.
 - 32 Code of Civil Procedure Section 527.8; *City of San Jose v. Garbett* (2010) 190 Cal. App. 4th 526 (finding that a member of the public’s frequent and angry statements that he would “take matters into [his] own hands” if the city clerk or the council did not take action, coupled with allusions to a recent mass killing at a city council meeting, justified a restraining order).
 - 33 See, e.g., *United States v. Poocha* (9th Cir. 2001) 259 F.3d 1077 (to characterize speech as fighting words, the government must prove that there existed a likelihood that the person addressed would make an immediate violent response).
 - 34 *R.A.V. v. City of St. Paul* (1992) 505 U.S. 377.
 - 35 *Aguilar, supra*, 21 Cal. 4th at pp. 141-42.
 - 36 See note 1 (discussing 28-day ban from council chambers).
 - 37 Cal. Gov’t Code § 54957.9.
 - 38 *Dowd*, 2013 WL 4039043 at *19-21.
 - 39 San Francisco’s policy is available at <http://www.sfcityattorney.org/modules/showdocument.aspx?documentid=1735>, at pp. 178-179 (last visited February 20, 2015)
 - 40 See <http://www.sfgate.com/bayarea/matier-ross/article/Former-chief-of-Building-Inspection-gets-damages-2598053.php>. According to the article, the case was complicated by events outside of the public hearing context as well.
 - 41 City council agendas are available at <http://www.ci.richmond.ca.us/archive.aspx>.