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Co-founded HealthHonors,  
Topokine Therapeutics, and  
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Biotech and Tech Investor,  
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Asst. Professor of Medicine &  
Entrepreneur-in-Residence at  
Yale University

Registered Patent Agent  
Part 107 Drone Operator

Reads law for fun; occasionally  
sues bad actors *pro se*

Providenciales, Turks and Caicos

## Newton, Boston, and Cambridge



I live in Newton, a suburb of Boston (inside KBOS Class B)

Sold Topokine in 2016 and started to evaluate new business opportunities

Invested \$\$\$ in professional drone equipment

A month later, Newton City Council enacted one of the harshest drone ordinances in the country

I decided to sue Newton *pro se* in Federal Court

# Forbes

## Federal Judge Overturns City Drone Ordinance In First Ruling Of Its Kind

# THE WALL STREET JOURNAL.

U.S.

## Judge Affirms Limited Power of States and Cities Over Drones

Consumer  
Technology  
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## Court Ruling on FAA Jurisdiction Will Boost U.S. Drone Innovations, Says CTA

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FORUMS

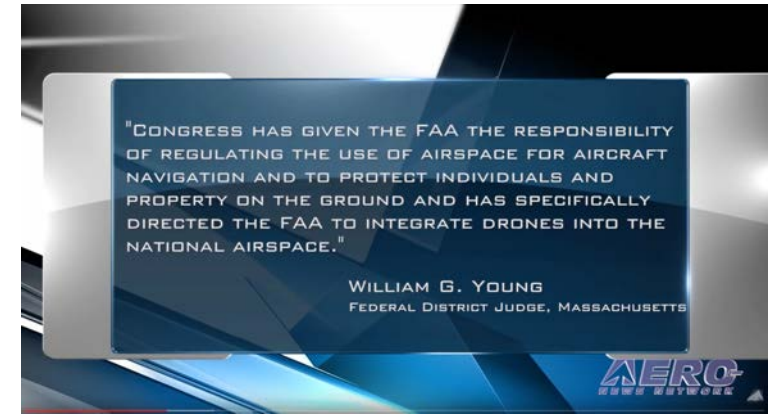


COME FLY THE CROWDED SKIES —

## Judge overturns local law that effectively banned drones over small town

# The Boston Globe

## Newton drones can fly low, federal judge says



## CONFLICT OF LAWS

*Singer v. City of Newton*

Massachusetts District Court Finds Portion of Local Drone Ordinance  
Preempted by FAA Regulation.

x

*Recent Case*: No. CV 17-10071, 2017 WL 4176477 (D. Mass. Sept. 21, 2017)

**MAY 10, 2018**

131 Harv. L. Rev. 2057



2. Operation and Certi-  
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Drones are the future: so some hope, and so some fear. For all their promise,<sup>1</sup> drones pose risks, and in 2016, the Federal Aviation Administration (FAA) issued its first rule governing commercial drone operations.<sup>2</sup> State and local governments have passed laws of their own, but subnational regulation presents a distinct problem: a drone cannot fly freely across city and state lines if inconsistent laws interfere with its path.<sup>3</sup> But because federal law is supreme, cities and states do not have the final word.<sup>4</sup>

1. Commercial drones  
[Show More](#) Small Link for farming

*City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *French v. Pan Am Express*, 869 F.2d 1 (1<sup>st</sup> Cir. 1989).  
See also *Pearson v. Town of Plymouth*, 44 Mass. App. Ct. 741 (1998) (not cited in decision).

*Pilotless Aircraft* – an unmanned, powered aerial vehicle, weighing less than 55 pounds, that is operated without direct human contact from within or on the aircraft.



(b) Registration: Owners of all pilotless aircraft shall register their pilotless aircraft with the City Clerk's Office, either individually or as a member of a club, as follows:

*Cf.* FMRA, Pub. Law No. 112-95 § 332; 14 C.F.R. § 107.13 (registration).

(c) Operating Prohibitions. The use and operation of all pilotless aircraft within the City shall be subject to the following prohibitions.

(1) No pilotless aircraft shall be operated:

a) over private property at an altitude below 400 feet without the express permission of the owner of said private property;

b) at a distance beyond the visual line of sight of the Operator;

c) in a manner that interferes with any manned aircraft;

d) in a reckless, careless or negligent manner;

e) over any school, school grounds, or other City property or sporting event without prior permission from the City, unless a permit is required as in Section 4, below;

*Cf.* Pub. Law No. 112-95 § 332; 14 C.F.R. § 107.51 (prohibits flight above 400 feet); 49 U.S.C. § 40102 (a) (32) and 14 C.F.R. § 91.119 (navigable airspace); 14 C.F.R. §§ 107.31-35 and 107.205 (line of sight; waiver).

- f) for the purpose of conducting surveillance unless expressly permitted by law or court order;
- g) for the purpose of capturing a person's visual image, audio recording or other physical impression in any place where that person would have a reasonable expectation of privacy;
- h) over any emergency response efforts;
- i) with the intent to harass, annoy, or assault a person, or to create or cause a public nuisance;
- j) in violation of federal or state law, or any Ordinance of the City of Newton.

*Cf.* Newton Ordinances Sections 20-13 (noise), 20-52 (disorderly behavior), 20-61 (peeping tom), 21-5 (nuisance); Mass. Gen. Laws Ch. 272 § 53 (disturbance of peace), Ch. 265 §§ 13A (assault and battery), 35 and 36 (dropping objects), 43 (stalking), 43A (harassment), Ch. 269 § 14A (annoying communication), and Ch. 272 § 105 (voyeurism); 14 C.F.R. §§ 91.13(a) and 107.23 (reckless operation); and FMRA § 336(a)(2) (model aircraft rules).

## Plaintiff's Argument

Field Preemption: Drone registration, operation, and navigation are exclusively federal fields.

Conflict Preemption: Each disputed provision conflicts with FAA regulations promulgated under the Federal Aviation Act and FMRA.

The FAA has exclusive power over the regulation of navigable airspace.

## Court's Analysis

Court showed deference to an FAA "Fact Sheet" on state and local drone regulation. FAA stated that some aspects of drones, such as privacy, can be locally regulated. Thus, regulation of drones is not field preempted.

Each disputed provision is conflict-preempted. The FAA is the exclusive registrar for drones. A city cannot impose a practical ban on drone navigation. The regulation of aircraft safety (visual line of sight) is an exclusively federal matter. *French, supra.*

Parts of the Ordinance that are unlimited as to altitude reach into navigable airspace and are preempted. Court declined to define the lower boundary of navigable airspace for a drone.