

# NEW YORK ZONING LAW AND PRACTICE REPORT

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## DRONES AND ZONING ENFORCEMENT: WILL IT FLY?

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### I. INTRODUCTION

Drones, also known as an unmanned aircraft system (UAS), are crewless aircrafts or ships that are guided by remote control or onboard computers.<sup>1</sup> These devices have quickly evolved and have become mainstream technology. In the United States, there are currently over 868,000 registered drones consisting of over 339,000 commercial registrations and over 524,000 recreational registrations.<sup>2</sup> According to Title 49 of the United States Code § 106 which creates the authority for the Federal Aviation Administration to regulate drones, “an unmanned aircraft is one that is operated without the possibility of human intervention from within or on the aircraft.”<sup>3</sup> A small UAS includes the components of the aircraft and the communication mechanisms required for the control and operation of such systems.<sup>4</sup> The scope of drone usage is broad and includes recreational, commercial, and government applications resulting in a serious intersection between the technology and many public policy considerations including property, privacy, and Constitutional rights.

#### *a. The Fourth Amendment and Privacy Doctrine meets Drones*

The Constitution of the United States protects individuals from unreasonable searches and seizures conducted by law enforcement without a warrant.<sup>5</sup> Over the course of American history, the privacy doctrine has developed and

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grown, in large part, from the Fourth Amendment of the United States Constitution.<sup>6</sup> As technology continues to advance, public policy and the law must comprehensively evolve with it in a way that fosters innovation and creation but also protects basic privacy rights.<sup>7</sup>

The Tenth Amendment of the United States Constitution reserves the States all powers that are not delegated to the federal government by the Constitution, often referred to as state police powers.<sup>8</sup> Thus, the power of land use, zoning, and enforcement thereof generally rests with the States as the power to regulate such issues is not a federally enumerated power.<sup>9</sup> A municipality typically has building inspectors, code enforcement officials, or investigators who enforce town code in accordance with the zoning ordinances passed by the jurisdiction's governing body. Zoning, land use, and other code violations are often reported to a municipal agency from concerned residents. Alternatively, violations may come to light during a permitting process or municipal service undertaken by the property owner. While violations of a municipal code may in plain view from the public roadway, issues frequently arise in rear and side-yards, inhibiting the ability of municipal officials to investigate from a public vantage point. As early as 1964, New York courts have held that, "warrantless searches or nonconsensual inspections of property are in derogation of the Fourth Amendment of the United States Constitution."<sup>10</sup> Thus, when zoning enforcement officials are unable to obtain consent from the property

owner, view the violation from plain view, or observe by utilizing another legal means, it is imperative municipal officials obtain a warrant.<sup>11</sup>

Enhanced technology such as drones begs questions: whether local municipalities can utilize unmanned aircraft systems to enforce land use and zoning ordinances without violating the Fourth Amendment; and notwithstanding the legal means of using such technology, should local municipalities employ drones to enforce code despite the moral and societal values that may conflict with their use?

## II. FOURTH AMENDMENT

The Fourth Amendment protects individuals from unreasonable searches and seizures conducted by law enforcement without a warrant.<sup>12</sup> Questions remain about the application of the Amendment, especially in the digital age. The Fourth Amendment impacts the ability of government entities to search our persons, our property such as homes and vehicles, to listen to our conversations over telecommunication channels, to read our physical mail, and to detain persons of interest.<sup>13</sup>

Under the Fourth Amendment, a search is conducted by a government agent or official that intrudes upon a person's reasonable expectation of privacy.<sup>14</sup> An unreasonable seizure of a person's property is understood to mean a seizure that took place, normally without a warrant, that meaningfully impeded a person's property rights absent a substantial countervailing government interest justifying the warrantless seizure.<sup>15</sup>

### *a. Privacy: A Historical Context and Doctrinal Origins*

The Fourth Amendment doctrine traces back to 1765, originating from a famous English case, *Entick v. Carrington* (1765).<sup>16</sup> *Entick* involved a series of civil actions against the state in connection with state sanctioned searches of homes and other places for materials pertaining to the works of John Wilkes.<sup>17</sup> The English court made two declarations that largely impacted the drafting of the Fourth Amendment: (1) warrants should be based on a showing of probable cause, and (2) a record should be established in order to show what was seized.<sup>18</sup>

The question of whether evidence obtained through an unreasonable search and seizure is admissible in a criminal case was answered by the Supreme Court of the United

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States in *Mapp v. Ohio* (1961). Law enforcement officials received a tip that a suspect wanted for questioning was hiding in Dollree Mapp's (defendant) home.<sup>19</sup> The law enforcement officials forcibly entered Mapp's home without consent, misrepresenting a piece of paper as a warrant.<sup>20</sup> The officers found materials that were introduced as evidence in Mapp's criminal trial for possession of, "certain lewd and lascivious," items in violation of Ohio state law.<sup>21</sup> Mapp was convicted despite the showing of a legally obtained warrant, a conviction which was affirmed by the Ohio Supreme Court.<sup>22</sup> The Supreme Court of the United States granted certiorari and held that evidence obtained through an unreasonable search and seizure cannot be used in criminal proceedings as it violates the Constitution's Fourth Amendment.<sup>23</sup> This landmark case affirms the notion that evidence obtained through Unconstitutional means cannot be used against a defendant in a criminal case.

Another landmark decision rendered by the Supreme Court of the United States is *Katz v. United States* (1967). This case involved defendant, Charles Katz, who was convicted of violating federal gambling law.<sup>24</sup> At trial, evidence was introduced of a conversation obtained through the wiretapping of a public phone booth.<sup>25</sup> The central issue evaluated in this case was whether a physical intrusion of one's person or property was required to invoke Constitutional protections under the Fourth Amendment. The Supreme Court held that Fourth Amendment protections against unreasonable searches and seizures do not require a physical entry.<sup>26</sup> The Court determined that a trespass was not required to invoke Fourth Amendment protections under the Constitution. Hence, the Fourth Amendment protects individuals against unreasonable searches and seizures conducted via electronic means and entitles Americans to a, "constitutionally protected reasonable expectation of privacy."<sup>27</sup>

### *b. Technological Impacts on Modern Day Fourth Amendment Application*

As society has advanced, the Supreme Court has grappled with cases at the intersection of the Fourth Amendment and new technology such as the internet, smartphones, and global positioning systems (GPS). In *United States v. Jones* (2012), the Supreme Court analyzed whether the warrantless placement of a GPS device on an individual's vehicle for the purpose of tracking the person's movements constitutes an Unconstitutional search in

violation of the Fourth Amendment. As part of the investigation, law enforcement officials sought and obtained a warrant to place the GPS device on a vehicle belonging to the defendant's wife within 10 days of the warrant issuance within the District of Columbia.<sup>28</sup> On the 11th day, and in Maryland, agents installed the GPS device and subsequently monitored the vehicle's movements.<sup>29</sup> In an opinion delivered by Justice Antonin Scalia, the court held that the government action of attaching a GPS device to a vehicle to monitor its movements constituted a search under the Fourth Amendment.<sup>30</sup>

In *Riley v. California* (2014), the Court evaluated whether the government could search the contents of a cell phone that was seized incident to arrest, absent exigent circumstances. Law enforcement stopped the defendant for driving with an expired registration and learned that Mr. Riley was driving with a suspended license.<sup>31</sup> The defendant was arrested for possession of concealed and loaded firearms that were revealed during the search.<sup>32</sup> Incident to arrest, an officer seized and searched the defendant's cellphone which led to Mr. Riley being charged with crimes unrelated to the events that unfolded on the date in question.<sup>33</sup> The court held that the Fourth Amendment prohibits a warrantless search of the contents of a cell phone seized incident to arrest, unless exigent circumstances exist.<sup>34</sup> This powerful message delivered by the Court marked an important point in Fourth Amendment jurisprudence by veiling Fourth Amendment protections to the data on one's cell phone.

Other cases that exemplify the United States Supreme Court dealing with technological advances and the impact on the Fourth Amendment include *Kyllo v. United States* (2001) and *Carpenter v. United States* (2018). These cases found that despite emerging technologies such as thermal imaging sense enhancing technology and cell-site location information (CSLI), an individual maintains a legitimate expectation of privacy under the Fourth Amendment, even if the property in question is personal data.<sup>35</sup>

## III. LOCAL ZONING ENFORCEMENT AND DRONES

Zoning and land use related enforcement concerns are normally brought to the attention of the municipality in one of three ways: (1) a complaint by a concerned resident (i.e. relying on information from the general public), (2) periodically reviewing the status of compliance with mu-

municipal procedures, processes, and permits, and (3) regulatory touring or observance through travel.<sup>36</sup> If the particular concern is observable from an authorized vantage point such as a public roadway or complainant's property, the municipal employee charged with enforcement may witness and act on such observations.<sup>37</sup> However, a local government official must act with caution and legal authority if an issue requires a town official to access private property.<sup>38</sup> In these instances, a municipal official may gain access to the property in one of several ways: (1) permission from the property owner, (2) obtain a warrant from the appropriate tribunal, or (3) the existence of exigent circumstances.<sup>39</sup>

Local officials usually undergo their investigatory duties by utilizing several tools. The official may interview the property owner in question, speak with neighbors or residents in the area, observe the concern in question from the public roadway or another public vantage point such as a parcel of open space. Further, the official may gain access to the property through verbal permission from the owner or by obtaining a warrant. However the local official conducts their investigation, it is imperative that the official follow all municipal policies, applicable laws, and both the State and Federal Constitution.

Recently, drones have been deployed for the purposes of code enforcement.<sup>40</sup> Drones can be used for analyzing side-yard and rear-yard violations, obstructions, building violations, and several other types of code violations.<sup>41</sup> In such instance, the individual would operate the drone from a legal access point like a roadway or public right of way to gain access to an otherwise private domain to obtain this information. Alternatively, the operation of a drone may be used where access to a particular point of interest is public but difficult to navigate due to environmental considerations. According to the American Planning Association, "while the rapid advance of UAS technology over the past 10 years has created reliable aircraft with capabilities that are potentially game-changing for planners and the agencies and organizations that employ them, the development of legal, ethical, and community standards has not kept pace."<sup>42</sup>

#### *a. Drone Use and Local Zoning Enforcement Case Law*

Since UAS is a relatively new technology, the case law analyzing their use in zoning enforcement is far from

exhaustive. There are no reported cases in New York but looking to other states can provide some ideas about how New York courts might address this challenge in the future. In *Long Lake Township v. Maxon (Ct. of Appeals 2021)*, the Michigan Court of Appeals confronted the issue of whether a municipality can legally utilize aerial photography obtained with the use of a drone in litigation against a property owner.<sup>43</sup> The Long Lake Township brought an action in 2018 alleging that the defendant was operating an illegal junk yard.<sup>44</sup> To support these allegations, the municipality introduced aerial photos taken over the course of eight years to show, "a significant increase in the amount of junk being stored on the defendants' property."<sup>45</sup> In turn, the defendant property owner argued that these photos were unlawfully obtained in violation of the Fourth Amendment.<sup>46</sup> The defendant distinguished unmanned aerial surveillance from other types of surveillance conducted overhead such as plane and helicopter surveillance by explaining that drones are equipped with highly sophisticated technology, operate at much lower altitudes, and are often undetectable to the general public.<sup>47</sup> Further, the property owner contended that having planes and helicopters fly over private property may not violate one's reasonable expectation of privacy but that the same cannot be said about a drone.<sup>48</sup> Based on these arguments, the defendant moved to suppress the drone imagery.<sup>49</sup> The trial court denied the motion to suppress the evidence, and held in favor of the Long Lake Township.<sup>50</sup>

On appeal, the court suppressed the evidence of aerial photography put forth by the municipality and remanded the case for further proceedings.<sup>51</sup> The holding hinged on several considerations. First, the court agreed with the defendant's argument that drones are inherently different than planes and helicopters.<sup>52</sup> The court highlighted Federal Aviation Agency regulations that, "require drone operators to keep drones within visual observation at all times, fly no higher than 400 feet, refrain from flying drones over human beings, and obtain a certification."<sup>53</sup> The court explained that these rules reflect the qualitative differences between drones and other traditional aircraft. Highlighting these differences, the court pointed out that airplanes routinely fly overhead for the purposes of travel and other reasons unrelated to surveillance while drones are, by nature, more targeted and easier to deploy for surveillance purposes.<sup>54</sup> The ruling described the, "maneuverability, speed, and stealth," of drones to express the notion that these devices have far exceeded the types of hu-

man limitations the framers of the Constitution would have expected when drafting the text of the Fourth Amendment.<sup>55</sup>

Another prong of the court's holding analyzed what airspace rights are possessed by property owners. The court conveyed, "although the United States Supreme Court rejected the ancient understanding that land ownership extended upwards forever, landowners are still entitled to ownership of some airspace of their properties, such that intrusions into that airspace will constitute a trespass no different than an intrusion upon the land itself."<sup>56</sup> While a decision was not reached as to the exact limits of aerial property ownership, the court identifies this doctrine in furthering the idea that this drone use violated the defendant's reasonable expectation of privacy.

The court continued their analysis by discussing the intersection of new technologies and Fourth Amendment protections. The decision points to the United States Supreme Court holding in *Kyllo* which explained that simply because new technologies develop, one retains their right to a legitimate expectation of privacy.<sup>57</sup> The court rejected the adoption of a formal test to determine the application of technology to the Fourth Amendment, as a test of this nature would be futile given the rapidly changing technological landscape.<sup>58</sup> The court explained that the use of drones in this instance was unnecessary. The municipality had several tools available for use such as the enforcement of a previous settlement agreement with the defendant, obtaining permission from the owner, or seeking a warrant.<sup>59</sup> The Court of Appeals of Michigan reversed the trial court's decision and suppressed the evidence in favor of the defendant.<sup>60</sup> This case, which was recently vacated and remanded by the Supreme Court of Michigan, has been the subject of national conversation and debate in recent months.<sup>61</sup> As the case is pending once again before the Court of Appeals of Michigan, the final judgment will have far reaching implications and is expected to serve as persuasive authorities for state courts across the country as the prevalence of drone technology increases. The Michigan Court of Appeals was right to initially balance the technology with one's reasonable expectation of privacy but must now consider whether the exclusionary rule applies to this case in accordance with the ruling from the Supreme Court of Michigan.

In a Connecticut case, *Town of Newtown v. Gaydosh*, the municipality sought to hold the defendant accountable

for a zoning violation. The municipality alleged that the defendant was executing commercial activities in a residential zone, including the processing and selling items unrelated to farming and the handling of materials other than the materials approved by the comprehensive nutrient management plan.<sup>62</sup> In response to complaints from local residents, the Town flew a drone over the subject property to obtain photographic evidence.<sup>63</sup> The evidence gathered by the drone showed that the property was still being used as a construction and landfill site.<sup>64</sup> It was this evidence that prompted the court to grant the Town's motion for a physical inspection.<sup>65</sup>

The defendant property owner did not permit physical inspection by the municipality until the last possible moment in an effort to clean up the property and return it to legal condition.<sup>66</sup> The Town of Newtown determined that the property had substantially changed between the time aerial photos were obtained and the time of the physical inspection.<sup>67</sup> The court determined that the cover-up activities undertaken by the defendant property owner were not in good faith, and that the photos reflect the true condition of the property.<sup>68</sup> The court held in favor of the Town, ruling that the defendants were in violation of municipal zoning ordinances.<sup>69</sup> The court took advantage of the aerial photography to reach their decision and went so far as to permit the Town to take aerial photos of the subject property moving forward, without notice, as part of their remedy.<sup>70</sup> In contrast to *Long Lake Township v. Maxon*, a Fourth Amendment and reasonable expectation of privacy defense was not invoked by the defendant to suppress the photographic evidence collected by the drone.

### *b. Federal, New York State, and Local Legislative Approaches*

In 2021, United States Senator Mike Lee (R-UT) introduced the Drone Integration and Zoning Act to establish a regulatory framework for drones based on a local governance approach. The bill addresses issues relating to the operation of unmanned aircraft systems, local control, and private property rights.<sup>71</sup> The bill, if adopted, would transfer some power from the Federal Aviation Administration to the states with the goal of ensuring public safety, protecting property rights, and unleashing local drone innovation.<sup>72</sup> The legislation would allow for states to issue time, place, and manner restrictions, "on the operation of unmanned aircraft systems operating within the imme-

diate reaches of airspace.”<sup>73</sup> It further protects the autonomy of state, local, and tribal municipalities and their zoning authority to designate drone take-off and landing zones without impeding on the federal government’s ability to regulate interstate commerce.<sup>74</sup> This bill would strike a more balanced approach to the regulation of drones between federal and state governments which in turn, could have a positive impact on the ability of states to utilize drone technology for land use and zoning initiatives within the confines of applicable privacy laws and policies.

Some legislation relating to drone use is pending before the New York State Legislature. Despite the many bills drafted, bill number A00417 sponsored by Assembly members Perry, Cook, and Englebright stands out. This bill, tabbed the “Empire State Citizens’ Protection from Unwarranted Surveillance Act,” seeks to limit the use of drones by law enforcement and municipal agencies to gather, collect, or store evidence of any type.<sup>75</sup> The proposal outlaws drone surveillance in favor of protecting one’s reasonable expectation of privacy.<sup>76</sup> While the impacts of this bill would be widespread if passed, the affect it would have on local municipalities’ ability to utilize unmanned aircraft systems for enforcement purposes is noteworthy.<sup>77</sup> The bill allows for the use of drones in the event a search warrant is obtained or exigent circumstances are present.<sup>78</sup> This proposal seems like one way to protect the privacy rights of New Yorkers from municipal overreach in the realm of zoning and code enforcement.

The Village of Kings Point, New York, adopted a local law on January 25, 2021, regulating the use of drones within its municipal boundaries.<sup>79</sup> The law places several prohibitions on drone use. Specifically, the Village of Kings Point outlawed the operation of UAS at an altitude of 300 feet or less over any property owned or leased to the Village, without express authorization from the Village.<sup>80</sup> The operation of such technology over municipal properties is a common concern across local governments. Further, the ordinance precludes drone operation over private property at an altitude of less than 300 feet.<sup>81</sup> Affirmative defenses are provided including securing permission from the owner or lessee of the property over which the drone was flown, obtaining governmental authority and approval, or credible witness testimony that based on direct observation, the drone was at an altitude of more than 300 feet.<sup>82</sup> The local law fails to clearly address the application of these prohibitions to the

municipality itself, for enforcement efforts in land use and zoning.<sup>83</sup> In contrast, the Town of Erin adopted a local law that directly curtails their own ability to use drone technology for enforcement purposes.

The Town of Erin, New York, adopted their local law regulating the use of drones within its limits on July 23, 2021.<sup>84</sup> According to the laws legislative intent, the Town of Erin sought to protect the, “public health, safety, and welfare of the community by regulating the use of drones within the Town of Erin.”<sup>85</sup> Further, the Town Board acknowledged the privacy, safety, and security concerns that drones pose.<sup>86</sup> The legislation prohibits the use of aerial drone surveillance from obtaining photographs, videos, and other types of data collection, retention, or dissemination of an individual’s home, business, or property where there is a reasonable expectation of privacy.<sup>87</sup> The prohibition applies to both individuals and law enforcement.<sup>88</sup> The ordinance defines law enforcement as, “a lawfully established state or public agency that is responsible for the prevention of crime, and/or local government code enforcement.”<sup>89</sup> Thus, this compelling local law passed by the Town of Erin’s legislative body strips their own power to utilize drones for the purposes of zoning and code enforcement.

## IV. CONCLUSION

### *a. Public Policy Considerations*

The productive uses of unmanned aircraft systems in planning and zoning are endless. However, questions remain about their application and the lack of legal and ethical protections surrounding their use. Drone operation in the zoning enforcement context raises several Constitutional questions pertaining to property and privacy rights. The right of a property owner to aerial space over their property has been acknowledged but a definitive test is yet to be adopted. The right to a reasonable expectation of privacy has long been accepted, but that expectation in relation to new developing technologies is relatively untested. These questions, and more, will be at the forefront for legislators and courts for years to come. The issue becomes balancing the interests of local municipalities with the property and privacy rights of individuals.

Local municipalities could likely benefit from the use of drones in both planning and enforcement functions. Municipal agencies could utilize this technology in the review

of applications for developments, subdivisions, or variances. With the explicit permission of an application, local governments would utilize this technology without running afoul of Constitutional rights. Municipalities could simply include a provision within their standard applications asking for the applicant to approve this method of review. The use of this technology in the review of applications and other planning functions may allow local building and planning departments to function more efficiently, curtailing frequent public criticisms of these agencies. Contrary to the planning function, the use of drone technology in the enforcement of municipal code is a bit more challenging. Despite the challenges posed, the use of drones to enforce the code would allow for municipalities to reach areas they otherwise might have difficulty reaching, like a subject property in a marshland or a mountainous environment. In addition, an aerial photograph is likely to afford a municipality a more complete view of what is transpiring at a given site.

Property owners and community members have various concerns. These concerns often arise from the perspective of protecting one's property and privacy rights. Some are likely to feel as though the operation of drones above one's property is impeding on property rights, regardless of whether the activity is taking place with judicial approval. Concerns about municipal abuse may arise as well, where many sectors of the citizenry distrust their government. Whether that abuse be in the form of unauthorized use (drone operation without a warrant) or in the form of violating one's reasonable expectation of privacy, they exist and are yet to be fully explored as this tool is new to the code enforcement toolbox.

Compelling arguments for and against the use of unmanned aerial systems in code enforcement can be made. The issue becomes how to balance drones, and other new technology, in the implementation of planning and land use functions in a way that furthers societal interests of progress but protects crucial individual rights.

### *b. Policy Recommendations*

Local municipalities should incorporate drone use into their land use and planning programs. The use of unmanned aircraft systems would be a valuable tool in modernizing and making planning processes more efficient. Local municipalities could save taxpayer dollars and utilize staff in a more productive way by deploying drones to evaluate planning applications.

However, local municipalities should generally refrain from utilizing unmanned aircraft systems in their code and zoning enforcement programs, absent the existence of exigent circumstances. Should local municipalities decide to move forward with this technology in their enforcement programs, clear guidelines and procedures should be in place to ensure staff are operating in accordance with the law. Obtaining a warrant is best practice if a municipality decides to use drone technology regularly in their effort to enforce the code. While municipalities should avail themselves to aerial surveillance in situations that require it, such as an environmental terrain that presents a danger to municipal staff, the use of traditional means of enforcement should remain the primary avenue for code enforcement to protect the rights of the citizenry.

### **ENDNOTES:**

<sup>1</sup>Merriam Webster, <https://www.merriam-webster.com/dictionary/drone>, (2021).

<sup>2</sup>*UAS by the Numbers*, Federal Aviation Administration (Nov. 23, 2021), [https://www.faa.gov/uas/resources/by\\_the\\_numbers/](https://www.faa.gov/uas/resources/by_the_numbers/).

<sup>3</sup>Federal Aviation Administration, 14 C.F.R § 1.1, <http://www.ecfr.gov/current/title-14/part-1>, (2005).

<sup>4</sup>Federal Aviation Administration, 14 C.F.R § 1.1, <http://www.ecfr.gov/current/title-14/part-1>, (2005).

<sup>5</sup>"The right of the people to be secure in their persons, houses, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

<sup>6</sup>Brent E. Newton, *The Supreme Court's Fourth Amendment Scorecard*, 13 Stan. J. of C.R. & C.L., (2017).

<sup>7</sup>Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar, and Erica Turner, *Americans and Privacy: Concerned, Confused, and Feeling Lack of Control Over Their Personal Information*, Pew Research Center (Nov. 15, 2019), <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/>.

<sup>8</sup>John R. Nolon, Patricia E. Salkin, Stephen R. Miller, and Jonathan D. Rosenbloom, *Land Use and Sustainable Development Law: Cases and Materials*, 4, (West Academic Publishing, 9th ed., 2017) citing U.S. Const. amend. X.

<sup>9</sup>U.S. Const.

<sup>10</sup>Patricia E. Salkin, *New York Zoning Law, and Practice (2021)* citing *People v. Laverne*, 14 N.Y.2d 304, 251 N.Y.S.2d 452, 200 N.E.2d 441 (1964).

<sup>11</sup>*People v. Sikorsky*, 195 Misc. 2d 534, 537, 759 N.Y.S.2d 836 (App. Term 2002).

<sup>12</sup>U.S. Const. amend. IV.

<sup>13</sup>U.S. Const. amend IV; Brent E. Newton, *The Supreme Court's Fourth Amendment Scorecard*, 13 Stan. J. of C.R. & C.L., (2017).

<sup>14</sup>*Katz v. U.S.*, 389 U.S. 347, 348, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); William E. Ringel, *Searches and Seizures, Arrests and Confessions*, § 2.2, (2021).

<sup>15</sup>*Soldal v. Cook County, Ill.*, 506 U.S. 56, 57, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992); Brent E. Newton, *The Supreme Court's Fourth Amendment Scorecard*, 13 Stan. J. of C.R. & C.L., (2017).

<sup>16</sup>*Entick v. Carrington (Ct. of Common Pleas 1765)*.

<sup>17</sup>*Entick v. Carrington (Ct. of Common Pleas 1765)*.

<sup>18</sup>*Entick v. Carrington (Ct. of Common Pleas 1765)*.

<sup>19</sup>*Mapp v. Ohio*, 367 U.S. 643, 644, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio L. Abs. 513, 84 A.L.R.2d 933 (1961).

<sup>20</sup>*Mapp v. Ohio*, 367 U.S. 643, 644, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio L. Abs. 513, 84 A.L.R.2d 933 (1961).

<sup>21</sup>*Mapp v. Ohio*, 367 U.S. 643, 644, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio L. Abs. 513, 84 A.L.R.2d 933 (1961).

<sup>22</sup>*Mapp v. Ohio*, 367 U.S. 643, 645, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio L. Abs. 513, 84 A.L.R.2d 933 (1961).

<sup>23</sup>*Mapp v. Ohio*, 367 U.S. 643, 645, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 86 Ohio L. Abs. 513, 84 A.L.R.2d 933 (1961).

<sup>24</sup>*Katz v. U.S.*, 389 U.S. 347, 348, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

<sup>25</sup>*Katz v. U.S.*, 389 U.S. 347, 348, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

<sup>26</sup>*Katz v. U.S.*, 389 U.S. 347, 349, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

<sup>27</sup>Margaret Hu, *Cybersurveillance Intrusions, and an Evolving Katz Privacy Test*, 55 Geo. Am. Crim. L. Rev., (2018).

<sup>28</sup>*U.S. v. Jones*, 565 U.S. 400, 402, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012).

<sup>29</sup>*U.S. v. Jones*, 565 U.S. 400, 402, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012).

<sup>30</sup>*U.S. v. Jones*, 565 U.S. 400, 413, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012).

<sup>31</sup>*Riley v. California*, 573 U.S. 373, 378, 134 S. Ct. 2473, 189 L. Ed. 2d 430, 42 Media L. Rep. (BNA) 1925 (2014).

<sup>32</sup>*Riley v. California*, 573 U.S. 373, 378, 134 S. Ct. 2473, 189 L. Ed. 2d 430, 42 Media L. Rep. (BNA) 1925 (2014).

<sup>33</sup>*Riley v. California*, 573 U.S. 373, 379, 134 S. Ct. 2473, 189 L. Ed. 2d 430, 42 Media L. Rep. (BNA) 1925 (2014).

<sup>34</sup>*Riley v. California*, 573 U.S. 373, 403, 134 S. Ct. 2473, 189 L. Ed. 2d 430, 42 Media L. Rep. (BNA) 1925 (2014).

<sup>35</sup>*Carpenter v. U.S.*, 138 S. Ct. 2206, 2221, 201 L. Ed. 2d 507 (2018).

<sup>36</sup>Michael A. Zizka, Timothy S. Hollister, Marcella Larsen, and Patricia E. Curtin, *State and Local Government Land Use Liability*, § 7.3, (Thomson Reuters, 2021); N.Y. Town Law § 268 (1998).

<sup>37</sup>Michael A. Zizka, Timothy S. Hollister, Marcella Larsen, and Patricia E. Curtin, *State and Local Government Land Use Liability*, § 7.3, (Thomson Reuters, 2021).

<sup>38</sup>Michael A. Zizka, Timothy S. Hollister, Marcella Larsen, and Patricia E. Curtin, *State and Local Government Land Use Liability*, § 7.3, (Thomson Reuters, 2021).

<sup>39</sup>Michael A. Zizka, Timothy S. Hollister, Marcella Larsen, and Patricia E. Curtin, *State and Local Government Land Use Liability*, § 7.3, (Thomson Reuters, 2021).

<sup>40</sup>Ric Stephens, Rob Dannenberg, Wendie Kellington, and Patrick Sherman, *Planning Advisory Service Report 597: Using Drones in Planning Practice*, 40, (American Planning Association, 2020).

<sup>41</sup>Ric Stephens, Rob Dannenberg, Wendie Kellington, and Patrick Sherman, *Planning Advisory Service Report 597: Using Drones in Planning Practice*, 40, (American Planning Association, 2020).

<sup>42</sup>Ric Stephens, Rob Dannenberg, Wendie Kellington, and Patrick Sherman, *Planning Advisory Service Report 597: Using Drones in Planning Practice*, 74, (American Planning Association, 2020).

<sup>43</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>44</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>45</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>46</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>47</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on ap-



plication for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>48</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>49</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>50</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>51</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>52</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>53</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>54</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>55</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>56</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>57</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022) citing *Kyllo v. U.S.*, 533 U.S. 27, 33, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001).

<sup>58</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521,

970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>59</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>60</sup>*Long Lake Township v. Maxon*, 336 Mich. App. 521, 970 N.W.2d 893 (2021), oral argument scheduled on application for leave to appeal, 970 N.W.2d 664 (Mich. 2022), vacated, 973 N.W.2d 615 (Mich. 2022) and vacated and remanded, 973 N.W.2d 615 (Mich. 2022).

<sup>61</sup>*Long Lake Township v. Maxon*, 973 N.W.2d 615 (Mich. 2022).

<sup>62</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>63</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 2 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>64</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 2 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>65</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 2 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>66</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 2 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>67</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 2 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>68</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 3 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>69</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 3 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>70</sup>*Town of Newtown v. Gaydosh*, 2019 WL 3020957, 1, 3 (Conn. Super. Ct. 2019), aff'd, 211 Conn. App. 186, 272 A.3d 206 (2022), certification denied, 343 Conn. 920, 275 A.3d 213 (2022).

<sup>71</sup>*Drone Integration and Zoning Act of 2021*, 117th Congress (2021).

<sup>72</sup>*Drone Integration and Zoning Act of 2021*, 117th Congress (2021).

<sup>73</sup>*Drone Integration and Zoning Act* of 2021, 117th Congress (2021).

<sup>74</sup>*Drone Integration and Zoning Act* of 2021, 117th Congress (2021).

<sup>75</sup>Empire State Citizens' Protection from Unwarranted Surveillance Act of 2021, A00417, NY Assembly.

<sup>76</sup>Empire State Citizens' Protection from Unwarranted Surveillance Act of 2021, A00417, NY Assembly.

<sup>77</sup>Empire State Citizens' Protection from Unwarranted Surveillance Act of 2021, A00417, NY Assembly.

<sup>78</sup>Empire State Citizens' Protection from Unwarranted Surveillance Act of 2021, A00417, NY Assembly.

<sup>79</sup>Village of Kings Point, NY Local Law 3 (2021).

<sup>80</sup>Village of Kings Point, NY Local Law 3 (2021).

<sup>81</sup>Village of Kings Point, NY Local Law 3 (2021).

<sup>82</sup>Village of Kings Point, NY Local Law 3 (2021).

<sup>83</sup>Village of Kings Point, NY Local Law 3 (2021).

<sup>84</sup>Town of Erin, NY Local Law 1 (2021).

<sup>85</sup>Town of Erin, NY Local Law 1 (2021).

<sup>86</sup>Town of Erin, NY Local Law 1 (2021).

<sup>87</sup>Town of Erin, NY Local Law 1 (2021).

<sup>88</sup>Town of Erin, NY Local Law 1 (2021).

<sup>89</sup>Town of Erin, NY Local Law 1 (2021).

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