September 8, 2023

VIA EMAIL TO PSULLIVAN@TORRANCECA.GOV AND U.S. MAIL, CERTIFIED # 7022 2410 0001 3273 6448 WITH RETURN RECEIPT REQUESTED

Patrick Sullivan, Esq.
City Attorney
City of Torrance
3031 Torrance Blvd.
Torrance, CA 90503

Dear Mr. Sullivan,

The undersigned are deeply concerned by, and object to, the City of Torrance ("City") City Council's actions on July 25, 2023, involving aviation and Zamperini Field ("KTOA") under City Council Agenda Item No. 9A. It is clear from the City's staff report and comments made by the councilmembers and the public that all of these actions are intended to limit aircraft in flight for the sole reason of noise control. As an overarching matter, the regulation of aircraft in flight rests solely with the Federal Aviation Administration. Per Title 49 United States Code section 40103(a)(1), "The United States Government has exclusive sovereignty of airspace of the United States." This means that any attempt to regulate the airspace above KTOA and the City has been preempted. Unless the City can demonstrate that there is an exemption that would allow the City to regulate aircraft in flight, it cannot take actions that are calculated to regulate such aircraft for the purpose of limiting noise within U.S. airspace.

Whatever the City's potentially greater control over the surface of KTOA, it is unequivocally entrenched in our jurisprudence that the federal government preempts the City's control over aircraft in flight when the aircraft is operated in compliance with FAA requirements.

> "While the federal government's exclusive statutory responsibility for noise abatement through regulation of flight operations and aircraft design is broad, the noise abatement responsibilities of state and local governments through exercise of their basic police powers are circumscribed." (FAA Aviation Noise Abatement Policy, Nov. 18, 1976, II(B).)
>
> "The chief restrictions on state and local police powers arise from the exclusive federal control over the management of airspace. Local authorities long have been preempted by the federal assumption of authority in the area from prohibiting or regulating overflight for any purposes. That principle was found in 1973 to include any exercise of police power relating to aircraft operations in *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973). In the *Burbank* case, the Supreme Court struck down a curfew imposed by the City in the exercise of its police power. The Court's reliance on the legislative history of section 611 and the 1972 amendments to it indicate that other types of police power regulation, such as, restrictions on the type of aircraft using a particular airport, are equally proscribed. The Court, however, specifically excluded consideration of the rights of an airport

> operator from its decision." (FAA Aviation Noise Abatement Policy, Nov. 18, 1976, II(B).)
>
> "There remains a critical role for local authorities in protecting their citizens from unwanted aircraft noise, principally through their powers of land use control." (FAA Aviation Noise Abatement Policy, Nov. 18, 1976, II(B).)

In *Air Transport Association of America v. Crotti*, 389 F. Supp. 58 (N.D. Cal., 1975), the district court explained that the *Burbank* preemption rule still applied ***"to regulations that actually affect the flight of aircraft. The portion of the California statute struck down by the court provided for criminal sanctions against the operator of an aircraft that exceed a single-event noise standard on takeoff or landing, a clear interference with the FAA's control over flight operations in the navigable airspace***." (FAA Aviation Noise Abatement Policy, Nov. 18, 1976, II(C), emph. added; see *Crotti* at p. 65.)

In *Crotti*, the district court further held:

> "We are satisfied and conclude that the SENEL provisions and regulations of noise levels which occur when an aircraft is in direct flight, and for the levying of criminal fines for violation, ***are a per se unlawful exercise of police power*** into the exclusive federal domain of control over aircraft flights and operation, and air space management and utilization in interstate and foreign commerce. ***The thrust of the Single Event Noise Exposure Levels is clear and direct and collides head-on with the federal regulatory scheme for aircraft flights delineated by and central to the Burbank decision***." (*Id.* at p. 65, emph. added.)

As the seminal cases of *Burbank* and *Crotti,* and FAA's policy lay down, the City cannot regulate an aircraft in flight that is compliant with federal law and regulations, even for noise abatement purposes.

Similarly in *State by Minnesota Public Lobby v. Metropolitan Airports Comm.*, 520 N.W.2d 388 (1994), the Minnesota Supreme Court, applying *Burbank,* held that state noise standards were inapplicable to aircraft in flight. Therein, the State of Minnesota promulgated maximum permissible noise limits and divided land into three "Noise Area Classifications" and created limits on noise pollution for each classification." (*Id.* at p. 389.) "Most of the area surrounding the MSP falls within Classification 1, which has the strictest requirements and applies to areas where people have an expectation of peace and quiet in residential areas. The standards set a maximum noise level for daytime and nighttime which may not be exceeded for more than a certain portion of each hour." (*Ibid.*) The Minnesota Supreme Court held, "The [U.S.] Supreme Court has made clear states may not enact noise regulations which impinge on aircraft operations, and that is precisely what the MCPA noise standards do." (*Id.* at p. 393.)

In *U.S. v. City of Blue Ash, Ohio*, 487 F. Supp.135 (S.D. Ohio, 1978), the district court enjoined a city ordinance requiring departing aircraft to make a turn to a given heading prior to reaching a described location because that ordinance was for the purpose of controlling aircraft noise. The district court explained that the purpose of flight direction is noise abatement and acknowledged, "It is the pervasive nature of the scheme of federal regulation of aircraft noise that leads us to

conclude that there is pre-emption." (*Id.* at p. 136.) The district court concluded, "It follows that City of Burbank requires a municipal ordinance resting on police power, which manages or dictates action by aircraft in navigable airspace for the purpose of noise control, is invalid under the preemption doctrine." (*Id.* at p. 137.)

Thus, the City Council's approvals under Agenda Item No.9A to invariably control aircraft flight for noise control purposes are also preempted and invalid.

In addition to our overall objection to the City's multi-prong attempt to regulate aircraft flight noise, we also have further objections to the specific actions taken by City Council that we now raise:

1. **Implementation of airport landing fees for all transient aircraft and Torrance-based fixed wing flight school operators with fleets of more than three (3) aircraft, and authorizing certain exemptions for military, public safety, medical flights, and Robinson Helicopter.**

   If for a proper purpose that is not for aircraft flight noise, we acknowledge that the City may impose landing fees, but it is not unfettered. Landing fees must be reasonable and must not create constructive exclusive rights. (49 U.S.C. § 40116(e)(2) and 40103(e).) Neither the City staff report nor discussions at the City Council meeting demonstrate that the proposed fee structure would be reasonable and would avoid constructive exclusive rights. Without such an analysis with specific findings, the City Council has no way of knowing whether the land fee structure is compliant with federal law.

   Further, the City Council's approval of a contract to begin collecting landing fees is impermissible unless and until the City Council adopts an ordinance authorizing the collection of landing fees. Per the City's own Charter, section 725:

   > "***Every act of the City Council*** establishing a fine or other penalty, or granting a franchise, creating a commission, board or agency, or ***in any way restricting or governing the use of property***, and in addition thereto, every act required by the City Charter to be done by ordinance ***shall be by ordinance***." (Emph. added.)

   Thus, the City cannot collect landing fees that result in the restricting or governing the use of KTOA unless and until it adopts an ordinance, which it has not done.

2. **Phaseout of leaded gas with a target of phasing it out within the next 12 months.**

   The City has indicated that it wishes to change air quality by phasing out leaded aviation fuel, but such action is preempted by the Clean Air Act. The FAA and industry stakeholders are working to effect a safe, smart, nationwide transition through the Eliminate Aviation Gasoline Lead Emissions ("EAGLE") initiative, but the effort is not at the finish line yet.

Currently, there is no unleaded aviation fuel being commercially refined and distributed for sale on a national basis for use in all piston aircraft. 70% of the avgas sold annually across the nation is purchased by aircraft that have high compression engines that cannot legally or safely use unleaded options currently available in the marketplace (i.e., 94UL), including aircraft based at your airport. One 100 octane unleaded fuel (GAMI's G100UL) has been approved by the FAA for use in certain aircraft, but at this time is not approved for use in any rotorcraft, nor is it in commercial production or distribution. Elimination of the sole fuel that many aircraft require to operate safely and legally threatens public safety.

Moreover, as discussed above, the City cannot regulate aircraft in flight noise in any manner. The phaseout of leaded aviation fuel was considered and approved by the City as a means to reduce aircraft taking off and landing at KTOA. Such means are preempted and invalid.

3. **Enforcement of early left turn violations.**

The FAA has previously explained that any local and state ordinances involving aircraft in flight are preempted, and inherently violate federal law and regulations. As discussed above in the *City of Blue Ash, Ohio* case, municipal control of aircraft flight for noise control is absolutely preempted and invalid. Importantly, this has been made abundantly clear in the FAA Letter of Interpretation dated February 18, 2020. *See* Attachment 1. The City also publicly acknowledged that several sections of the Torrance Municipal Code are invalid and unenforceable, and have been since 1958, due to federal preemption. *See* Attachment 2.

4. **Ban on all training operations on weekends and City of Torrance recognized holidays and modified weekday hours to "make a difference on airport noise."**

Congress has long vested the FAA with exclusive authority to regulate a variety of areas including airspace use, management and efficiency; air traffic control; safety; and aircraft noise at its source. The Aircraft Noise and Capacity Act ("ANCA") generally provides that "a noise policy must be carried out at the national level" and requires that local restrictions be vetted by the FAA.[1] The FAA's "notice, review, and approval requirements" implementing ANCA "apply to all airports imposing noise or access restrictions."[2] A recent federal court decision has clarified that ANCA's procedural requirements for local restrictions apply to all public airport sponsors, not just those receiving federal funding and/or subject to federal grant assurances. *See* Attachment 3.

An example of impermissible regulation of training is the prohibition of touch-and-goes. The FAA in its Airport Compliance Manual Order 5190.6B, section 14.8, confirms that touch-and-goes as a flight training procedure constitute an aeronautical activity. And it is

[1] 49 U.S.C. § 47521(3).
[2] 14 C.F.R. § 161.3(a), (c).

clear that the City's attempt to control noise by banning aeronautical activities within national airspace is preempted, as detailed above.

Moreover, as discussed above, the City can only change the use of KTOA by ordinance, which the City's action did not do.

The City Council apparently also received updates on legalities involving the prohibition of touch-and-go landings on the south and north runways and the imposition of a moratorium on new flight school operators. The best source for legal compliance input on these proposed actions is with the FAA, and we urge you to use the agency as your trusted resource for accurate information.

Also, see above on the training bans where the FAA expressly stated that prohibiting touch-and-goes cannot be done to control noise from aircraft in flight.

To avoid the waste of taxpayer funds in attempting to defend clear violations of the law, the implementation and enforcement of the actions approved on July 25, 2023, should be held in abeyance *pending verification of legal compliance with the FAA*. We request an in-person with you no later than October 13, 2023, to discuss the legal landscape in greater detail, with the goal of avoiding preventable legal battles that will require significant financial and staff resources to litigate law that is already well settled.

Sincerely,

Justine A. Harrison
General Counsel
Aircraft Owners and Pilots Association

Alex Burkett
General Counsel
General Aviation Manufacturers Association

Jol A. Silversmith
Counsel for
Helicopter Association International
National Business Aviation Association

Lars H. Liebeler
General Counsel
National Air Transportation Association

Cc: Mark McClardy, FAA Office of Airports, Western Pacific Region (via email)
Joseph Manges, FAA Office of Chief Counsel (via email)