



Justine A. Harrison
General Counsel

January 23, 2024

**VIA EMAIL TO PSULLIVAN@TORRANCECA.GOV AND U.S. MAIL, CERTIFIED
AND RETURN RECEIPT REQUESTED**

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

Dear Mr. Sullivan,

AOPA is deeply concerned by, and objects to, the City of Torrance ("City") staff recommendations to adopt an ordinance amending Torrance Municipal Code Article 5 to "regulate touch (and stop) and go landings, full stop-taxi backs, and low approaches at Zamperini Field ("KTOA") under City Council Agenda Item No. 9H at tonight's meeting. We request a copy of this letter be included in the record of the meeting.

Background

The City should be familiar with well-established legal principles regarding federal authority for regulating the efficiency of the airspace, including the operation or flight of aircraft. To ensure the maintenance of a safe and sound air transportation system, the FAA has exclusive regulatory authority over matters pertaining to aviation safety and the efficient use of the airspace. Aviation safety includes ensuring the safety of flight, as well as the safety of people and property on the ground as a result of the operation of aircraft. State and local governments cannot regulate in fields of aviation safety or airspace efficiency, which is precisely what the proposed ordinance attempts to do.

Substantial air safety issues are implicated when state or local governments attempt to regulate the operation of aircraft. The general balance between Federal and state authority in the context of aviation regulation is well established. The Federal Aviation Administration ("FAA") has the exclusive authority to regulate aviation safety and the efficient use of the airspace by aircraft. Attempts by state and local governments to regulate in those fields are preempted.

A state or local law will be preempted if it conflicts with FAA regulations. A law is preempted if, as with the City's proposed ordinance, it makes it impossible to comply with FAA regulations or frustrates the purposes and objectives of such regulations.

In the area of aviation, "federal control is intensive and exclusive." *Burbank*, 411 U.S. at 633. Recognizing that the global nature of the industry requires a uniform approach to regulation,

Congress wanted to ensure that airports, domestic aircraft manufacturers, airlines, and the traveling public are subject to uniform standards of safety, airworthiness, and environmental regulation anywhere in the United States. *See French v. Pan Am Exp., Inc.*, 869 F.2d 1, 5 (1st Cir. 1989) (“The legislative history underlying the original Act stressed the importance of a single uniform system of regulation, especially with regard to air safety. . . . [E]stablishment of a single uniform system of regulation in the area of air safety was one of the primary ‘object[s] sought to be obtained’ by passage of the [FAAct].” (second brackets in original) (quoting *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988))). To this end, Congress has promulgated a series of statutes regulating the aviation industry, including the Federal Aviation Act.

The proposed ordinance conflicts with Federal Aviation Administration (FAA) authority involving takeoffs, landings, touch and go’s, stop and go’s, and low approaches.

The FAA Airplane Flying Handbook¹ discusses navigating on airport surfaces, airport traffic patterns, and approaches and landings, all from the standpoint of airport safety. The FAA Pilot’s Handbook of Aeronautical Knowledge² discusses airport operations in detail, all in support of aviation safety. When obtaining a pilot’s license, the FAA examiner tests pilots on taxiing, takeoffs, landings, go-arounds and rejected landings.³ The FAA air traffic tower at KTOA controls airplane navigation on the airport surface and in the airport’s airspace and, when the tower is closed, the FAA has also highlighted regulatory obligations and safety information on how traffic should flow when the tower is closed.⁴ The FAA has sole jurisdiction over these areas to ensure safety and efficiency of aircraft operations.

Courts across the country have confirmed that the Federal Aviation Administration (FAA) has exclusive jurisdiction over matters involving aviation safety. Below is a small sampling:

- Local governments cannot regulate control of aircraft or airspace, or any aspect of aviation navigation. *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority*, 72 Cal. App. 4th 366, 85 Cal. Rptr. 2d 28 (2d Dist. 1999).
- Limitations on aircraft taking off and use of the airport runway involve air safety, which is field preempted by the Federal Aviation Act. Restrictions that conflict with the Federal Aviation Act or sufficiently interfere with federal regulation of air safety are preempted. *Tweed-New Haven Airport Authority v. Tong*, 930 F.3d 65 (2d Cir. 2019).
- Municipal ordinances cannot prohibit flights of aircraft at altitudes (i.e. low approaches, missed approaches). Only the federal government has the right to regulate safe altitudes of flight at any elevation and take-off and landing patterns. *Allegheny Airlines v. Village of Cedarhurst*, 238 F.2d 812, 17 Pub. Util. Rep. 3d (PUR) 244 (2d Cir. 1956).

¹ [FAA-H-8083-3C](#)

² [FAA-H-8083-25C](#)

³ [FAA Airman Certification Standards: Private Pilot – Airplane.](#)

⁴ [FAA Advisory Circular 90-66C. Non-Towered Airport Flight Operations.](#)

- An airport cannot restrict the number of planes flying, as it constitutes an attempt to regulate air navigation which is exclusively within the jurisdiction of the federal government. *Gary Leasing, Inc. v. Town Bd. of Town of Pendleton*, 127 Misc. 2d 194, 485 N.Y.S.2d 693 (Sup 1985).
- Aviation commerce and safety are governed by pervasive federal regulations, and applicable local standards are field preempted. The Federal government, not city, controls the airspace above city limits. Noise regulation ordinances, flight-pattern controls, restrictions on operations, air safety regulations, and pilot drug-testing provisions are all impliedly preempted by the Federal Aviation Act (FAA). *International Aerobatics Club Chapter 1 v. City of Morris*, 76 F. Supp. 3d 767 (N.D. Ill. 2014).

The best source for legal input on these proposed actions is with the FAA, and there is an email set up specially for questions from state and local governments on preemption matters at the Aviation Litigation Division 9-AGC300Preemptionquestions@faa.gov. To avoid the waste of taxpayer funds in defending actions that are federally preempted and that will require significant financial and staff resources to litigate law that is already well settled, the City should not pass the proposed ordinance.

KTOA is part of the national aviation system, and the ordinance contemplated today is not only illegal, but it would also shift flights to neighboring airports in the region. The national system works because it is a network of airports in which all play a role in balancing traffic, which is particularly vital in the Los Angeles area's congested airspace. It is not legal, fair or equitable to push flight operations to other airports.

Sincerely,



Justine Harrison
General Counsel
Aircraft Owners and Pilots Association

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

