

DATE: 6/12/2025
TO: Hon Mayor & Members of the Torrance City Council
FROM: Jim Gates
SUBJECT: Council Agenda Item 10Bfor 6/17/2025

The current Torrance Municipal Code (TMC) Sections 51.5.5 - 51.1.8 (as well as the proposed changes) illegally attempt to regulate "low approaches." As noted many times before to the Council, the FAA has exclusive authority to regulate the navigable airspace in the United States.

The City's definition of "low approaches" includes what are known as "aborted landings", "go-arounds" and "missed approaches." These are standard safety maneuvers that the Pilot in Command (PIC) may execute at any time he/she deems necessary. Federal Aviation Regulations, 14 CFR 91.3, vests the PIC with the direct responsibility and final authority as to the operation of their aircraft. Neither the Torrance City Manager nor the Torrance City Council have any role in that decision--either before or after it is made!

All references to regulation of "low approaches" should be eliminated from these TMC Sections.

References

The Supremacy Clause:

The Supremacy Clause of the Constitution of the United States (Article VI, Clause 2) establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the "Supreme Law of the Land", and thus take priority over any conflicting state or local laws.

Preemption Doctrine:

The Preemption Doctrine is based on the Supremacy Clause of the U.S. Constitution. It holds that certain matters are of such a national (as opposed to local) character that federal laws preempt or take precedence over state or local laws. As such, a state or local government may not pass a law inconsistent with the federal law. A state or local law may be struck down, even when it does not explicitly conflict with federal law, if a court finds that Congress has legitimately occupied the field with federal legislation. Congress has long vested the FAA with exclusive authority to regulate airspace use and air traffic control. In simple terms, this means that ordinances passed by state and local governments that attempt to do so are invalid and unenforceable.

- 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).
- 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).
- In May of 2015, the Torrance City Attorney stated: "*Congress has tasked the Secretary of Transportation, via the FAA, with the task of "assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce," as well as "controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations."* (49 U.S.C. 44718, subd. (d).) The United States Court of Appeals for the Ninth Circuit recognizes that, "federal law occupies the entire field of aviation safety." *Montalvo v. Spirit Airlines* (9th Cir. 2007) 508 F.3d 464,473.)
- California state courts note that the Ninth Circuit's position is consistent with the positions taken by the Second, Third, Sixth and Tenth Circuits. { *Citizens Opposing a Dangerous Env't v. Cnty. Of Kern* 2014) 228 Cal.App.4th 360, 364 [noting that the aforementioned Circuits of the Federal Court of Appeals have concluded that Congress intended to occupy the entire field of aviation safety).
- FAR 91.3 Responsibility and authority of the pilot in command (PIC) states.
 - "(a) *The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.*
 - (b) *In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.*
 - (c) *Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."*