



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Safety and
Standards

800 Independence Ave., SW.
Washington, DC 20591

The Honorable Michael Feinstein
Mayor, City of Santa Monica
Santa Monica City Hall
1685 Main St., #200
Santa Monica, CA 90401

Dear Mayor Feinstein and City Council:

This letter is to follow up on my October 23 letter expressing concerns about the ordinance to amend Santa Monica Municipal Code Sections 10.04.04.040 and 10.04.04.050, and to add Section 10.04.04.055, currently being considered by the City. Among other things, the proposed ordinance would increase fines and penalties for noncompliance with the "Santa Monica Aircraft Noise Abatement Code" (Code), implement aircraft registration requirements and expand the scope of the Code to include aircraft operators, including fractional fleet operators. It is our understanding that the City of Santa Monica is planning a second reading on November 13, at which time it may adopt the ordinance.

We have conducted a preliminary review of the proposed ordinance in order to determine whether the amendments and additions to current airport noise and access restrictions in the current Code are subject to the Airport Noise and Capacity Act of 1990 (ANCA) (49 USC 47521 et seq.), as implemented by 14 Code of Federal Regulations (CFR) Part 161. The current ordinance was in effect prior to ANCA and has not been amended after October 1, 1990. Therefore, the current restrictions at the Santa Monica Airport predate ANCA, and are therefore "grandfathered." However, any amendments to a restriction, "grandfathered" or otherwise, that have the effect of making access to an airport more restrictive, are subject to the requirements of ANCA and Part 161.

Under the current Code, responsibility for compliance with the Code rests with either the pilot or the aircraft owner. The Code allows sanctions and civil penalties to be assessed against both pilot and owner. After repeated violations by an aircraft, pilot or owner, according to the Code, the aircraft, pilot or owner may be excluded from the airport. The current Code also provides that if an aircraft is operated in violation of the Code by a person other than the owner of the aircraft, the pilot and not the owner of the aircraft shall be subject to sanctions, with some exceptions. Those exceptions include, among other things, owners that own "Listed Aircraft," and owners that fail to advise the pilot of the applicability of the Code to the aircraft.

The proposed amendments to the Code would add "operator" to those entities responsible for compliance and define an "operator" as any person or entity operating, managing or controlling an aircraft. The proposed amendments would also redefine the term "owner" to include the registered owner of an aircraft and any person or entity

possessing ownership interest in an aircraft, such as an owner under a fractional program. With these changes, it appears the amended Code could affect a broader category of airport users (e.g., additional aircraft in a fractional fleet). In its April 23, 2001, memorandum to the Airport Commission recommending changes to the Code, airport staff wrote that “[p]roposed changes to the Ordinance could consider assigning culpability of Noise Ordinance violations to the pilot, aircraft owner, and/or the aircraft operator jointly or individually.”

In contrast, the existing Code appears to permit the City to sanction and potentially exclude from the airport only the pilot or owner of the aircraft that violates the Code. Since fractional fleet companies do not own the aircraft they manage, the proposed amendments to the Code may be determined to make access to the airport more restrictive than it is today and, therefore, subject to ANCA. Access restrictions subject to ANCA cannot be implemented without first conducting an analysis pursuant to 14 CFR Part 161. Part 161 prescribes the requirements and process under which FAA will review and approve certain airport noise and access restrictions.

We are also concerned that requiring pilots, aircraft owners and operators to register aircraft, for the purpose of enforcement of the Code, could impede the City's ability to comply with its Federal obligations to make the airport available to the public on reasonable terms and without unjust discrimination. Specifically, we do not understand the need for registration requirements since, reportedly, fixed base operators, through their leases with the City, already collect this type of user information. Moreover, the FAA is concerned that a pilot's failure to notify the Director of this information could become, itself, a reason for exclusion from the airport, or result in an aircraft owner's or operator's inability to receive aeronautical services at the airport. That said, any substantive review of this issue by the FAA is dependent on the City's drafting of specific rules and regulations governing the registration of aircraft at the Santa Monica Airport.

With regard to the proposed increased fines associated with the City's airport access restriction, including civil penalties of up to \$10,000 per offense, be advised that only reasonable increases in such fines are consistent with ANCA, Part 161 and other Federal obligations of the City.

The aforementioned concerns reflect the FAA's understanding of the proposed ordinance independent of any discussions or consultation with the City. Due to our recent receipt of the proposed ordinance, less than one month ago, and the absence of any proposed regulations that would implement the ordinance, the FAA has not been able to sufficiently consider all of the potential implications that the ordinance may have on the City's compliance with ANCA and with its Federal obligations.

Therefore, this letter is not intended to provide a final determination of compliance with ANCA or the City's Federal obligations embodied in Federal grant agreements, the surplus property deed of conveyance, and the 1984 Agreement; nor is it intended to address all of the FAA's concerns regarding the proposed ordinance. Rather, this letter communicates the FAA's concerns based on a preliminary review of the proposed ordinance for the City's information and consideration.

I want to emphasize the FAA's desire to work with the City informally to ensure compliance with Federal laws and regulations. To this end, I urge the City to delay voting on the adoption of the proposed ordinance until we can engage in discussions regarding our concerns.

You may reach me at (202) 267-3053 to schedule a time to discuss these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'DLB', with a large, stylized flourish at the end.

David L. Bennett
Director, Airport Safety
and Standards

cc: Susan McCarthy, City Manager
Robert Trimborn, Airport Manager