

Ms. Sara L. Mikolop  
September 20, 2022  
Page 4

**Response to the FAA February 18, 2020 Letter:**

In its February 18, 2020 letter to Torrance Airport Association representative, FAA cited several legal opinions, which either support the City's position regarding the enforceability of the left turn restriction, or are inapplicable/distinguishable.

*Friends of the E. Hampton Airport v. Town of E. Hampton*, 841 F.3d 133 (2d Cir. 2016) confirms section 51.2.3(e) is enforceable. This case reinforced federal recognition of the proprietor exception to preemption – the court confirmed that “municipalities retain some proprietary authority to control noise at local airports,” albeit such authority is limited. *Id.* at 139. The court “reasoned that, because an airport proprietor ‘controls the location of the facility, acquires the property and air easements and [can] assure compatible land use,’ it might be liable to other property owners for noise damage and, thus, has a right ‘to limit [its] liability by restricting the use of [its] airport.’” *Id.* The court explained, however, that the proprietor is vested “‘only with the power to promulgate reasonable, nonarbitrary and non-discriminatory regulations that establish acceptable noise levels for the airport and its immediate environs.’” *Id.*

Here, the City is the proprietor of the airport, and as such, it has authority to enact the left turn restriction, which is a reasonable, non-arbitrary, and non-discriminatory regulation, enforced only when the left turn is not directed by the Tower, and intended to protect from excessive noise to the residential community in the immediate vicinity of the airport and limit the City's liability to those residents.

Similarly, *National Helicopter Corp. v. City of New York*, 137 F.3d 81 (2d Cir. 1998) [affirming city's restrictions on the FBO facility use and curfew on facility operations] applies here because the City has the proprietor and police power authority to impose reasonable noise restrictions at the airport. The *National Helicopter* court specifically stated that “Congress has consciously delegated to state and municipal proprietors the authority to adopt rational regulations with respect to the permissible level of noise created by aircraft using their airports in order to protect the local population.”

Other cases the FAA cites in support of its preemption argument are either inapplicable or distinguishable:

- *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007) – this case concerned a question of whether the state law on the duty to warn about the risk of deep vein thrombosis applies to airlines. The FAA cites this case for the court's general statement that “the FAA preempts the entire field of aviation safety from state and territorial regulation.” However, this case does not support the FAA's position that section 51.2.3(e) is preempted because (1) section 51.2.3(e) is grandfathered in for purposes of ANCA; (2) the City's restriction

Ms. Sara L. Mikolop  
September 20, 2022  
Page 5

is reasonable and is part of the City's noise program; and (3) the City does not enforce the left turn restriction when the left turn is directed by the Tower.

- *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989) concerns pilot qualifications and not aircraft noise regulations. The court's mention of another case holding that "the majority ruled that aircraft noise was wholly subject to federal hegemony, thereby preempting state or local enactments in the field" is dicta and does not take into consideration the City's enforcement of the reasonable left turn restriction, which is the only viable solution to address the noise concerns of the nearby residents, only when not in conflict with the Tower directions.

**Conclusion:**

As explained above, the City's left turn restriction is not preempted by federal regulations and is a reasonable local regulation necessary to reduce noise. Therefore, the City will enforce the restriction in cases where it is consistent with Tower directions.

Very truly yours,



Lori D. Ballance  
of  
Gatzke Dillon & Ballance LLP

LDB/rlf

cc: Patrick Sullivan, City Attorney for the City of Torrance