

October 26, 2015

Mr. Kevin McKeown
Mayor of the City of Santa Monica
2118 Wilshire Boulevard, Room 209
Santa Monica, CA 90403
kevin@mckeown.net

RE: Santa Monica Airport

Dear Mayor McKeown:

I write on behalf of the National Business Aviation Association (NBAA). As you know, NBAA represents over 10,000 member companies which own and operate over 11,000 general aviation aircraft to facilitate the conduct of their businesses or which are otherwise involved with business aviation – including numerous tenants and users of the Santa Monica Municipal Airport (SMO), who are strongly interested in its future accessibility and viability.

We understand that the City Council's agenda for its October 27, 2015 meeting will include a staff report from the City Attorney, which makes several recommendations for aircraft emissions-related restrictions at SMO. NBAA and the entire aviation industry are concerned about the environment, and are continuing to engage in efforts at both national and international levels to reduce the impact of aircraft. But many of the City Attorney's proposals – well-intentioned as they may be – are legally impermissible, and must not be adopted.

Notably, the proposals include a prohibition on the sale and/or use of certain types of aircraft fuels in future leases to SMO tenants. As you are no doubt aware, both the Airport Improvement Program (AIP) grants that the City has accepted for SMO, and the 1948 surplus property deed for SMO, require Santa Monica to allow all types of aeronautical activities at the airport – and the FAA's position is that the AIP-based commitments are effective through 2023, while the deed-based commitments are effective in perpetuity. Simply put, these proposals are incompatible with the City's binding federal obligations – and could lead to severe sanctions, including the termination of all DOT grants to the City, as well the reversion of SMO to federal ownership.¹

Additionally, the City Attorney has proposed that a cap on total emissions generated by SMO be studied. In addition to comprising a general violation of the City's grant- and deed-based obligations, this proposal also conflicts with the FAA and EPA's exclusive jurisdiction over aircraft emissions. And unlike for the grant- and deed-based obligations – whose validity Santa Monica has tried to question – there is no dispute that the underlying statutes are applicable to the City and SMO. Accordingly, there is simply no further basis for consideration of this proposal as formulated.²

The staff report also proposes that the City condition future SMO tenant leases on certain environmental remediation requirements, and that the City study the possibility of directly assuming responsibility for fuel sales at the airport. Although these general proposals do not necessarily contradict the City's federal obligations, the City would have to proceed with extreme caution in order to ensure compliance. For example, the FAA has warned that environmental conditions must be rational and


¹ The Council should be concerned that the staff report does not explicate the potential legal consequences of these proposals. As a further example, the City Attorney has observed that restrictions on fuel sales at SMO would not prohibit the purchase of fuel elsewhere. But the FAA has made clear that local restrictions may not be justified on the basis that aeronautical users could acquire those services at a different airport instead – and this concession also calls into question whether restrictions on fuel sales at SMO could even be said to have a bare rational basis.

² NBAA appreciates the staff report's recognition that the City cannot directly regulate aircraft operations based on their emissions – but notes that its proposals nevertheless appear to endorse equally impermissible “back door” emission-based controls on aircraft, such as restrictions on “[f]light training, fuel sales, and FBO operations.”

cannot be a mere facade for access restrictions. Moreover, if the City is to assume all responsibility for fuel sales at SMO, it must be prepared do so entirely in-house – FAA requirements establish that it could not rely on third-party vendors.

Finally, although there is much about which the City Attorney and NBAA disagree, NBAA does concur with her advice that the City should not take any precipitous action while legal questions about the airport are working their way through FAA administrative and court proceedings. Indeed, NBAA agrees that it would be preferable if those proceedings advanced more swiftly, but courts and agencies set their own adjudicatory timetables, and it is highly inappropriate that the City has recruited political intervention – and solicited ex parte communications from the public – in an effort to interfere with FAA deliberations. Moreover, NBAA re-emphasizes that if the City were to adopt measures that are at odds with its legal obligations, the association and its members are fully prepared to hold the City accountable, including in further FAA administrative and court proceedings.

Sincerely,

 FOR STEVE BROWN

Steve Brown
NBAA, Chief Operating Officer

CC:

Santa Monica City Council, council@smgov.net
Mayor Pro Tempore Tony Vazquez, tony.vazquez@smgov.net
Council Member Gleam Davis, gleam.davis@smgov.net
Council Member Sue Himmelrich, sue.himmelrich@smgov.net
Council Member Pam O'Connor, pam.oconnor@smgov.net
Council Member Terry O'Day, terry.oday@smgov.net
Council Member Ted Winterer, ted.winterer@smgov.net
City Manager Rick Cole, manager@smgov.net
City Attorney Marsha Moutrie, marsha.moutrie@smgov.net
Assistant City Attorney Joseph Lawrence, joseph.lawrence@smgov.net
Deputy City Attorney Lance Gams, lance.gams@smgov.net
Deputy City Attorney Ivan Campbell, ivan.campbell@smgov.net
Airport Manager Stelios Makrides, stelios.makrides@smgov.net