



March 9, 2021

**Via Electronic Mail**

Mr. Peter Vallone  
Chair  
Committee on Economic Development  
City Hall  
250 Broadway  
New York, NY 10007  
[district19@council.nyc.gov](mailto:district19@council.nyc.gov)

**RE: Support for Bill No. 2027 and Opposition of Bill No. 2026 and 2067**

Dear Chair Vallone and Members Powers, Gjonaj, Koo, Cornegy, Lander, Baron, and Louis:

As representatives of the aviation community, including thousands of general aviation and commercial helicopter pilots, airports, and fixed based operators, we thank you for the work you are doing to preserve the economic future of the New York City-owned heliports and the many organizations, businesses, and industries that they support.

Supplementing the oral testimony submitted to the committee on February 17 by representatives from the Eastern Region Helicopter Council (ERHC), the undersigned associations and industry members believe the restrictions on helicopter operations at the City's heliports proposed by bills no. 2026 and no. 2067 would be devastating to New York City's economy overall, as well as the economic viability of the heliports and the helicopter industry as a whole.

The City-owned heliports are critical infrastructure as part of a much larger transportation network that supports public-use, emergency medical services (including organ transplants for local area hospitals), electronic news gathering, institutions of higher learning, non-profit organizations, law enforcement, and non-government organizations from all over the world. It is also important to note that the helicopter industry is investing billions of dollars into technologies that will dramatically reduce noise levels and drastically reduce the carbon footprint. The industry is fueling research and development needed for sustainable solutions across a broad spectrum of applications.

Having said that, as noted at the February 17 hearing, we fully support bill no. 2027, which would study the use of electric aircraft by the City. Other major cities are embracing these opportunities and will undoubtedly leverage emerging technologies to attract and retain cutting-edge innovation and their associated industries that are now within reach. Additionally, the ERHC and the other signatories would welcome the opportunity to discuss with you the

measures that could be taken and already have been taken on a voluntary basis to reduce the impact of helicopter operations.

Additionally, the undersigned here fully endorse the testimony presented by Jol Silversmith of KMA Zuckert LLC on behalf of the ERHC regarding the legal implications of bills no. 2026 and no. 2067. Supplementing that testimony, as well as the testimony of Economic Development Corporation Assistant Vice President Adam Lomasney which briefly identified similar legal issues, we respectfully offer the following points for the committee's consideration:

- Aviation, including helicopters, is a federally-regulated industry. Congress, the courts, and the FAA deliberately have left little room for state or municipal regulation – and public airports (including heliports) generally must accommodate all types of operations. As the Supreme Court explained in City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624 (1973):

“Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls.”

Id. at 633-34 (citation omitted).

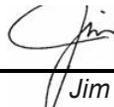
- In 1990, Congress adopted the Airport Noise and Capacity Act (ANCA; 49 U.S.C. 47524), with the specific purpose of preventing the adoption of local restrictions – including but not limited to noise-based restrictions – on aircraft operations at public airports. ANCA and associated FAA regulations do establish procedures through which local restrictions can be proposed, but with a high threshold and detailed requirements (e.g., a study to justify the benefits of the proposed restrictions and an extended opportunity for public comment). The signatories respectfully posit that bills no. 2026 and no. 2067 would impose noise and access restrictions in a manner that is flatly inconsistent with ANCA.
- Congress also prohibits “exclusive rights” at public airports that have accepted federal aid at any time since 1938 (49 U.S.C. 40103). That prohibition applies to the Manhattan heliports. In practice, FAA interprets this statute to mean that “constructive exclusive rights” are prohibited – essentially, that one category of operations at an airport cannot be given preference over a different category of operations. The signatories respectfully posit that bills no. 2026 and no. 2067, by imposing restrictions and requirements on only a subset of helicopter operators, are directly at odds with this statute.
- A third issue is preemption. By statute, Congress has prohibited states and municipalities from regulating air carriers, including charter operators (49 U.S.C. 41713). The courts also routinely have concluded that states and municipalities may not regulate the safety or operation of aircraft overall, because the FAA has fully occupied that field. See, e.g., International Aerobatics Club v. City of Morris, 76 F.Supp.3d 767, 780-83 (N.D.Ill. 2014). The signatories respectfully posit that bills no. 2026 and no. 2067 are impermissible based on both types of preemption.

- Finally, we note that the City cannot by indirect means accomplish what it is prohibited from doing directly – i.e., to the extent that the City cannot itself impose the restrictions and requirements embodied in bills no. 2026 and no. 2067, it also cannot direct the EDC to require concessionaires to selectively restrict operations at the heliports. See, e.g., FAA Order 5190.6B, Airport Compliance Manual, section 6.6(f).

New York City, and the City Council's Committee on Economic Development in particular, has done a tremendous job investing and sustaining heliport infrastructure since 1956. That investment has significantly contributed to the economic competitive advantage that NYC enjoys compared to other cities around the country and all of the members of this coalition support bill no. 2027. The coalition strongly opposes bills no. 2026 and no. 2067 as they are in violation of federal law and would have a devastating effect on the City's economy, urging the committee to withdraw them.

We all genuinely appreciate this opportunity to expand upon the information previously presented to the Committee and thank you for your consideration of our comments and testimony.

Sincerely,



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*Jim Coon*  
SVP, Government Affairs & Advocacy  
Aircraft Owners and Pilots Association



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*Cade Clark*  
VP, Government Affairs  
Helicopter Association International



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*Tom McCormick*  
Chair, Board of Directors  
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