MEMORANDUM

TO: Members, City Council
City of Livermore

CC: John Pomidor, City Attorney
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FROM: Zane O. Gresham
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DATE: June 6, 2006

RE: Federal Limitations on Local Government Authority Over Use and Operation of Airport and Airspace

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The City of Livermore ("City") has been asked by interested citizens to consider taking certain actions relating to the use and operation of the Livermore Municipal Airport ("LVK") and aircraft operations over and around Livermore. This memorandum addresses generally the major federal legal and regulatory restrictions and procedures involved with the potential exercise of the City of its police power (including its zoning and planning authority) to limit the use and operation of LVK and overflights above the City by aircraft which do not utilize LVK.

These issues involve a municipal airport proprietor's authority to regulate operations at its airport, and a local community's authority to control the use of the airspace above the community to manage aircraft noise. As the following exposition illustrates, local control over airport and aircraft operations has been limited severely by Federal law.

I. BACKGROUND

Livermore Municipal Airport

LVK is owned and operated by the City of Livermore. The airport is located on 643 acres approximately three miles northwest of the City of Livermore. The facility has two parallel runways: a 5,255' lighted main runway and a 2,700' unlighted training runway. The Airport currently serves private, business and corporate tenants and customers. At this time there is no scheduled air carrier service at LVK, although the longer runway could accommodate smaller regional jets which are operated by major air carriers.

LVK currently has approximately 200,000 annual aircraft operations. It is open 24 hours a day and is attended by city employees from 8:00 A.M. to 7:00 P.M., 365 days a year. The Air Traffic Control Tower is operated by Federal Aviation Administration ("FAA") employees daily from 7:00 A.M. until 9:00 P.M.

Over the years, LVK has received and utilized funding under the federal Airport Improvement Program ("AIP"), and as a condition to that AIP funding, has signed grant agreements with the FAA.

II. Applicable Law: Federal Restrictions and Limitations on City Authority Over Use of LVK and Overflights

Air travel and air transportation have long been recognized as directly and inherently part of interstate commerce, and therefore subject to control by the federal government pursuant to the Commerce Clause of the US Constitution. Congress has exercised that authority to encourage the development of air transportation. In the process, Congress has enacted a series of laws that severely constrain the ability of local communities to control aircraft operations (even at municipally-owned airports) and overflights above such communities by aircraft. As the FAA explained in its proposed "Aviation Noise Abatement Policy 2000," the Federal Government has "preempted the areas of airspace use and management, air traffic control, safety and the regulation of aircraft noise." 65 Fed. Reg. 43802, 43818. The following are the most relevant sources of the FAA's authority:

1. The Airport Noise and Capacity Act of 1990 ("ANCA")

ANCA (49 U.S.C. 47521 et seq.) restricts airport proprietors from implementing new "noise or access restrictions" on aircraft without meeting extraordinarily rigorous substantive requirements, following elaborate public administrative procedures and seeking FAA review and approval. ANCA was designed, in part, to end the proliferation of local noise restrictions being adopted by airports in the 1980s and sets a high threshold for approval of new local noise or access rules.[1] The regulations adopted by the FAA to implement ANCA, 14 C.F.R. Part 161, therefore require that an airport sponsor demonstrate to the FAA that the proposed restriction:

(1) is reasonable, non-arbitrary and non-discriminatory;

(2) does not create an undue burden on interstate or foreign commerce[2];

(3) is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace;

(4) does not conflict with any existing federal statute or legislation;

(5) has been afforded adequate opportunity for public comment; and

(6) does not create an undue burden on the National Aviation System.

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[1] Although restrictions on new local airport rules appears to have been intended principally to limit new "noise" regulations, the language of the statute addresses "noise or access restrictions." 49 U.S.C. § 47521. In promulgating the Part 161 regulations, the FAA stated that "[c]learly, [ANCA] requires the review of both noise and access restrictions." *Millard Refrigerated Services, Inc. v. FAA*, 98 F.3d 1361 (D.C. Cir. 1996); *see also* 14 C.F.R. §§ 161.1-161.5.

[2] The courts have interpreted "undue burden on interstate or foreign commerce", when a state or locality asserts a safety or security rationale, by balancing the local interest in safety and security with the regulation's impact on interstate commerce. In *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 671 (1981), the Court invalidated an Iowa regulation that prohibited the use of 65-foot double tractor trailers on its highways because the regulation substantially burdened interstate commerce. The rule established from the Court's multiple opinions in *Kassel*, appears to be that a state may not enact regulations that effectively shift the burden of interstate commerce away from its citizens for the purpose of protecting their safety. In other words, the problem with the Iowa regulations was that they appeared to protect Iowans from the perceived dangers of 65-foot tractor trailers by diverting those vehicles into other states. The result was an effective shift of the burdens and costs of interstate commerce from Iowa onto neighboring states. Similarly, by diverting aircraft from one locality to another region, a city arguably is shifting the burden, hazards, and costs of interstate commerce onto neighboring cities.

14 C.F.R. § 161.305. An airport proprietor must justify any new local noise or access restriction to the FAA in the form of a detailed, FAA-compliant cost-benefit analysis. 14 C.F.R. § 161.305(e)(2)(ii). Moreover, under Part 161, the FAA must approve any new noise or access restriction before the local airport proprietor may implement that restriction.

In more than a decade since ANCA was enacted, only one airport has successfully instituted an FAA-approved local noise or access rule under the Part 161 process and standards. Many observers have noted the tremendous procedural and substantive difficulty of an airport in meeting the standards set forth in Part 161, particularly the "reasonable, non-arbitrary and non-discriminatory" standard, not imposing "an undue burden of interstate or foreign commerce," and not imposing "an undue burden on the national aviation system."

The single case in which an airport has successfully imposed access restrictions pursuant to Part 161 actually involved a plan originally disapproved by the FAA, the decision of which was later overturned by the United States Court of Appeals for the District of Columbia Circuit. The court first ruled as a legal matter that the FAA may withhold grants when an airport operator imposes an unreasonable noise restriction. The court, however, rejected the FAA's factual arguments with regard to the study conducted by Naples to support the noise restriction. *See City of Naples Airport Authority v. FAA*, 409 F.3d 431, 434-35 (D.C. Cir. 2005). The FAA had decided that the Naples Airport Authority's ban on Stage 2 aircraft was unreasonable because the Part 161 study concluded that 60 dB was the maximum acceptable noise level for surrounding communities. *Id* at 435. The FAA reasoned that the 60 dB level was unreasonable because "(1) local ordinances did not 'unequivocally prohibit' development in areas subjected to noise levels of DNL 60 dB or higher; and (2) the area presently subjected to DNL 60 dB was not 'uniquely quiet.'" *Id.* The court disagreed, noting that the City of Naples indeed had passed ordinances using 60 dB as a threshold and noting further that the "area is a retirement community; that the area is one of outdoor living; and that aircraft noise is the leading cause of noise complaints." *Id.* Finally, the court determined that the FAA had not identified in the record any real evidence to support the FAA's rejection of the Naples Airport Authority's noise study and determination that the noise regulation was justified.

2. Airport and Airway Improvement Act of 1982

The Airport and Airway Improvement Act of 1982 established the Airport Improvement Program, which itself established the procedures by which airport proprietors may apply for and receive airport development funds under the AIP. Under the statute, airport proprietors that accept federal grant money for airport improvement or development projects are required by statute to give the FAA a number of assurances regarding the operation of that airport. (As noted above, the City has received such AIP funds and has agreed to abide by the required assurances.)

One of these assurances states that "the airport will be available for public use on reasonable conditions and without unjust discrimination." 49 U.S.C. § 47107(a)(1). An FAA guidance document reiterates this obligation: "[t]he owner of any airport developed with Federal grant assistance is required to operate it for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination." *FAA Order 5190.6A, Airport Compliance Requirements,* Section 4-13 (1989); *see also FAA Order 5100.38A, Airport Improvement Program Handbook*, Appendix 1, at ¶ C.5 (1999).

This requirement, sometimes referred to as the "economic nondiscrimination" assurance, curtails an airport proprietor's ability to restrict particular classes or types of aircraft, potentially even where such a restriction serves a salutory goal such as regulating airport noise or congestion. If the airport proprietor fails to comply with the grant assurances, the FAA is authorized to suspend the grant and withhold further payments and, if corrective action is not taken, to terminate the grant. 14 C.F.R. §§ 152.503(a), 152.505(a). Of the statutory constructs cited in this memo, this has spawned by far the most prolific litigation.

3. Aviation Safety and Noise Abatement Act of 1979 ("ASNA")

Strictly speaking, ASNA (Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) does not impose limits on the airport proprietor. It does establish, however, the basis on which the FAA will provide technical and financial support for airport noise

compatibility studies since the late 1970's, and such support is provided pursuant to the ASNA is implemented by Part 150 promulgated in 1985 (14 C.F.R. § 150) ("Part 150"). The Part 150 program allows airport proprietors to voluntarily submit noise exposure maps and noise compatibility programs to the FAA voluntarily for review and approval by FAA.

The FAA is authorized to provide AIP funding for airport noise compatibility planning (i.e., the preparation of the noise exposure maps and the noise compatibility program) and for noise projects (i.e., measures approved by the FAA in a noise compatibility program). However, such funding is available only if there are residential units within the day-night average sound level ("Ldn") 65 dB contours for an airport. Accordingly, the City would have to demonstrate that there are residential units within that contour in order to obtain Federal financial assistance for a Part 150 study.

Under ASNA and Part 150, a noise compatibility program sets forth the measures that an airport operator proposes for the reduction of existing noncompatible land uses and the prevention of additional noncompatible land uses within the area covered by noise exposure maps. According to the FAA, the Part 150 program allows airport operators substantial latitude to submit a broad array of measures (including innovative measures) that respond to local needs and circumstances. See, e.g., Final Policy on Part 150 Approval of Noise Mitigation Measures: Effect on the Use of Federal Grants for Noise Mitigation Projects, 63 Fed. Reg. 16409-16414 (April 3, 1998).

However, ASNA requires that any Part 150 airport noise compatibility study be approved only, in keeping with ASNA's general strictures, (1) if the program measures do not create an undue burden on interstate or foreign commerce; (2) if the program measures are reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and (3) if the program provides for its revision if necessitated by the submission of a revised noise exposure map. In addition, the study will be approved only if the flight procedures for noise control can be implemented without:

(i) Reducing the level of aviation safety provided;

(ii) derogating the requisite level of protection for aircraft, their occupants and persons and property on the ground;

(iii) adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems; or

(iv) adversely affecting any other powers and responsibilities of the Administrator prescribed by law or any other program, standard, or requirement established in accordance with law.

14 C.F.R. § 150.35(b)(3)(i-iv).

The program has very specific requirements for public participation. Under the rules, program documentation submitted to the FAA must show that the airport proprietor consulted with the following officials/entities: FAA officials, state officials, public and planning agencies within the Ldn 65 dB contours, other Federal officials having local responsibility for land uses within the Ldn 65 dB, air carriers, and other aircraft operators to the extent practicable. In addition, Part 150 requires the submission of detailed 5-year noise exposure maps, together with the noise compatibility program if the airport is seeking simultaneous approval of the maps and program, which are designed to demonstrate the extent of the noise impact on communities around an airport. (A technical description of the requirements of these maps can be found at Appendix A to Part 150 in 14 C.F.R.)

Each noise compatibility program must consider a number of noise abatement alternatives, some of which are similar to those already suggested to the City. The alternatives include the following:

(1) Acquisition of land and interests therein, including, but not limited to air rights, easements, and development rights, to ensure the use of property for purposes which are compatible with airport operations;

(2) the construction of barriers and acoustical shielding, including the soundproofing of public building;

(3) the implementation of a preferential runway system;

(4) the use of flight procedures (including the modifications of flight tracks) to control the operation of aircraft to reduce exposure of individuals (or specific noise sensitive areas) to noise in the area around the airport.;

(5) the implementation of any restriction on the use of an airport by any type or class of aircraft based on the noise characteristics of those aircraft. Such restrictions may include, but are not limited to the following list. It is not necessary for all of these potential restrictions to be examined in each noise compatibility program, so long as a program gives consideration to at least one type of restriction;

(i) Denial of use of the airport to aircraft types or classes which do not meet Federal noise standards;

(ii) capacity limitation based on the relative noisiness of different types of aircraft;

(iii) requirement that aircraft using the airport must use noise abatement takeoff or approach procedures previously approved as safe by the FAA;

(iv) landing fees based on FAA certificated or estimated noise emission levels or on time of arrival; and

(v) nighttime restrictions;

(6) other actions or combinations of actions which would have a beneficial noise control or abatement impact on the public;

(7) other actions recommended for analysis by the FAA for the specific airport.

(FAA Part 150 Noise Compatibility Study Checklist, IV. Consideration of Alternatives.)

After a 180-day period, the FAA will issue a decision either approving or disapproving a proposed program or portions of a program. However, approval does not necessarily equate to funding; instead, where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office (or FAA regional office) in the geographic region of the airport. In sum, although the FAA review process requires only six months, the preparation of the materials to be submitted in connection with Part 150 is relatively time-consuming and expensive. Thus, while the Part 150 noise compliance study process may well lead to both FAA approval of certain noise abatement procedures and funding for the undertaking of such procedures, the City should seriously consider the time and financial commitment required to undertake such a study, and the extent to which even a successful Part 150 approval would result in limiting noise effects on the community.

4. Airline Deregulation Act of 1978

Finally, to the extent that the City were to attempt to regulate commercial airline operations, the Airline Deregulation Act preempts any state or locality from enforcing any law or regulation "related to [the] price, route or service" of air carriers. 49 U.S.C. § 41713(b)(1). The Act does exempt state actions taken pursuant to proprietary powers or rights, but as discussed below, the scope of such rights has been subject to intense litigation and remains somewhat ambiguous.

5. Other Non-Federal Restrictions

It is worth noting that the City's contract with any fixed base operator, as well as the flight schools based at LVK, also may constrain the City's ability to impose limitations on use of LVK. This memorandum does not address those questions.

III. The Scope of the Airport Proprietor's Rights

As noted above, airport operators possess certain proprietary rights with respect to the management of their airport. Although the scope of an airport proprietor's authority is limited by the statutes, regulations and agreements referred to above, the proprietor may retain some authority to take action to control noise, regulate congestion or address other

environmental concerns. *American Airlines v. DOT*, 202 F.3d 788, 806 (5th Cir. 2000). In its proposed noise abatement policy, the FAA characterized its understanding of the airport proprietor's rights as follows:

> "Airport Proprietors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optimal site location, improvements in airport design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the Federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate … commerce."

65 Fed. Reg. 43802, 43818 (July 14, 2000) (emphasis added).

The FAA further explained that these "proprietor's rights" are also limited by assurances provided for in any grant agreements it has entered into with the FAA – "[t]hese obligations include the duty to ensure that the airport is available for public use on fair and reasonable terms and without unjust discrimination, and that no restriction results in the establishment of an exclusive right." *Id.* at 43817. Indeed, in *U.S. v. Westchester*, the District Court held that an evening curfew on flights constituted a breach of the obligation of the airport under its grant assurances to make the airport available at all times. *See U.S. v. Westchester*, 571 F. Supp. 786 (S.D.N.Y. 1983).

Federal requirements conflicting with local rights often create tensions, and aviation is no exception. The desire of the airport owner to manage the operation of its airport may conflict with the federal requirements prescribing open and nondiscriminatory access. The case law interpreting the tension between an airport operator's proprietary rights and the statutory nondiscrimination requirements in federal law provides some guidance on how to resolve this tension. In the leading cases on an airport operator's attempted exercise of its proprietary powers, the courts have concentrated their analyses on the reasonableness and the

potentially discriminatory effects of the airport operator's regulatory actions. These decisions strongly suggest that,

1. the airport proprietor's rights are subordinate to the Commerce Clause and statutory restrictions such as the ANCA and AIP grant assurances.

2. before attempting to restrict airport use, an airport proprietor must conduct detailed studies analyzing the proposed restrictions to show that the restrictions are reasonable, not arbitrary and not unjustly discriminatory. *See* 14 C.F.R. § 161.305.

The leading case in which an airport proprietor was allowed to limit use of its airport is *Western Air Lines, Inc. v. Port Authority of New York and New Jersey*, 658 F. Supp. 952 (S.D.N.Y. 1986), *aff'd* 817 F.2d 222 (2d Cir. 1987). In that case, the federal courts upheld, against a challenge by an airline, a 1500 mile perimeter rule enacted by the Port Authority to alleviate congestion at LaGuardia by preserving the short-haul status of that facility.[3] In upholding the perimeter rule, the district court noted that the Port Authority had conducted studies of the proposed perimeter rule, groundside delays and congestion, as well as LaGuardia's airside capacity. *Western Air Lines*, 658 F. Supp. at 659. The court stated that these studies concluded that the perimeter rule was "necessary to meet increasing congestion problems" at LaGuardia. *Id.* at 960. Therefore, the court concluded that the perimeter rule was reasonable and justified. *Id.* In addressing the question of whether the perimeter rule was discriminatory, the court stated that "[t]he critical inquiry is whether that discrimination is unjust; or to put it another way, whether the discrimination is reasonable in light of the legitimate objectives sought to be achieved." *Id.* at 959. The court found that the Port Authority did not deliberately discriminate against Western, and that any discriminatory effect of the perimeter rule was reasonable in light of the legitimate objectives sought. *Id.* at 958-59.[4]

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[3] The perimeter rule at LaGuardia was implemented in 1984, and prohibited nonstop operations to the airport exceeding 1500 miles. *Western Air Lines*, 658 F. Supp. at 953. The purpose of this rule was to maintain LaGuardia's status as a short-haul airport used primarily by business travelers, and to direct "long range aircraft, and with it the leisure traveler" to Newark and JFK. *Id.* at 959.

[4] It is worth emphasizing that LaGuardia's perimeter rule at issue in *Western Air Lines* was adopted and upheld by the court prior to the enactment of ANCA and promulgation of Part 161. In order to adopt a local perimeter

On the other hand, in *New England Legal Foundation v. Massachusetts Port Authority*, 883 F.2d 157 (1st Cir. 1989), the court struck down a landing fee pricing scheme because the landing fee had an undue discriminatory effect on smaller aircraft. *Id.* at 173. In doing so, the court relied on the DOT administrative law judge's findings that the landing fee structure was not scientifically derived, and therefore not reasonable. *Id*. at 164. The court also affirmed that the landing fees were proposed and implemented as a means of restricting or eliminating small aircraft operations at Logan Airport, and thus were unjustly discriminatory. *Id.*

Even in situations where congestion management is not the point of the airport proprietor's proposed restriction, unjust discrimination is prohibited. *City and County of San Francisco v. FAA*, 942 F.2d 1391 (9th Cir. 1991). In that case, a San Francisco noise regulation prohibited the operation of retrofitted Boeing 707 aircraft (the so-called Q707) at SFO. *Id.* at 1393. The FAA found that the exclusion of the Q707 was unjustly discriminatory, and in violation of 49 U.S.C. § 2210(a)(1) and the Airport's federal grant assurances. *Id.* at 1394. The Ninth Circuit Court of Appeals affirmed that decision. *Id.* at 1397. As a result, SFO lost its eligibility to receive federal grant monies for several years. *Id.* at 1401. Thus, the prohibition against unjust discrimination applies to any restrictions imposed by a local airport proprietor.

In *American Airlines v. DOT*, 202 F.3d 788 (5th Cir. 2000), *aff'g Love Field Service*, DOT Order 98-12-27 (Dec. 22, 1998), the City of Fort Worth and Dallas-Forth Worth Airport ("DFW") sought to enforce certain agreements between the air carriers and the DFW Airport Board requiring that interstate air carrier service occur at DFW and limiting competing air carrier service at Love Field Airport, which is owned by the City of Dallas.[5] DOT opened a proceeding to investigate whether DFW had overstepped its authority as an airport proprietor and ultimately concluded that the agreements to limit service at Love Field

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rule today, it appears that any such rule would be subject to review and approval by the FAA under Part 161 procedures.

[5] When DFW was built, the local bond ordinance required Dallas and Fort Worth to phase their individual local airports (including Dallas' Love Field) out of service and transition air carrier service to the new regional airport, DFW. These agreements were entered into pursuant to this ordinance. *American Airlines v. DOT*, 202 F.3d at 793.

were not enforceable. In upholding the DOT declaratory ruling, the Fifth Circuit Court of Appeals held that the agreements restricting service at Love Field were an impermissible use of the DFW's proprietary powers. The court emphasized that a proprietor's right to enact a rule restricting access to an airport depends on "*if it articulates a need for the restriction.*"[6] *Id.* at 807 (emphasis in original). Thus, the court sought to determine if there was a "reasonable and nondiscriminatory" reason for the limitation "aimed at advancing a previously unrecognized local interest." *Id.* at 808. In finding no justification for the restrictions at Love Field, the court found that the local restrictions were preempted under the ADA. *Id.*

In *Arapahoe County Public Airport Authority v. FAA*, 242 F.3d 1213 (10th Cir. 2001), the Court of Appeals for the Tenth Circuit determined that the Arapahoe County Public Airport Authority's attempt to ban scheduled passenger commuter air service at Centennial Airport was unreasonable and arbitrary. The Airport Authority argued that it had the authority to ban scheduled commercial air carrier service (while continuing to allow general aviation operations) at the airport under its proprietary powers in order to regulate the safe operation of the airport and to satisfy the public's civil aviation needs. *Id*. at 1222. In rejecting this reasoning, the Tenth Circuit concluded that there was a "dearth of evidence to support the Authority's claim that the ban . . . is necessary due to ground congestion, operational safety and environmental impact concerns" and that the Authority "unreasonably exercised its proprietary powers" to ban scheduled service. *Id.* at 1223. In reaching this decision, the court noted that the determination of whether the justification that an airport proprietor advances for the reasonableness, nondiscriminatory and non-arbitrary nature of a rule is a factual one for which the airport proprietor bears the burden of proof. *Id.*

Thus, the case law demonstrates that an airport operator must make a strong showing, based on objective evidence, that the propose restriction is reasonable, nonarbitrary and not unjustly discriminatory. Accordingly, if the discriminatory effect encompasses a particular class of air carriers and/or appears to lack a reasonable, scientific basis, it will likely be determined to be an impermissible use of an airport operator's proprietary powers.

[6] The DOT has indicated that it will rely on its prior decisions, such as *Love Field Service,* for guidance when examining new congestion management proposals such as those currently being proposed for LaGuardia.

See New England Legal Foundation, 883 F.2d at 169-70. Moreover, the airport operator bears the burden of proof of justifying the basis for any such local restriction and the reasonableness of the lines that have been drawn. *Arapahoe County Public Airport Authority*, 242 F.3d at 1223. These standards are in addition to the criteria established by ANCA and Part 161 for any new local noise or access restriction (see discussion above at Section II.A.1).

In sum, the limited scope of proprietor rights after ANCA, AIP, ADA and related legislation, the strict requirements for reasonable and non-discriminatory treatment, and for avoiding undue burdens on interstate and foreign commerce, will affect whether and to what extent the City legally may implement measures controlling uses at LVK.

V. Federal Limitations on Local Control of Aircraft Flight Paths and Times of Operation

As the discussion above indicates, the airport proprietor essentially is limited to taking actions that are directly related to the operation of its own airport, such as assuring appropriate land use. Federal law completely preempts the legal authority of local communities relating to overflights.

1. Limiting Major Airport Overflight Paths and/or Timing:

Federal law completely preempts the legal authority of local communities relating to overflights.

Thus, to the extent that complaints about aircraft noise relate to flights leaving from or on the way to land at Oakland International Airport or San Francisco International Airport, the City does not have any legal authority to control the flight paths of such aircraft, or the timing of their passage above the City. The Federal regulatory scheme simply does not permit local entities to control or regulate federal airspace. The FAA's comprehensive explanation of its duties and its preemption of state and local action in the area of aeronautics is instructive:

The principal aviation responsibilities assigned to the Federal Aviation Administrator and since 1966 to the Secretary of Transportation, under the Federal Aviation Act of 1958, as amended, 49 U.S.C. 40101 et seq., concern promoting the development of civil aeronautics and safety of air commerce. The basic national policies intended to guide our actions under the Federal Aviation Act are set forth in section 103, 49 U.S.C. 40101(d), which provides public interest standards, including: (1) Assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce; (2) Regulating air commerce in a way that best promotes safety and fulfills national defense requirements; (3) Encouraging and developing civil aeronautics, including new aviation technology; (4) 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; (5) Consolidating research and development for air navigation facilities and the installation and operation of those facilities; and (6) Developing and operating a common system of air traffic control and navigation for military and civil aircraft. To achieve these statutory purposes, sections 307(a), (b), and (c) of the Federal Aviation Act, 49 U.S.C. 40103(b), 44502, and 44721, provide extensive and plenary authority to the FAA concerning use and management of the navigable airspace, air traffic control, and air navigation facilities. The FAA has exercised this authority by promulgating wide-ranging and comprehensive Federal regulations on the use of navigable airspace and air traffic control . . . . In legal terms the Federal government, through this exercise of its constitutional and statutory powers, has preempted the areas of airspace use and management, air traffic control and aviation safety. The legal doctrine of preemption, which flows from the Supremacy Clause of the Constitution, is essentially that state and local authorities do not have legal power to act in an area that already is subject to comprehensive Federal regulation.

65 Fed. Reg. 43812 (July 14, 2000)

That being said, the City may wish to work closely with the Airport Noise Offices at Oakland International Airport and San Francisco International Airport to help residents gain information about flight tracks, and thus the sources of the noise at a particular time at a particular location. Both these airports have real-time aircraft tracking (with a short time delay for security reasons). Hence, a person at a particular location in Livermore could determine from the appropriate airport noise office which aircraft from what air carrier was above or close to that location at a given time. Such information would then empower the individual resident to deal directly with the operator of the aircraft, or with the FAA, which has the legal authority to take remedial action, rather than the City, which does not.

2. Flight Path Relocation by Local Ordinance: Santa Monica/Ontario/Orange County

From time to time, members of the public suggest that the flight paths for aircraft may be affected by new local ordinances. These persons often cite the flight paths for arriving and departing flights at Orange County, Ontario and Santa Monica in support of that proposition. However, the flight paths of arriving and departing aircraft at those airports are not mandated by the local airport proprietors. Rather, they are the result of agreements entered into by the local government, residents and pilots. Under the agreements, pilots are encouraged to use specific flight paths. Indeed, Santa Monica's airport website explains that "Pilot Actions/Aircraft Operations are under the sole jurisdiction of the Federal Aviation Administration. As a result of the 1984 Airport Agreement, Santa Monica Airport has certain 'requests' and 'ordinances' which coincide with the airport's 'Fly Neighborly' program." http://santa-monica.org/airport/n_flight_paths.aspx.

In fact, the City has already been working with local pilot groups and the FAA to encourage the use of particular flight paths for aircraft approaching and leaving LVK. Note, though, that these flight paths relate only to operations in the immediate vicinity of the airport, not operations conducted by aircraft not approaching or departing the relevant airport. As a practical matter, the routing of aircraft in as congested an airspace as that of the

Bay Area is complex, and the movement of a particular flight path even by a few miles is likely to have significant consequences for management of the whole regional airspace. For this reason, it is unlikely that the airlines or the FAA would be particularly receptive to ideas for the rerouting of commercial aircraft heading to or from major international airports which happen to pass over or near the City. Without that cooperation, the City would not be able to exert any control of the routes followed by those aircraft.