



421 Aviation Way
Frederick, Maryland 21701

T. 301-695-2000
F. 301-695-2375

www.aopa.org

September 16, 2008

The Honorable Mark Epley
Mayor, Village of Southampton
23 Main Street
Southampton NY, 11968

RE: Southampton Village Code Chapter 39

Dear Mayor Epley:

The Aircraft Owners and Pilots Association (AOPA), represents more than 415,000 pilots nationwide, including over 14,500 in the State of New York. AOPA respectfully submits these comments to bring your attention to an unconstitutional law that is presently written into the Southampton Village Code.

Pilots rely on access to the National Airspace System (NAS) in connection with their flight activities and AOPA has always been in the forefront of efforts to keep the nation's airspace open and accessible to all aviation activities without unreasonable restrictions.

The law in question, Southampton Village Law Amendment to Code 39, Use Of The Village Heliport, Section 3, paragraph 39-5C, "Other Restrictions," prohibits certain routes for aircraft ingressing and egressing the Southampton Village Heliport. While the Village government has the authority to dictate the use of the actual landing pad, the airspace above the heliport is exclusively governed by the Federal Aviation Administration (FAA), and cannot be pre-empted by local or state law.

AOPA has two issues concerning the village's aircraft landing approach code. First, by dictating the directions in which flight activity may or may not be conducted over the village, the code purports to regulate aircraft in flight, which is a subject matter preempted by extensive federal regulation and interest. Second, AOPA is concerned that the breadth of the code could set a precedent for even more intrusive local regulation of national airspace. For example, if the village believes that it can prohibit flight over certain areas, there would appear to be no logical reason why the village could not prohibit any flight within its physical boundaries. Clearly, such a regulation could not stand. The code appears to differ only in degree and should be declared invalid.

The Federal Aviation Act (FAAct) provides that "The United States of America is declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States..." (49 U.S.C. 1508 (a)). The FAAct grants to the Administrator of the Federal Aviation Administration (FAA), by delegation from the U.S. Secretary of Transportation, broad authority to regulate the use of the nation's navigable airspace "to ensure the safety of aircraft and the efficient utilization of such airspace" and to assure "the protection of person and property on the ground" (49 U.S.C. 1348 (a)), (c)). The FAAct also declares, "to exist on behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States" (49 U.S.C. 1304).

Honorable Mark Epley
Page 2
September 16, 2008

Pursuant to these various provisions, the FAA has promulgated detailed and comprehensive rules and regulations governing flight activities including such matters as 1) the certification, maintenance, and repair of aircraft; 2) the training and licensing of pilots; 3) the establishment of air routes and procedures; and 4) the prescription of minimum flight altitudes, including minimums for flights over congested or crowded areas.

The FAA has sole responsibility for the adoption of any air traffic or airspace regulation in the United States. States, local governments, and airport operators may not regulate in a preempted area. Case law fully supports federal preemption of air traffic and airspace management. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *Allegheny Airlines v. Village of Cedarhurst*, 238 F.2d 812 (2d Cir. 1956); *American Airlines v. Town of Hempstead*, 398 F. 2d 369 (2d Cir. 1968); *British Airways Board v. Port Authority of New York and New Jersey*, 564 f.2d 1002, 1010 (2d Cir. 1977). (Congress has reserved for airport proprietors an “extremely limited” role in the system of aviation management...common sense requires that the exclusive control of airspace be preserved at the national level. Communities are preempted from attempting to regulate planes in flight.”)

As outlined above, no state or local government may regulate aircraft operations through its police powers. Regardless of the intent of the county in proposing its ordinance, the ordinance plainly regulates the flight of aircraft in navigable airspace. Therefore, the code is preempted and is not enforceable.

For the reasons stated above, The Village of Southampton has no power to ban or regulate flights in navigable airspace, which have been authorized and regulated in detail by the Federal Government. Any attempt to enforce the code represents an impermissible attempt to regulate in an area preempted by the Federal Government.

Sincerely,



Melissa Rudinger
Vice President
Regulatory Affairs

cc: Ms. Edie Williams, FAA
Ms. Astrid C. Glynn, NY DOT
Mr. Seth Edelman, NY DOT, Bureau of Aviation
Mr. Greg Pecoraro, AOPA