April 21, 2025

Via Electronic Mail

Amanda Farías, Chair
Committee on Economic Development
New York City Council
City Hall Park, NY 10017
afarias@council.nyc.gov

RE: Bill No. 0026-A: Regulating Helicopter Operations at City Owned Heliports to Reduce Noise

Dear Majority Leader and Chair Farías:

As representatives of the above-captioned national and regional associations and on behalf of the aviation community – including thousands of general aviation and commercial pilots, fixed based operators, and numerous airports and other interested entities – we strongly oppose Bill No. 0026-A which is currently pending before the Council's Committee on Economic Development. The federal safety regulator, the Federal Aviation Administration (FAA), must remain the ultimate authority on aircraft operations in order to maintain the highest levels of safety in the national airspace system. As such, this legislation is preempted by federal law and exceeds the powers of the City.

In brief, the Bill would prohibit helicopters that do not meet federal "Stage 3" noise emission standards from conducting "non-essential" operations at the two Manhattan heliports owned by the City – the Downtown Manhattan Heliport (JRB) and the East 34th Street Heliport (6N5). The explicit motivation for this Bill is to reduce the impact of noise from operations at the heliports. The helicopter industry already endeavors to understand and reduce its impact on neighbors, and the Manhattan heliports are already subject to unique restrictions on operations.

But not only would this Bill have significant negative impacts upon those heliports and the many organizations, businesses, and industries that they support, it also would have devastating

economic and safety ramifications on New York City and the surrounding areas that rely on these heliports for air transportation, including emergency and medical transportation. For example, without the revenue from all of the types of flights that the heliports currently accommodate, their operation would become financially unsustainable.

Moreover, the Bill also is preempted by federal law and as a result exceeds the powers of the City. This letter is intended to address that issue, and why for that reason the Committee and the Council as a whole should decline to consider the Bill. As the Supreme Court explained in *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 633-34 (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."

Accordingly, the City must understand that as a general principle, aviation noise and operations are regulated at the federal level only, and not by states or municipalities.

Notably, the Airport Noise and Capacity Act of 1990 (ANCA; 49 U.S.C. § 47524) specifically prohibits the imposition of new noise-based and other operational restrictions at public airports (including heliports) absent very specific circumstances – including the preparation of a detailed analysis of the justifications for any restrictions, in addition to other procedural and substantive requirements. *See* 14 C.F.R. Part 161. The Bill purports to comply with ANCA by directing the contracted operators of the heliports to comply with ANCA – but that process must be conducted by the City itself. Neither ANCA nor the operator contracts enable the City to delegate the compliance requirements of the statute (much less to require the contractors to incur the millions of dollars in expenditures that would be required).[1]

Further, a U.S. statute prohibits "exclusive rights" at aeronautical facilities which have accepted federal aid at any time since 1938. *See* 49 U.S.C. § 40103(e). That prohibition applies to both JRB and 6N5, which historically have accepted various forms of federal support, including both FAA-funded and FEMA-funded grants. FAA has emphasized that this statute prohibits "constructive exclusive rights" – *i.e.*, one category of operations at an airport cannot be allowed access while another is denied access. But that is precisely what the Bill would do. Operations with certain helicopters (*i.e.*, meeting or exceeding Stage 3 standards) would be allowed even if "non-essential" while others would not – and the definition of "essential" is itself facially arbitrary and capricious (*i.e.*, it is not limited to public safety operations but also includes any activity that could be deemed news-gathering as well as commercial photography). This is a further reason that the Bill is inherently in conflict with federal law and cannot be adopted by the City.

Federal law also prohibits the state or local regulation – directly or indirectly – of the prices, routes, and services of air carriers. *See* 49 U.S.C. § 41713(b). The commercial operations at the

[1] Additionally, the existing restrictions at the heliports also likely do not comply with ANCA and other federal statutes – and if the Bill is adopted, it is expected that not just its provisions but all of the restrictions will be challenged.

heliports (including both passenger transportation and tourism operations) are largely conducted by air carriers, with authority issued by the FAA pursuant to 14 C.F.R. Part 135. Accordingly, the City's proposal to dictate what aircraft such operators can utilize at those facilities, in addition to the purposes for which they may operate, is also squarely impermissible. *See, e.g., In re Changes in Physical Structures and Use at Burlington International. Airport*, 117 A.3d 457, n.10 (Vt. 2015) ("[t]he federal government has specifically preempted the states from regulating the type of aircraft that are authorized to use an airport").

To the extent that the City may be implicitly relying on a prior court decision, which allowed certain restrictions to be imposed at 6N5 (*see National Helicopter Corp. v. City of New York*, 137 F.3d 81 (2d Cir. 1998)), as a foundation for the Bill, it should be aware that decision was narrowly decided and does not justify the current proposal. For example, to the extent *National Helicopter* held that a "proprietor exception" to Section 41713(b) provided a basis for certain operational restrictions, the court also specified that the City could not discriminate among different types of helicopters (*see id.* at 91). Moreover, that case did not address ANCA or Section 40103(e). *See Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133, 153 (2d Cir. 2016).

Finally, the Bill is likely to have significant effects on the environment – for example, by re-directing helicopter traffic to other facilities of which the City is not the proprietor and over which it accordingly has no jurisdiction, including the West 30th Street Heliport (JRA),[2] and heliports in New Jersey. But the City has made no effort to comply with the requirements of the State Environmental Quality Review Act (SEQRA), which require that it analyze the impacts of the Bill. The courts recently confirmed that the proprietor of an airport in New York cannot impose restrictions on operations at that facility, which would have consequences elsewhere, but only study the environmental outcomes after-the-fact. *See East End Hangars, Inc. v. Town of East Hampton*, 208 N.Y.S.3d 645, 225 A.D.3d 861 (2nd Dept. 2024). In this case, not even a *post hoc* SEQRA study is planned by the City; the environment is simply ignored. As a result, the Bill not only is inconsistent with federal law, but with state law as well, and must be withdrawn.

We thank you for your consideration of this information and would welcome the opportunity to engage, provide testimony to or share further data with the Committee and Council. We urge that this Bill does not advance and strongly recommend that the City obtain and consult with counsel experienced in aviation law before taking any further action on legislation applicable to helicopters, heliports, and aeronautical facilities and operations.

[2] That heliport is owned by, and operated under a contract with, the Hudson River Park Trust. The City also lacks any police-based power to regulate aircraft and flight operations at JRA. *See, e.g., International Aerobatics Club v. City of Morris*, 76 F.Supp.3d 767, 782 (N.D.Ill. 2014).

Sincerely,

Cade Clark, Chief Government Affairs Officer
Vertical Aviation International

Jeff Smith, President
Eastern Region Helicopter Council

Ed Bolen, President and CEO
National Business Aviation Association

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Jim Viola, President and CEO
General Aviation Manufacturers Association

Curt Castagna, President and CEO
National Air Transportation Association

CC: New York City Council – Bill Sponsors and Committee Members
New York City Corporation Counsel
EDC General Counsel
Atlantic Aviation
Skyports Infrastructure