City of
Santa Monica®

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April 22, 2008

Kevin L. Solco
Acting Director, Airport Safety and Standards
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Enforcement of Santa Monica's Aircraft Conformance Program
Ordinance No. 2251 (CCS)

Dear Mr. Solco:

Yesterday, you communicated to Santa Monica Airport Director Robert Trimborn the FAA's demand that Mr. Trimborn take specified actions by the close of business today. The actions include withdrawing his letter of April 14, 2008 notifying aircraft users that the City Council had adopted Ordinance No. 2251 ("Ordinance"), which prohibits the operation of Category C and D aircraft at Santa Monica Airport, in order to protect public safety. Your communication warns Mr. Trimborn that if he fails to accede to the demand, the FAA will issue a cease and desist order requiring that the City refrain from enforcing City Ordinance No. 2251 pending the outcome of the administrative proceeding, which the FAA initiated over five years ago and recently attempted to "revive" through issuance of an Order to Show Cause. Your letter claims that the proceeding was "stayed," but in fact there was no stay and the 120 day period for decision expired without extension.

Before responding to your demand, I must express the City's objections to the FAA's process. As you are aware from the City's response to the Order to Show Cause, the City is represented by counsel in this proceeding. Any communications you issue should be addressed to counsel listed on that pleading, not to the Airport Director. The necessity of your doing so is particularly obvious under these circumstances: you threatened legal action and required a response within one day.

In the context of this more than five year old dispute, your demand appears both unreasonable and misdirected on its face. The FAA is well aware that the Ordinance was adopted according to the standard process dictated by state and local law. There were multiple public hearings over the course of several months, four of which your agency attended. Even after the Ordinance was approved on first reading, the second reading was postponed to ensure ample opportunity to explore possibilities that might have existed for a cooperative resolution. Thus, the City Council took the time to carefully consider both the safety of the community and the FAA's arguments against the Ordinance. Ultimately, the Council concluded that the Ordinance should be adopted to ensure safe and appropriate operation of the City's Airport. The Council's authority cannot be circumvented by simply demanding that the Airport Director immediately withdraw a letter

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intended to implement City law and policy by giving fair notification of the new law to aircraft operators.

Additionally, your communication with Mr. Trimborn is further evidence that this process is infected with prejudgment. As explained, at length, in the City's response to the Order to Show Cause, the FAA has already decided the matter. Months ago, Associate Airport Administrator Shaffer decreed, in writing, that the Ordinance is "flatly illegal". Yesterday, the FAA's counsel, conveyed a letter which asserts, without any basis in fact, that there will be dire consequences if the Ordinance goes into effect. This assertion is apparently based solely on the number of operations by noncompliant aircraft within the last year. It ignores the fact that fractional operators have publicly stated that their participants may easily use compliant aircraft and that charter aircraft users may do the same. Thus, the statements in yesterday's communications perpetuate the FAA's practice of prejudging the outcome of this proceeding. The threatened cease and desist order against the City would only constitute further evidence of the FAA's bias. Such blind prejudgment has no place in governmental process. Even if your agency remains determined to ignore standard requirements of Due Process in its efforts to place the convenience of a small percentage of Airport users above public safety, you should consider the FAA's reputation. It can only be protected, or perhaps salvaged, by treating the City fairly and reasonably in this case.

To date, you have not done so. The FAA asserts that no emergency exists at this time that warrants implementation of the City's ban on C and D operations at the City's Airport. The FAA further asserts that the City is somehow attempting to "divest the FAA of its jurisdiction over its administrative process". Both statements are patently unreasonable. As the extensive record on file with the FAA clearly demonstrates, the Airport facilities are not, according to the FAA's own standards, adequate for C and D aircraft. There are no runway safety areas, and there are homes in singularly close proximity to the runway ends. The City is responsible and liable for the Airport's operation. The City must keep the Airport safe and is simply attempting to implement the FAA's own safety standards.

The City acted prudently to address these risks. The Ordinance was adopted through the standard municipal process – indeed, as explained above, that process was extended to ensure a full opportunity for consideration of the FAA's concerns and possible solutions.
And, it was adopted to fulfill the most basic of governmental duties – the duty to keep the public safe. Your assertion that this effort is undertaken to divest your agency of jurisdiction reveals stunning self-absorption or institutional paranoia.

Nor, contrary to your assertions, does the law require that an emergency exist prior to the adoption of the Ordinance. Like your agency, the City serves the public and does so, by among other things, adopting laws that protect public health and safety. Moreover, as Airport proprietor, the City must both protect the public and safeguard against liability for failure to keep the Airport safe. Your agency's assertion that C and D aircraft have been using SMO for over twenty years without incident would not, even if true, establish that the City may not meet the

FAA's own safety standards. The FAA's argument to the contrary is as foolish as saying that if a city bridge designed to handle 10,000 pound vehicles has been able to support some 25,000 pound vehicles in the past, the City is therefore required to allow all such overweight vehicles to use the bridge in the future. Indeed, if the "tombstone mentality" evidenced in your letter were national policy – which it is not – compliant runway safety areas would only be required at those airports which had already experienced serious runway overrun accidents.

Simply put, the law does not require Santa Monica to suffer a catastrophe in order to qualify to meet FAA runway standards. In recent years, the number of faster aircraft operating at the Airport has increased significantly. At the same time, federal acknowledgement of the importance of runway safety areas has grown. Indeed, James Hall, who served as Chairman of the NTSB for six years, concluded in his Declaration, on file in this case, that runway safety areas are "critically important" and "especially important to safety at [Santa Monica Airport] due to its unique topography and close proximity to residential housing." He also concluded that in the absence of meeting the federal standards, "Category C and D aircraft should not be permitted to operate due to the serious risks of injuries and deaths."

The City, as a prudent airport operator, cannot ignore these realities. And, we are confident that implementation of the Ordinance will greatly enhance public safety while only minimally inconvenience Airport users. When the Ordinance was adopted, there were about 25 C and D aircraft per day at the Airport. When the law goes into effect on April 24, 2008, the operators of affected aircraft can and will either switch to compliant aircraft or make adequate arrangements at one of the surrounding airports where C and D operations do not create serious safety risks. They have choices. The City simply does not have the choice of ignoring the growing safety risk.

Nor should the FAA ignore it. Your agency is already under criticism and pressure from Congress for putting aviation industry convenience ahead of public safety. The City urges you to change your course and steadfastly put safety first. Even if you will not, or cannot, the City must. Therefore, it must respectfully decline to withdraw Mr. Trimborn's letter notifying pilots that the Ordinance will go into effect on April 24th.

Very truly yours,

Marsha Jones Moutrie

MARSHA JONES MOUTRIE
City Attorney

cc: Mayor and City Council
P. Lamont Ewell, City Manager
Bob Trimborn, Acting Airport Director
Marty Tachiki, Deputy City Attorney
Frank San Martin, Office of Chief Counsel, FAA