September 9, 2002

City of Garland
Legal Department
P.O. Box 469002
Garland, TX 75046-9002

Re: Garland City Ordinance, Article XI. Aviation

To Whom It May 'Concern:

This is to advise you that certain sections of Garland City Ordinances (Ordinance) have been brought to the attention of the Federal Aviation Administration (FAA) by the Aircraft Owners and Pilots Association (AOPA). The concerns center around issues of Federal preemption in the aviation arena.

The section of the Ordinance specifically questioned by AOPA is:

Sec. 33.1251. Minimum altitude.
It shall be unlawful for any person to operate or fly any aircraft over the city at a lower altitude than twenty-five hundred (2,500) feet from the earth's surface. This section shall not apply to aircraft during the final approach for landing and normal climb for takeoff.

On special occasions and for exhibition or educational purposes or for photographer's work, the City Council may authorize aircraft exhibitions or flights at lower altitudes than specified in this section to be conducted under the direction of the council.

Section 10.05 appears to provide that a violation of the above-cited section is punishable by a fine not exceeding five hundred dollars ($500.00).

Congress has vested the FAA with exclusive responsibility for developing plans and policy for the use of the navigable airspace and assigning by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of the airspace of the United States.
49 U.S.C. §40103. The regulation of aircraft in flight is preempted by Federal law, and limitations on aircraft flight may only be imposed by the FAA. See, City of Burbank v. Lockheed Air Terminal, 411 U.S. 624 (1973); Blue Sky

1We have not been able to determine when this section of the Ordinance became effective.

Entertainment v. Town of Gardiner, 711 F.Supp. 678 (1989); U.S. v. New Haven, 496 F.2d 452 (2nd Cir. 1974); American Airlines v. Town of Hempstead, 272 F.Supp. 226 (E.D.N.Y. 1967); aff'd, 398 F.2d 369 (2nd Cir. 1968); cert. denied, 393 U.S. 1017 (1969); and Allegheny Airlines v. Village of Cedarhurst, 238 F.2d 812 (2nd Cir. 1956).

The above cited section of the Ordinance pertains to aspects of aircraft flight that the FAA already regulates. The FAA prescribes the altitude at which aircraft may operate over a congested area. 14 C.F.R. §91.119. Thus, we conclude that the above section of the Ordinance not only conflicts with, but is also preempted by Federal law.

Sections 33.123, 33.124, and 33.126 of the Ordinance were not specifically questioned by AOPA. Although we are not issuing an opinion on whether those sections may also be preempted by Federal law, you may want to review them in light of the attached FAA opinion issued several years ago to the State of Tennessee and the cases referenced above.

Lynette Word
Regional Counsel Southwest Region

Attachment

cc: Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, MD 21701