
From: Teresa Takaoka
Sent: Tuesday, October 5, 2021 2:27 PM
To: CityClerk
Subject: FW: Oct 5th staff report re: Preserve etc.

Late corr

From: William Wynder <wwynder@awattorneys.com>
Sent: Tuesday, October 5, 2021 2:17 PM
To: sharon yarber <momofyago@gmail.com>; Ara Mihranian <AraM@rpvca.gov>
Cc: CC <CC@rpvca.gov>
Subject: RE: Oct 5th staff report re: Preserve etc.

CAUTION: This email originated from outside of the City of Rancho Palos Verdes.

Ms. Yarber – I write to respond to your e-mail below. As an initial response, your reference to “avigation” and “aviation” easements are both correct, they are synonyms. However, such easements have nothing to do with overflights and control of airspace over real property. These easements have to do with commitments of property owners not to construct to a particular height or in a particular location on or near an airport. Attached is an exemplar of such an F.A.A. approved easement: https://www.faa.gov/airports/central/airports_resources/media/RPZeasement.pdf

With respect to our legal opinion included in the staff report, the same was simplified for the sake a brevity given the breadth of the subject matter addressed in that report. If you are interested in a more “legalize” analysis, I am pleased to provide the same (which has been shared with the City Council).

By virtue of 49 U.S.C. §§ 106(g), 40103-104, 40113, 44701, as implemented in the Code of Federal Regulation, commencing at Title 14, federal law affords the F.A.A. exclusive authority to regulate and enforces all flight rules, including overflights, of “ultralight vehicles.” Paragliders, parasails, or hang gliders, are defined in federal law as “ultralight vehicles.” See, 14 CFR § 103.

Title 14, beginning with Sub-Part B, identifies regulated activities of ultralight vehicles. The extent of F.A.A. regulatory authority, as you will see, is extensive. Among these regulations relevant to the scope of the City’s regulatory authority, 14 CFR § 103.15 **prohibits** flights over “congested areas.” While “congested areas” are not defined in these federal regulations, certainly overflights of residential areas are prohibited under federal law. 14 CFR § 103.17 also **prohibits** “ultralight vehicle[s] within Class A, Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless that person has prior authorization from the ATC facility having jurisdiction over that airspace.”*

Accordingly, ultralight vehicles are not prohibited from operating in uncontrolled air space (meaning below 700 feet above ground level (“AGL”)), Class G airspace (meaning no higher than 1,200 feet AGL), or in Class E airspace (which can be measured as between 1,200 and roughly 4,000 feet above AGL or, depending on the F.A.A. map governing a particular airspace, above mean sea level (“MSL”)) **provided** that such operations occur beyond the “lateral boundaries of an airport.”

We are advised that "lateral boundaries of an airport" has been interpreted by the F.A.A. to mean beyond 5 nautical miles of an airport. LAX is more than five nautical miles from any part of the City. However, we are advised that both Torrance and Long Beach airports are within five nautical miles of some parts of the City.

Based on the above, it is our legal opinion that regulating ultralights over RPVs airspace is pre-empted by the F.A.A.'s regulatory authority and, at best is not recommended, and, at worst, will be practically impossible to enforce within defined airspace. And it is our recommendation to continue to prohibit the launching and landing in the city which has that land use authority in regards to ultralights.

Hopefully, this responds to your question.

*Under the regulations, there are two categories of airspace are: regulatory and nonregulatory. Within these two categories, there are four types of airspace: controlled, uncontrolled, special use, and other airspace. The categories and types of airspace are dictated by the complexity or density of aircraft movements, nature of the operations conducted within the airspace, the level of safety required, and national and public interest.

These are categorized as Class A through E and G airspace. In some areas, the Class E airspace begins is 1,200 feet AGL. In many other areas, the Class E airspace begins either at the surface or 700 feet AGL. Some Class E airspace begins at a mean seal level ("MSL") instead of an AGL altitude. Uncontrolled airspace or Class G airspace is the portion of the airspace that has not been designated as Class A, B, C, D, or E. It is therefore designated uncontrolled airspace. Class G airspace extends from the surface to the base of the overlying Class E airspace. https://www.faa.gov/air_traffic/publications/atpubs/aim_html/chap3_section_2.html#O8C3b6ROBE

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CC 10/05/2021

cannot enforce regulations over airspace, and it was necessary for Staff to recraft the ordinance for reintroduction. Additionally, clarification was also realized to the section of the ordinance pertaining to e-bikes.

In response to the August 17 direction to further clarify the City's ability to regulate airspace over the City, the City Attorney's Office has prepared a legal analysis included in this staff report for the City Council's consideration. Attached is a draft ordinance (Attachment A) that reintroduces the amendments to Chapter 12.16 from the August 17 meeting, as well as includes the following proposed modifications for the City Council's consideration:

1. Repeal and replace RPVMC 12.16.020 to prohibit motorized vehicles, motorized bicycles, and electric bicycles in parks, Preserve, and recreational facilities.
2. Add RPVMC 12.16.170 to regulate commercial activities (including vending) and industrial activities in parks, Preserve, and recreational facilities.

DISCUSSION:

The following discusses the City Attorney's legal analysis on the City's ability to regulate airspace over the City, along with proposed modifications to Ordinance 650 introduced at the August 17 meeting.

Legal Analysis on Prohibiting Overflights of City Airspace

While Staff had originally proposed to prohibit such overflights, based on regulations adopted by the County of Los Angeles, at the request of the Mayor Pro Tem, the City Attorney was asked to provide a legal analysis of the City's regulatory authority of its airspace. Based on that analysis it is the further considered the opinion of the City Attorney that the City lacks such regulatory authority.

The federal government regulates and enforces airspace. The City, however, can regulate where any kind of aircraft (with or without engine) can take off and land, airports, helipads etc. as this is considered a matter of local land use. The City cannot regulate paragliders, parasailing, or hang gliders using airspace because such regulations would be preempted and enforced by the Federal Aviation Administration (FAA).

Based on the above, the legal opinion of the City Attorney is that the City cannot regulate the use of airspace over the City by ultralight aircrafts (i.e. paragliders) but can regulate the launching and landing, which is already regulated in the RPVMC.

Amendments to Chapter 12.16 of the RPVMC

On August 17, 2021, the City Council received information and justifications for four amendments to Chapter 12.16 of the City's Municipal Code pertaining to renaming RPVMC Chapter 12.16; Protection of flora and city facilities; E-bike use in parks, Preserve, and City facilities; and Commercial services and industrial activities in Parks,