

Presentation on Legal Constraints for 10/4 Council Hearing re Santa Monica Airport

Council Meeting of 10/4/11

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Introduction

The City of Santa Monica owns and operates Santa Monica Airport. However, constraints imposed by federal law significantly limit the City's authority and control over the aviation activities that occur at the Airport. Those constraints fall into several categories.

I. Federal Laws

A. Statutes - found in Title 49 of the US Code

1. The Federal Aviation Act (49 U.S.C. § 40103)
2. The Airline Deregulation Act (49 U.S.C. § 41713)
3. The Airport Noise Capacity Act (49 U.S.C. §§ 47523 – 47533)

Because of the national interest in aviation, Congress has created the Federal Aviation Administration (FAA) and delegated to that agency broad authority over matters relating to aviation safety and air commerce. The FAA's realm of authority includes the use and management of navigable airspace, aviation safety, air traffic control, air navigation facilities, and airport development, among other things. The FAA exercises its authority in many ways, including by promulgating and enforcing administrative regulations.

Congress has also recognized that airport proprietors have proprietary rights. But, Congress has not clearly delineated the extent of those rights.

B. Administrative Regulations - (Title 14, Chapter 1: FAA, Dept. of Transportation)

Regulations particularly important to the City in recent years have included the Part 16 regulations, which relate to the compliance and enforcement of obligations derived from the receipt of federal grants for airport development and the conditions, and the Part 161 regulations, which implement the Airport Noise Capacity Act and establish procedures applicable to, among other things, changes in airport operations and noise management.

C. Other Administrative Enactments

In addition to regulations, the FAA also promulgates other directives and guidelines, including the Compliance Manual (FAA Order 5190.6B), which tells federally obligated grantees how to comply with federal grant assurances or conditions.

D. FAA Administrative Decisions

In addition to promulgating regulations, the FAA conducts quasi-judicial hearings and issues administrative decisions, which decide the rights of the parties to the hearing and also establish a body of law interpreting the FAA's own regulations. For example, the FAA has issued administrative decisions invalidating local limits on pattern flying activities and other airport access restrictions. As to Santa Monica, the FAA issued an administrative decision invalidating the ban on Category C&D aircraft operations, which the City had adopted in order to promote runway safety.

E. Court decisions

From time to time, federal courts issue decisions in cases involving federal statutes and the FAA regulations that govern aviation. This body of case law also defines the rights and responsibilities of airport owners and, to a lesser extent, the FAA's authority. For instance, after the FAA invalidated the City's C&D ban, the City appealed to federal court, and the court upheld the FAA's ruling. (*City of Santa Monica v. Federal Aviation Administration*, 631 F. 3d 550 (DC Cir. 2011)). Also, after jet aircraft began using the Airport, the City adopted a number of ordinances intended to protect airport neighbors. Litigation was filed, challenging the ordinances. A federal trial court and a federal appellate court upheld most of the ordinances but struck down a ban prohibiting jets from using the Airport. (*Santa Monica Airport Ass'n v. City of Santa Monica*, 481 F. Supp. 927, 935 (C.D. Cal. 1979), aff'd, 659 F.2d 100, 104 (9th Cir. 1981)).

II. Contracts and Legal Instruments

In addition to being limited by laws and judicial or quasi-judicial decisions, the City's authority over the Airport is also limited by contracts and legal instruments.

Over the years, the City and the federal government have had many interactions involving the Airport. The most significant of these are noted in the informal history of the Airport, which City staff has prepared to give the community information about the Airport. Some of these interactions between the FAA and the City have resulted in the creation of contracts or instruments that relate to authority over the Airport.

A. The 1948 Instrument of Transfer - Before World War II, the City had owned and operated the Airport for about forty years. In support of the war effort, the City leased the Airport to the federal government. This was done partly to protect the huge Douglas Aircraft factory at the Airport, which employed a large number of Santa Monica residents. During the War, the federal government made improvements to the Airport and some land was added to the Airport property. After the War, the federal government and the City executed the Instrument of Transfer when the property was returned to the City.

The Instrument of Transfer includes conditions. These include operating the Airport without unjust discrimination or the creation of exclusive rights. The FAA and the City disagree about the impact of the Instrument of Transfer on the City's ability to close the Airport. The

FAA believes that the Instrument of Transfer effectively prohibits the City from closing the Airport; the City believes that it does not.

B. The 1984 Agreement - After jet aircraft began using the Airport, the City adopted ordinances restricting Airport usage and even considered closing the Airport. Litigation followed. Ultimately, to resolve disputes about operation of the Airport, the City and the federal government negotiated and signed the 1984 Agreement. The 1984 Agreement includes a promise by the City to operate the Airport until 2015. It also releases some Airport land, allowing that land to be used for non-aviation purposes.

Additionally, the 1984 Agreement contains some operational restrictions. They were incorporated into the City's Municipal Code. Examples include the decibel limit and the prohibition against helicopter operations. Other airports have different restrictions and most have less stringent restrictions than Santa Monica. Most operation restrictions at General Aviation airports were adopted many years ago and could not be adopted now without the FAA's permission.

Among the operational restrictions in the 1984 Agreement are prohibitions against two classes of pattern flying: touch and go operations (in which a pilot or student touches down on the runway and immediately takes off again) and stop and go operations (in which the pilot or student touches down on the runway, stops, and then takes off again). The 1984 Agreement does not prohibit taxi back operations (in which the student or pilot touches down, leaves the runway, taxis back to the runway and takes off again).

The FAA takes the position that the expiration of the 1984 Agreement will not change the City's obligation to operate the Airport as a public airport, partly because of the Instrument of Transfer and grant assurances. The City disagrees.

C. The Grant Assurances - Over the years since the 1984 Agreement was made, the City has accepted federal grants from the FAA in order to improve and maintain the Airport. The grants include conditions (known as "assurances") to which the City, as grantee, must abide for twenty years from the making of the grant. The conditions include the requirement that the City must operate the Airport without "unjust discrimination" and or "exclusive rights". Both of those terms, and the other grant conditions, are interpreted and enforced by the FAA.

The City and the FAA disagree about when the assurances related to the last grant expire. The City believes they will expire in 2015. The FAA believes that the grant assurances do not expire until 2023.

Conclusion

A complex body of federal laws and other restrictions constrains the City's ability to alter operations at its Airport. The body of law gives the FAA broad authority over aviation safety and commerce. That reality must be carefully considered in assessing potential future options for the Airport.

