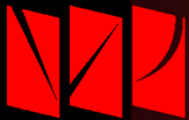


Public Meeting Regarding Extent of City Power to Control Aircraft Noise



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Primary sources of law

- Supremacy Clause of the Constitution
- Commerce Clause of the Constitution
- FAA Grant Assurances
 - (especially Assurance 22)
- Airport Noise and Capacity Act/Part 161
- Aviation Safety and Noise Abatement Act/Part 150

U.S. Constitution: Supremacy Clause

- Supremacy Clause: federal law trumps state and local law
- Federal Aviation Act
 - Federal government has exclusive sovereignty of the airspace – 49 U.S.C. § 40103
 - State and local regulation is generally preempted
 - *City of Burbank* – “proprietor’s exception”
- Adjudicated in federal and state courts

U.S. Constitution: Commerce Clause

- Dormant Commerce Clause: State and local governments cannot take actions to unduly burden or discriminate against interstate commerce
- Any restrictions must be:
 - Reasonable under the circumstances
 - Carefully tailored to local needs
 - Based upon data which support the need
 - Not unduly restrictive of interstate commerce
- Enforced in state or local court

What are Grant Assurances?

- Contractual commitment by airport proprietor to the U.S. government in exchange for grant funds
- Basic structure in effect for decades
 - Since Federal Airport Act of 1946
- Required by, and implement, federal law (49 U.S.C. § § 40103, 47107)
- Grant assurances allow FAA to enforce *contractually* many of the obligations of federal law
 - Puts FAA into enforcement role
 - 14 C.F.R. Part 16

Grant Assurance 22.a

Obligated airport must:

“make the airport available as an airport for public use *on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities*, including commercial aeronautical activities offering services to the public at the airport.”

Enforcement of grant obligations

- Generally apply for life of improvement (up to 20 years)
- Rise of Part 16 enforcement is critical to noise restriction reviews
- FAA is aggressive in enforcing both grant assurances and federal law
 - Santa Monica and Naples
 - East Hampton
 - Skydiving cases (*e.g. Bodin v. County of Santa Clara*, FAA Docket 16-11-06 (1993))

ANCA

- Airport Noise and Capacity Act (ANCA)
 - Phased out noisiest large aircraft
 - But restricts ability to adopt access restrictions for airports that wish to remain eligible for FAA grants
 - For restrictions on stage 2 aircraft, airport must complete study and public review procedures (Part 161 regulations)
 - For restrictions on stage 3 aircraft, airport must complete study *and* secure FAA approval

Aviation Safety and Noise Act

- 14 C.F.R. Part 150
- Creates federal framework for FAA review of noise compatibility
 - Day-Night Level noise metric
 - DNL 65 dB compatibility threshold
- Noise compatibility plans
 - Not mandatory
 - Vehicle for funding
 - Means of supporting noise control measures, but tied to FAA's DNL 65 threshold
 - Very expensive

History of airport use restrictions

- **Many** airports have use restrictions (*e.g.*, curfews, noise limits)
 - *The vast majority of these restrictions was enacted before:*
 - *ANCA became law in 1990*
 - *Heavier FAA enforcement through Part 16*
 - Exceptions: Naples (FL) and East Hampton (NY)
- Since 1990, very few airports have *even tried* to adopt new use restrictions
 - Only two airports have completed the ANCA process needed for FAA approval to restrict Stage 3 aircraft (LA and Burbank, CA). They were unsuccessful
 - Restrictions are expensive and likely to be challenged

Uncertainties

- Efforts to impose use restrictions since 1990 usually result in litigation
 - By FAA (Naples, Santa Monica)
 - By user groups (Naples, East Hampton)
- Lessons from Naples, Burbank, Santa Monica and East Hampton: Hurdles are –
 - Practical (detailed study)
 - Legal (litigation exposure)
 - Financial (cost of compliance; litigation costs)

Questions from community



Category 1: Ban Skydiving or Move Drop Zone?

- Can the City limit or deny access to airport property for use as a parachute landing area?
- Can City work with Boulder County to develop an alternative to the drop area at the Airport?
- Can City require use of off-airport alternative?

Category 2: Existing and Future Noise Plans?

- Doesn't the airport already have a noise abatement plan in place, per some sort of FAA mandate?
- Will the City or Airport revise its noise rules as a result of this lawsuit? Specifically, will you recommend the local noise ordinances be revised to exclude aircraft?

Category 3: Noise Below DNL 65 dB

- Can airport owner adopt reasonable regulations to reduce noise in areas that are below 65 DNL?
- What are the roles of County and City noise ordinances?

Category 4: FAA Part 150

- Under what circumstances would the FAA require a 65 DNL noise study be completed and who is required to pay the cost?
- Is a Part 150 noise study required in order to adopt any regulations to address community noise concerns?

Category 5: Requirements to Use Different Equipment/Limit Louder Aircraft

- Can the City mandate that Mile-Hi utilize different equipment in their operation?
- Can the City ban the loudest aircraft?

Category 6: Restrictions on or Regulation of Uses

- In consideration of the frequent and unreported off-site parachute landings, and Mile-Hi's operation during periods of high winds, can the City require that skydivers have a "C" or higher license?

Category 7: Operational Rules and Restrictions

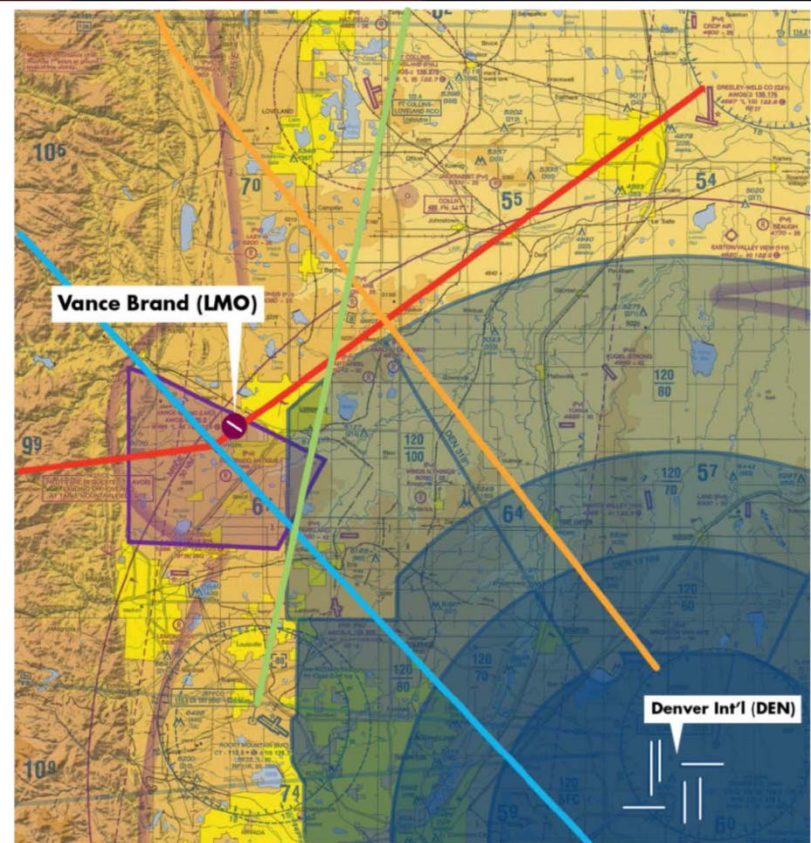
- Can the city disallow mid-runway takeoffs?
- Can the City limit an operator's hours of operation, especially on weekends? If not, why?
- Can touch and go's be eliminated or at least regulated such as allowing them only once per month and limiting each pilot to 3 before they must then "move on" to somewhere else.
- According to the FAA Matrix of Noise Control Actions, the airport proprietor has the authority to adopt "Limitations on Number or Types of Operations or Types of Aircraft" without FAA approval. Do you agree? If not, why would the provisions in this FAA circular not apply?
- What prohibits the City from managing aircraft operations and noise impacts within it's city limits?

Category 8: Role of FAA Grants

- If the Airport closed, would the City need to repay grants?
- If the Airport stopped taking grant funds, how many years would need to elapse before the Airport could impose restrictions or close airport?
- If grant assurance monies are paid back, could Airport place operational restrictions on Mile Hi or terminate leases without consequences or litigation?

Category 9: Seeking FAA Approvals

- Can the City seek changes to the Mile Hi flight box?



LEGEND

- DIA TOMSN Four Arrival Gate/V85
- DIA RAMMS Five Arrival Gate/V575
- Victor Airway V220

Category 11: Examples from Other Airports

- East Hampton Airport in New York
- Naples, Florida
- *Sea Air NY, Inc. v. City of New York*

Category 12: Role of Complaints

- What role do complaints play in supporting restrictions?
- What complaints should count?
- How does City distinguish between legitimate complaints and frivolous ones?
- What actions are the city taking with people who repeatedly make frivolous complaints, and waste city resources and money?