

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

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: 20 years
- Violation is enforced *only* by FAA
 - Though administrative adjudication
 - In federal court if necessary
- FAA is aggressive and consistent in enforcing both grant assurances and federal law
 - Santa Monica and Naples litigation
 - East Hampton
 - Skydiving cases

ANCA and ANSA

- Airport Noise and Capacity Act (ANCA)
 - Requires approval for noise and access restrictions
 - Stage 2 and Stage 3 aircraft
 - FAA approval
- ANSA – Part 150
 - Tool for noise and access restrictions
 - Not mandatory
 - Vehicle for funding
 - Very expensive

History of airport use restrictions

- Many airports have use restrictions (*e.g.*: curfews, noise limits)
 - *Almost every one of these restrictions was enacted before ANCA became law in 1990*
 - Exceptions: Naples (FL) and East Hampton (NY)
- Since 1990, very few airports have *even tried* to adopt use restrictions
 - Only two airports have completed the Part 161 process needed for Stage 3 aircraft (LA and Burbank, CA). They were unsuccessful
 - Restrictions are expensive and risky
 - \$5 M budgeted for East Hampton
 - Over \$1M for Naples

Airport Noise Report, 5/29/15

- “[T]he slate of litigation against East Hampton’s noise restrictions demonstrates the scorched-earth legal tactic that much of the general aviation industry is employing against any new airport noise restrictions.”
- 6 current lawsuits

Other Measures

- Development decisions
- Use of airport funds
 - Limitations exist
 - Sound insulation
- Advocacy with FAA
- Agreements with operators

CFQS v. Mile Hi

- Court denied Plaintiffs' claims
- Found state law generally preempted
- City noise ordinance preempted
- Part 150 the exclusive means of addressing noise
 - Note: This is inconsistent with FAA guidance and practice
- Did not find noise to be significant or severe
- Did not find measurable impact on property values