

AIRPORT NOISE AND OPERATIONS: WHAT THE CITY CAN AND CANNOT DO

City of Longmont

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LEGAL FRAMEWORK: PREEMPTION

The Supremacy Clause, U.S. Constitution Art. VI, Cl. 2:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”



FEDERAL CONTROL OF AIRSPACE AND SAFETY

- “The United States Government has exclusive sovereignty of airspace of the United States.” 49 U.S.C. § 40103(a)(1).
- FAA has the exclusive authority over:
 - Aircraft in flight
 - Air traffic control
 - Flight paths
 - Flight procedures (STARs, SIDs, NextGen, etc.)



FEDERAL CONTROL OF AIRCRAFT NOISE

- Noise Abatement and Control Act (1968) and Noise Control Act of 1972
 - Directed FAA (with EPA) to establish noise standards for aircraft
 - Noise regulation at its source is federal responsibility
 - Research into effects of noise on public health
 - 14 C.F.R. Part 36, *Noise Standards*
 - *New aircraft are required to meet noise certification standards*
 - *Introduction of “stage” ratings for aircraft*



LIMITED STATE AND LOCAL AUTHORITY

- *Lockheed Air Terminal v. Burbank* (1972)
 - Non-Proprietor Curfew Preempted
 - Proprietors' Exception: Proprietors may adopt reasonable, non-discriminatory, non-arbitrary access restrictions

FEDERAL LIMITS ON PROPRIETARY POWERS

- FAA grant agreements and assurances
 - Commitments to FAA in exchange for grants
 - FAA provides guidance in its Airport Compliance Manual
 - FAA can enforce through grants and in court
 - Has found restrictions to violate grant assurances
- Airport Noise and Capacity Act & 14 C.F.R. Part 161
 - New restrictions on Stage 3+ require FAA approval
 - FAA has not approved ANY restrictions on Stage 3 or higher aircraft under ANCA
- Constitutional Limits (Equal Protection, Due Process, Commerce Clause, etc.)



GRANT ASSURANCE 22

- City 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.”

CITY AUTHORITY OVER NOISE IMPACTS



Land use authority over nearby property (zoning)



Voluntary cooperative program with local pilots and businesses



Complaint reporting



Flight track design in cooperation with FAA

FAA ON TOUCH-AND-GO OPERATIONS

- **FAA Order 5190.6C, *Airport Compliance Manual*, ¶ 14.8:**
- ***Restrictions on Touch-and-Go Operations.*** A touch-and-go operation is an aircraft procedure used in flight training. It is considered an aeronautical activity. As such, it cannot be prohibited by the airport sponsor without justification. For an airport sponsor to limit a particular aeronautical activity for safety and efficiency, including touch-and-go operations, the limitation must be based on an analysis of safety and/or efficiency and capacity, and meet any other applicable requirements for airport noise and access restrictions explained in chapter 13 of this Order, *Airport Noise and Access Restrictions*.



FAA ON TOUCH-AND-GO OPERATIONS

- Compliance Manual ¶13.12:
- Restrictions must:
 - be justified by an existing noncompatible land use problem (65 DNL);
 - be effective in addressing the identified problem without restricting operations more than necessary; and
 - reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.

FAA RULES ON TOUCH-AND-GO OPERATIONS

- Compliance Manual ¶13.14:
- FAA balances
 - Part 150 and Part 161 compliance
 - Is noise problem defined based on 65 DNL standard
 - Is restriction a rational response to proven noise problem
 - Were non-restrictive measures considered first
 - Was same methodology used to establish compatibility and restriction
 - Are compatibility standards the same for all noise sources
 - Is sponsor facing noise liability



HOW DOES FAA VIEW TOUCH-AND-GO RESTRICTIONS?

FAA has found that touch and go restrictions violate Grant Assurance 22

Aircraft Owners and Pilots Ass'n v. City of Pompano Beach, FAA Docket No. 16-04-01, Director's Determination at 11 (Dec. 15, 2005)



Touch-and-go restrictions are a national issue



Affects flight safety, training and could have spillover effects

WHO CAN CONTROL AIRCRAFT NOISE?

- FAA Has Exclusive Control Over
 - Aircraft in Flight, Flight Procedures, Air Traffic Control, Pilots
 - Noise at Source
- Proprietary Power to Adopt Restrictions Sharply Limited
 - Subject to FAA review under Grant Assurance 22
 - Constitutional limits
- Non-Proprietary Powers
 - Zoning and Land Use Outside Airport Fence, including expansion



ATTEMPTS TO EXERCISE PROPRIETARY AUTHORITY

Centennial
Passenger Service
Ban

Struck Down

Naples Stage 2 Jet
Ban

Upheld*

Santa Monica
Approach Category
C&D Ban

Struck Down*

Pompano Beach
Touch and Go Ban

Struck Down

East Hampton
Helicopter Curfew
and Noise Limits

Struck Down
(ANCA)*

Lantana Jet
Restrictions

Struck Down*

Westchester County
Terminal Restrictions

Struck Down (ANCA)

POSSIBLE CONSEQUENCES OF UNILATERAL ACTION

Preliminary Injunction to enforce FAA Cease and Desist Order

Santa Monica



Administrative litigation by FAA and user groups

Loss of grant funding

Injunction



Federal/State litigation by user groups

TOWN OF SUPERIOR V. JEFFCO, 2026

COA 14

- Town of Superior and Boulder County sued to enjoin touch-and-go operations by piston powered aircraft to abate an alleged nuisance caused by noise and emissions
- March 28, 2025: Court granted JeffCo's Motion to Dismiss because the Court is preempted from enjoining or regulating flight operations. Town of Superior and Boulder County appealed.
- March 12, 2026: Court of Appeals affirmed dismissal of noise claims and remanded for further analysis of emissions claims. JeffCo's petition for rehearing on emissions issues is pending.
- Plaintiffs have sought review by Colorado Supreme Court.

TOWN OF SUPERIOR V. JEFFCO: OPINION



Holding: Federal law preempts non-proprietor state and local governments from enacting laws to restrict aircraft operations



Holding: Federal law preempts courts from requiring proprietors to restrict aircraft operations

Town of Superior v. JeffCo: Opinion



Court **assumed but did not decide** that a proprietor could ban touch-and-goes

¶ 22 We need not decide whether the proprietor's exception would *permit* Jefferson County to prohibit touch-and-go operations at the Airport because it did not do so. The question before us, which we turn to below, is whether the district court could *require* it to implement such a prohibition. We agree with the district court that these are two different questions. We therefore assume, without deciding, that Jefferson County has the authority as the airport proprietor to prohibit touch-and-go operations if it chooses to do so.