

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

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**IN THE MATTER OF COMPLIANCE  
WITH FEDERAL OBLIGATIONS  
BY THE CITY OF SANTA MONICA,  
CALIFORNIA**

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**FAA Docket No. 16-02-08**

**INTERIM CEASE AND DESIST ORDER**

This matter is before the Federal Aviation Administration (FAA) based on a Notice of Investigation (NOI) dated October 8, 2002, initiated by the Director of the Office of Airport Safety and Standards, and supplemented by his March 26, 2008 Order to Show Cause. The NOI and Order to Show Cause were issued in accordance with the FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings, 14 Code of Federal Regulations (C.F.R.) Part 16. The FAA's investigation seeks to determine the legality of the City of Santa Monica, California's ("the City") Ordinance adopted on March 25, 2008 ("Ordinance") banning Category C and D aircraft operations from the Santa Monica Municipal Airport (SMO).

The City's banning Category C and D jet aircraft from SMO becomes effective on April 24, 2008. The City's executive summary to the Ordinance claims it will affect approximately 7% of 130,000 annual operations or ban 9,000 Category C and D aircraft operations.

The Ordinance's stated purpose purports to be one of safety: to protect the people living adjacent to the airport and flying in aircraft using the airport. The Ordinance also claims to comport with a 1984 agreement between the City and the FAA<sup>1</sup>. The City claims the Ordinance conforms to the City's obligation under the agreement to serve category A and B aircraft at SMO and its asserted right to prohibit or limit any other type, kind or class of aeronautical use of SMO. The categories of aircraft are based on wingspan and approach speed.<sup>2</sup>

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<sup>1</sup> The 1984 Agreement is a settlement agreement between the City and the FAA. For additional explanation, see page 5 infra.

<sup>2</sup> A Category A-1 aircraft, for example, has an approach speed of less than 91 knots. A Category B-1 aircraft, for example, has an approach speed of less than 91 knots but less than 121 knots.. A Category C-1 aircraft, for example, has an approach speed between 121 knots or more but less than 141 knots. A Category D-1 aircraft, for example, has an approach speed of more than 141 knots but less than 166 knots.

On March 26, 2008, the FAA issued an Order to Show Cause under 14 C.F.R Part 16. The Order to Show Cause directed the City to show cause as to why the FAA should not supplement the existing Part 16 investigation (begun in 2002 when a similar Ordinance was proposed<sup>3</sup>) with the facts pertaining to the adopted Ordinance. The Order to Show Cause also expressly determined and stated the need to expedite said investigation and issuance of the initial determination pursuant to 14 C.F.R. § 16.11 because the Ordinance will take effect April 24, 2008.

On April 1, 2008, FAA denied the City's request for an extension of time to file its response to the Order to Show Cause without prejudice and with an opportunity to renew if the renewal was based upon an agreement to suspend enforcement of the Ordinance while the investigation remained pending.

On April 7, 2008, the City filed its response to the Order to Show Cause.

By letter dated and delivered on April 21, 2008, by e-mail, facsimile and express mail to the City and its counsel, the FAA requested that, by close of business Tuesday April 22, 2008, the City withdraw its April 14, 2008 letter to the aeronautical users of SMO advising them of the ban, and assuring the FAA and those users in writing that the City will refrain from enforcing the ban on Category C and D aircraft operations pending the outcome of the Part 16 administrative proceeding. The FAA requested a copy of the City's withdrawal letter by close of business Tuesday April 22, 2008. The FAA's April 21, 2008 letter is attached to this Interim Cease and Desist Order.

The FAA further advised the City that should it fail to comply with this request by close of business Tuesday April 22, 2008, the FAA would issue a cease and desist order requiring the City to hold the Ordinance in abeyance in order to preserve the status quo pending the conclusion of the FAA's investigation. The City responded by letter dated April 22, 2008, copy attached, refusing to withdraw the April 14, 2008 letter to the aeronautical users and which again stated the City's intention to enforce the Ordinance effective April 24, 2008.

While all of the issues raised by the City are being addressed in the on-going investigation and will be decided in the FAA's forthcoming initial determination, the FAA finds it necessary to issue this Interim Cease and Desist Order pursuant to 14 C.F.R. §§ 16.31(d) and 16.109(a), because the City has failed to comply with our request to withdraw the letter to the users and advise the FAA that it is refraining from enforcement of the Ordinance pending the final outcome of the Part 16 administrative proceeding. Furthermore, while we have not yet issued the initial Director's determination, we can make a preliminary finding that the City's ban on operation of these aircraft is likely unlawful. Accordingly, it is our view that the Ordinance cannot be allowed to go into effect, since doing so will foreclose operations by aircraft with a present right to utilize SMO. The City's ban would be unfounded while the Part 16 administrative proceeding addressing its legality is ongoing.

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<sup>3</sup> On October 8, 2002, the FAA issued a Notice of Investigation under Part 16 initiating an investigation into the legality of a Santa Monica Airport Commission recommendation that the City Council adopt an Aircraft Conformance Program (ACP) that, like the present 2008 Ordinance, would restrict aircraft operations at SMO up to Category B-II aircraft, thus excluding Category C and D jet aircraft. The City responded to the NOI on November 2, 2002, and did not adopt an Ordinance but entered into discussions with the FAA that continued until recently in 2008 when it adopted the new but substantially similar Ordinance.

Enforcement of the Ordinance on April 24, 2008, can only be interpreted as an attempt to divest Category C and D aircraft operators of their right to use SMO and the FAA of its jurisdiction over its administrative process to which the City, as a federally obligated airport, must adhere. SMO is an important general aviation reliever for Los Angeles International Airport (LAX) in a regional airspace and airport system that is already strained in terms of available airports. Furthermore, Category C and D aircraft operations have been landing and taking-off safely from SMO for over twenty years. There is no emergency requiring an immediate ban, and there is no safety or other basis for a change in the status quo that would bar these operations.

Airport design standards for facilities such as runways are based on the operational and physical characteristics of the aircraft that use the airport. FAA airport design standards are used so that all airport elements meet the requirements for the most demanding aircraft that is expected to have 500 or more annual itinerant operations at the airport, It is not inherently unsafe for an aircraft of a larger design category to utilize an airport that has been designed to accommodate a lesser design category of aircraft if the aircraft meets the FAA approved operational requirements for using SMO. The FAA strictly regulates the safe operation of aircraft from certification (e.g. 14 C.F.R. Part 25) to the manner in which the aircraft is operated (e.g. 14 C.F.R. Part 135). Both types of regulations cover runway length requirements. Moreover, pilot certification, and the operation of a particular aircraft/flight, including the amount of required runway for a take off and landing, are all regulated by the FAA.

There are also a number of separate reasons why the City's Ordinance is likely an unlawful ban. All of these have been communicated previously to the City and are discussed briefly below.

#### Federal Grant Assurance Obligations

Title 49 of the United States Code, § 47101, et seq., provides for Federal financial assistance for the development of public-use airports like SMO under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Section 47107 and the grant contract, set forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding obligation between the airport sponsor and the Federal government.

Between 1985 and 1994, the Airport received a total of \$9.7 million in Federal airport development assistance. Because the City's AIP grants have not been used for purchasing land, most of the corresponding AIP grant assurance obligations are effective for 20 years. Since 1994, the City has not received new grants and the City's last grant amendment was in 2003.

Assurance 22, Economic Nondiscrimination, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a) (1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport

“will make its 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.”  
Assurance 22(a)

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. As such, it may not deny reasonable access to aeronautical users.

Title 49 USC § 40103(e) states that “[a] person does not have an exclusive right to use an air navigation facility on which Government money has been expended.”

49 USC § 47107(a)(4) provides, in pertinent part, that “a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport.”

Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances requires and subsumes the statute’s pertinent parts, so that the sponsor of a federally obligated airport:

“will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public... . It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities... .”

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

The City’s Ordinance raises grave concerns under each of these statutory and grant assurance provisions since, if effective, the Ordinance would bar categories of operators currently serving SMO, and in doing so would favor other categories of operators. Consistent with the City’s obligations discussed above there can be no basis for allowing the City to begin enforcing its unilateral ban while the legality of that ban is under question and is subject to ongoing administrative investigation.

Contrary to the City’s arguments in the on-going Part 16 investigation, the FAA has independent jurisdiction to address the proprietary authority and preemption issues. These issues are tied to enforcement of the assurances under 49 U.S.C. §§ 40103(e), 40113, 47122, and 47107.

### The 1984 Settlement Agreement

In June 1981, the Santa Monica City Council enacted a resolution calling for closure of SMO. That action resulted in extensive litigation against the City by airport associations, the FAA. The litigation resulted in a negotiated settlement memorialized on January 31, 1984, referred to as the 1984 Santa Monica Airport Agreement (“1984 Agreement”). The agreement was executed by the City and the FAA and resolved all “existing litigation and/or administrative complaints pending between the parties.”

The 1984 agreement restates the City’s Federal obligations including that of Assurance 22 to permit reasonable access to aeronautical users. In Section 8 of the agreement, the City committed to “operate

and maintain the Airport as a viable functioning facility without derogation of its role as a general aviation reliever, or its capacity in terms of runway length and width, taxiway system, and runway weight bearing strength”. Section 9 requires the City to maintain continuously the one designated runway (3/21) which is 5,000 feet long and 150 feet wide. The agreement also provides in Section 2 that SMO “is to be open and available to and for public use as an airport on fair and reasonable terms and without unjust discrimination, and without granting any exclusive rights prohibited by law” and recognizes that “exclusive authority is vested in the FAA for the regulation of all aspects of air safety, the management and control of the safe and efficient use of the navigable airspace, and movement of aircraft through that airspace” in connection with SMO.

The City, ostensibly for safety reasons – an area within the “exclusive authority” of the FAA – is poised to restrict access of two categories of users to SMO that are currently permitted to utilize SMO without restrictions. Again, it would be imprudent to allow that action, which appears to be directly contrary to its federal grant assurance obligations as set forth in the 1984 Agreement; to take place before the underlying legality of the City’s Ordinance has been determined by the FAA. By enforcing the ordinance, the City seeks to take unilateral action, despite the City’s knowledge that the FAA believes the ordinance is likely unlawful and beyond the airport’s authority to enforce.

#### Surplus Property Act Restrictions

Deeds issued under the Surplus Property Act (SPA), 49 U.S.C. § 47151, such as the 1948 SPA Instrument of Transfer that transferred SMO to the City, contain restrictive covenants similar to AIP grant assurance obligations such as providing reasonable access to aeronautical users without unjust discrimination. The SPA obligations run in perpetuity until released by the FAA. The SPA deed also provides the FAA with the right to revert the airport to the federal government for violation of the deed covenants.

The United States executed an “Instrument of Transfer” dated August 10, 1948” (*1948 Instrument of Transfer*)<sup>4</sup> in which the federal government surrendered its leasehold interest in the Santa Monica Airport, and transferred it together with U.S. airfield improvements back to the City. The *1948 Instrument of Transfer* remised, released and forever quitclaimed the subject premises to the City subject to reservations, restrictions and conditions specified in the transfer document

Two of the restrictions listed in the 1948 *Instrument of Transfer* executed between the Federal government and the City of Santa Monica, the surplus airport property instrument of disposal, are applicable here. The first provides:

“the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, *on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right* for use of the airport... .”

The second relevant restriction in the 1948 *Instrument of Transfer* independently re-states the exclusive rights prohibition:

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<sup>4</sup> 2001 Title Report sets out the 1948 Instrument of Transfer as a quit claim deed.

"no exclusive right for use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the terms "exclusive right" being defined to mean... ."

...any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft."

On the tenth of August in 1948, the City confirmed its acceptance of the *Instrument of Transfer* from the U.S Government passing Resolution No. 183. The City's acquiescence to the terms, conditions and restrictions is demonstrated by its properly approved City resolution accepting the 1948 *Instrument of Transfer*; the 1948 *Instrument of Transfer* was recorded in the County of Los Angeles on August 23, 1948 as Document No. 1746.

Pursuant to 49 U.S.C § 47151 only the Secretary may ensure compliance with an instrument conveying an interest in surplus property. Hence, the FAA has the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the SPA.

Additionally, FAA is granted the authority to release airport premises from surplus property disposal restrictions. This authority is conditioned on a finding that the release is necessary to protect or advance the interests of the United States in civil aviation. See 49 USC § 47153 and 14 C.F.R. § 155.3

Accordingly, the City's Ordinance also raises legal concerns under the Surplus Property Act since the ban on operations by Category C and D aircraft is in all likelihood contrary to the obligations contained in the 1948 *Instrument of Transfer*. Again, there is no basis, given this, to allow the Ordinance to take effect and disrupt the ongoing operations of Category C and D aircraft while the legality of the Ordinance is finally determined by the FAA.

#### The City's Arguments in Support of its Ordinance Will Be Decided in the On-Going FAA Proceeding

The FAA recognizes that the City has offered reasons why it believes the Ordinance does not run afoul of any of the provisions discussed above. Principally the City contends that the Ordinance ban on Category C and D aircraft is based on the City's assumptions that Category A and B aircraft are somehow safer on the runway at SMO than Category C and D aircraft. The City claims that growing numbers of Category C and D aircraft have begun using SMO since 1984 and exacerbate the safety risks of operating at SMO. The City therefore assumes that because category C and D aircraft may have faster approach speeds than Category A and B aircraft, they carry a higher safety risk and thus cannot operate at SMO even though the approach speeds of many jets like C-I and C-II, may at certain weights be faster than some B-II aircraft. This does not necessarily mean that they will need longer runways.

It is incorrect to categorically assume that operations of Category C and D airplanes into and out of SMO are less safe than operations of Category A and B airplanes. Airport design standards do not determine whether a given airplane can safely land or take off at a given airport; this is the function of

the airplane certification and operating rules. The airplane certification and operating rules take into account the airplane design features and characteristics (for example, airplane weight, configuration, engine thrust, stopping capability, speeds, and procedures) and the operating environment (for example, airport elevation, runway surface condition (dry or wet), runway length and slope, and atmospheric conditions such as wind and temperature) to determine the conditions under which takeoff and landing operations can be conducted. Airplane approach categories only categorize airplanes in terms of their approach speed at the maximum certificated landing weight. They are not intended to and should not be used as a sole criterion for determining whether or not a takeoff or landing can be safely conducted, nor for evaluating the relative safety risk of different airplanes for takeoff or landing.

The vast majority of existing turbojet airplanes, including those that operate at SMO, were certified in accordance with 14 CFR Part 25, *Airworthiness Standards: Transport Category Airplanes*. These certification standards apply to airplanes ranging from business jets to large airliners. These standards include requirements to determine the minimum safe distances required for the airplane to take off and land under the conditions, airplane weights, and configurations within the operating envelope defined for the airplane.

For takeoff, the current Part 25 certification rules require that an airplane be able to safely continue or reject a takeoff if an engine fails at the most critical point in the takeoff. For both takeoff and landing, the probability of the failure of any system needed to show compliance with the certification requirements must be inversely related to the severity of the failure. Failures that could result in a catastrophic outcome must be extremely improbable.

The rules under which the airplane is operated (i.e., 14 CFR Parts 91, 121, 125, 135) relate the minimum safe takeoff and landing distances determined under Part 25 to the specific operation and airport for each takeoff. The combination of the airplane certification rules and the operating rules provide the requirements and parameters under which takeoff and landing operations can be safely conducted.

The FAA does not believe that the City has demonstrated at this stage any basis for the contention that growing numbers of Category C and D aircraft decrease safety at SMO. There is no evidence that C and D aircraft are any less safe than A and B aircraft. In fact, the performance range of many B, C or even D aircraft overlap to such an extent that restricting C and D aircraft and not certain B aircraft may be judged to be unjustly discriminatory.

Moreover, not only do accident rates indicate that jets, including Category C and D types, have lower accident rates than propeller driven aircraft, larger jet aircraft have even lower accident rates than smaller jet aircraft types. There is no data to support a premise that jets have a higher overrun rate than other aircraft types, or that large jets are more prone to an overrun than small ones, or that C or D jets have a higher overrun rate than B aircraft. In fact, the overrun accident history at SMO does not support banning any type of B, C or D jets. According to NTSB data from 1981 to 2007, a period of twenty-seven years, there were 6 accidents, including two fatalities at SMO. All six accidents involved aircraft that were small piston propeller driven A-I or B-I aircraft, and not those prohibited by the Ordinance.<sup>5</sup>

In 1979, the U.S. District Court found an earlier Santa Monica Ordinance imposing a total ban on jet landings to violate the Equal Protection and the Commerce clauses of the U.S. Constitution. *Santa*

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<sup>5</sup> See NTSB database at [ntsb.gov](http://ntsb.gov)<sup>5</sup>

*Monica Airport Association v. City of Santa Monica*, 481 F. Supp. 927 (D.C C.D CA, 1979), aff'd 659 F.2d 100 (9<sup>th</sup> Cir 1981). The District Court rejected the City's safety justification for the Ordinance, finding: "as to safety, the evidence is utterly convincing that modern, small, business or executive type jets of the type that would be able to fly out of this airport with the jet ban lifted, are at least as safe, if not much safer, than the types of piston-engine fixed wing aircraft which are now allowed to use the airport." *Id.* \_

The City also attempts to justify the Ordinance as meeting FAA requirements for Runway Safety Areas ("RSAs"). RSAs enhance safety in the event of an undershoot, overrun, or excursion from the side of the runway. All airports certificated by the FAA for commercial service under 49 U.S.C. § 44706, as implemented by 14 C.F.R. Part 139 are required to build standard runway safety areas to the extent practicable by 2015. 49 U.S.C § 44706 note (2005). The RSA standard is part of FAA's airport design standards; it is not an operating requirement or condition for federally funded general aviation airports like SMO. No FAA aircraft operating rule requires a standard RSA.

There is no basis in federal law for federally funded airports to restrict access based upon runways that do not meet federal airport design standards for RSAs as claimed by the City. Moreover, at commercial service airports the RSA standard only has to be met to the extent practicable. Even if Santa Monica were a commercial service airport, standard RSAs would not be practicable because there is little leveled property at both ends. Accordingly, Santa Monica has no independent proprietary authority to restrict access based upon heightened application of federal RSA standards. Assuming arguendo that an airport proprietor has authority to exceed minimum airport design standards such as those relating to RSAs, that authority clearly may not be exercised in a manner that violates its obligations under its federal grant assurances and Surplus Property Act obligations to allow access on fair and reasonable terms without unjust discrimination. For similar reasons, SMO lacks authority to interpret FAA's Airport Reference Code ("ARC") designation to restrict access in violation of the obligations noted above.

RSAs are not considered during aircraft certification nor do they enter into the determination of the minimum runway length required under airplane operating rules. Airplanes must be able to safely operate regardless of the presence or absence of an RSA. FAA-approved Airplane Flight Manual (AFM) limitations and performance information, developed in accordance with the airplane certification requirements, are used to show compliance with the requirements applicable to that operation. When those requirements are met, there is no aircraft performance regulatory basis for prohibiting that operation.

In any event, these arguments, and any others offered by the City, will ultimately be considered in the context of the ongoing FAA proceeding. But there is absolutely no demonstrated basis, at this stage of the proceeding, and while the legality of the City's Ordinance is being examined in the context of the ongoing proceeding, for the City's attempt to ban category C and D aircraft, that have been safely operating for over twenty years at SMO.

### Irreparable Harm

The City's Ordinance, as explained above is likely unlawful in a number of respects. Allowing, an Ordinance (that may subsequently be determined to be unlawful) to subvert present operations of Category C and D airplanes is harmful on its own and its effects on the national air system. Santa

Monica is an important general aviation reliever airport for Los Angeles International Airport (.LAX). According to the City's own estimates the ban would affect over 9,000 Category C and D aircraft operations or approximately 7% of total operations at SMO. Disruption of over 9000 annual operations is a significant number for the Los Angeles region and nationally as well. For example, the FAA uses 500 annual operations as a standard for funding runways. The exclusion of 9,000 operations may also impact the travel of approximately 20,000-30,000 passengers annually.

The ban will affect interstate travel because the Category C and D aircraft are used for a substantial portion of non-stop interstate flights. This will result in a significant burden on interstate commerce.

By banning 9,000 or more operations from SMO and forcing them to use other airports, the ban affects Federal air traffic and airspace management in the greater Los Angeles region. Several other airports in the region, Los Angeles International Airport ("LAX"), Van Nuys, and Burbank, are already at capacity and many are working with the FAA to institute access restrictions. The LAX Master Plan Final EIS states that "all of the general aviation airports are constrained from large scale expansion and there is a concern to avoid displacing general aviation operations from those busy facilities into other commercial airports in the region." Diverting general aviation operations to LAX is inconsistent with SMO's reliever status obligation: to relieve general aviation operations from LAX.

Allowing one City to ban Categories of aircraft in violation of its Federal obligations will encourage other local governments to follow suit thus creating a patchwork of local laws affecting aviation which is the province of the Federal government. The ban undermines the FAA's role to ensure the safe and efficient use of airspace pursuant to 49 U.S.C. § 40103(b)(1). Permitting the City to enforce its ban during the pendency of Part 16 administrative proceedings will detract from FAA's statutory role to enforce airport grant assurances and other Federal obligations.

#### Legal Authority.

Pursuant to 49 U.S.C § 40113(a) FAA is authorized to issue orders to carry out Part A of Subtitle VII of 49 U.S.C., including section 40103(e) prohibiting the granting of exclusive rights. That section provides explicit authority for the Administrator of the FAA to "take action the . . . Administrator . . . considers necessary to carry out this part . . . ." including the authority for "issuing orders."

Pursuant to 49 U.S.C § 47122(a) the FAA may issue orders to carry out Subchapter I on Airport Improvement, sections 47101 – 47142. This subchapter includes the grant assurances requiring reasonable access and prohibiting unjust discrimination to aeronautical users.

Pursuant to 49 U.S.C. § 46110(a), FAA final orders issued under Part A or Part B of Subtitle VII of 49 U.S.C. may be appealed to the United States Court of Appeals.

Under 14 C.F.R § 16.33(d) if the Director's Determination finds the respondent in noncompliance and proposes the issuance of a compliance order, the initial determination will include notice and opportunity for a hearing under Subpart F, if such an opportunity is provided by the FAA. Section 16.109(a) of the regulation provides authority for the issuance of proposed orders of compliance including a cease and desist order in initial determinations.

The FAA recognizes that it is an unusual step to issue a cease and desist order that is effective immediately. However, no local government has previously ever taken the unprecedented action the City now contemplates. In the context of this proceeding, where the City is poised to begin enforcing a local ordinance with criminal penalties that may very well be unlawful for a host of reasons, allowing the Ordinance to take effect at this juncture in the administrative proceeding cannot be countenanced. There is no basis here for the City to alter the status quo, deprive operators of their right to use SMO and subject other airports and the air navigation system to the disruption that will ensue while the City tests its various arguments in defense of its Ordinance in the ongoing administrative proceeding. Therefore the FAA has determined that advance notice of this Order, and any opportunity for hearing prior to its effectiveness is not practical and will not be in the public interest. The FAA has therefore determined that there is good cause to make this cease and desist order effective upon issuance consistent with the FAA's authority to take action deemed "necessary" to carry out the aviation statutes, including section 40113(a).

Under the statutory and regulatory scheme, an initial Director's Determination with a finding of non-compliance and providing the opportunity for a hearing, may propose issuance of a compliance order. However because the Ordinance is effective April 24, 2008 before the Director's Determination will issue, and given the immediate and severely disruptive nature of the Ordinance, the City was provided notice on April 21, 2008 of FAA's intention to issue an interim cease and desist order. The City responded by letter dated April 22, 2008, and refused to suspend enforcement of the Ordinance.

Good cause exists for issuance of an interim cease and desist order. SMO is an important general aviation reliever for LAX in a regional airspace and airport system that is already strained in terms of available airports. Furthermore, Category C and D aircraft operations have been landing and taking-off safely from SMO for over twenty years. There is no emergency requiring an immediate ban, and there is no basis for a change in the status quo that would bar these operations. Furthermore, while we have not yet concluded our initial determination, we can make a preliminary finding that the City's ban on operation of these aircraft is unlawful. Accordingly, it is our view that the Ordinance cannot be allowed to go into effect, particularly while the FAA's proceeding is ongoing.

In order to ensure that the City has ample opportunity to respond to matters set forth in this Order the FAA is affording the opportunity for a response to be filed within 10 days. In the event that those comments articulate a basis, consistent with legal constraints and with the public interest, for allowing the Ordinance to take effect during the pendency of the FAA's proceeding we will re-visit this issue. Otherwise it is our intention that the City must be precluded from banning operations by Category C and D operators until such time that the legality of the City's proposed ban is determined, one way or the other.

**IT IS ORDERED:**

That the City of Santa Monica, California cease and desist immediately from enforcing its Ordinance banning Category C and D aircraft operations from Santa Monica Municipal Airport until a final agency decision is issued in this matter pursuant to 14 C.F.R. §§ 16.33 or 16.241(c).

That City shall publically withdraw its letter of April 14, 2008 to airport users regarding enforcement of the ordinance.

That City shall provide, within three (3) days of this order, written notification to the airport users that the Ordinance is in abeyance until completion of the FAA's administrative process.

That City shall provide a copy of the notification above to the FAA as well as the list of users to whom it was sent, no later than close of business April 28, 2008.

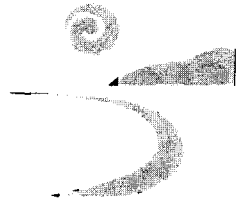
That The City may file a response to this Interim Cease and Desist Order within 10 days from the date of this Order.

That The FAA shall consider any arguments made in such response concerning conclusions reached in this order in a subsequent order.



Kelvin L. Solco  
Acting Director  
Office of Airport Safety and Standards

Date: 4/23/08



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PO Box 2200  
Santa Monica, California 90407

City of  
**Santa Monica**<sup>®</sup>

April 22, 2008

Kevin L. Solco  
Acting Director, Airport Safety and Standards  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

Re: Enforcement of Santa Monica's Aircraft Conformance Program  
Ordinance No. 2251 (CCS)

Dear Mr. Solco:

Yesterday, you communicated to Santa Monica Airport Director Robert Trimborn the FAA's demand that Mr. Trimborn take specified actions by the close of business today. The actions include withdrawing his letter of April 14, 2008 notifying aircraft users that the City Council had adopted Ordinance No. 2251 ("Ordinance"), which prohibits the operation of Category C and D aircraft at Santa Monica Airport, in order to protect public safety. Your communication warns Mr. Trimborn that if he fails to accede to the demand, the FAA will issue a cease and desist order requiring that the City refrain from enforcing City Ordinance No. 2251 pending the outcome of the administrative proceeding, which the FAA initiated over five years ago and recently attempted to "revive" through issuance of an Order to Show Cause. Your letter claims that the proceeding was "stayed," but in fact there was no stay and the 120 day period for decision expired without extension.

Before responding to your demand, I must express the City's objections to the FAA's process. As you are aware from the City's response to the Order to Show Cause, the City is represented by counsel in this proceeding. Any communications you issue should be addressed to counsel listed on that pleading, not to the Airport Director. The necessity of your doing so is particularly obvious under these circumstances: you threatened legal action and required a response within one day.

In the context of this more than five year old dispute, your demand appears both unreasonable and misdirected on its face. The FAA is well aware that the Ordinance was adopted according to the standard process dictated by state and local law. There were multiple public hearings over the course of several months, four of which your agency attended. Even after the Ordinance was approved on first reading, the second reading was postponed to ensure ample opportunity to explore possibilities that might have existed for a cooperative resolution. Thus, the City Council took the time to carefully consider both the safety of the community and the FAA's arguments against the Ordinance. Ultimately, the Council concluded that the Ordinance should be adopted to ensure safe and appropriate operation of the City's Airport. The Council's authority cannot be circumvented by simply demanding that the Airport Director immediately withdraw a letter

tel: 310 458-8336 • fax: 310 395-6727

Kevin L. Solco  
Acting Director, Airport Safety and Standards  
April 22, 2008  
Page 2

intended to implement City law and policy by giving fair notification of the new law to aircraft operators.

Additionally, your communication with Mr. Trimborn is further evidence that this process is infected with prejudgment. As explained, at length, in the City's response to the Order to Show Cause, the FAA has already decided the matter. Months ago, Associate Airport Administrator Shaffer decreed, in writing, that the Ordinance is "flatly illegal". Yesterday, the FAA's counsel, conveyed a letter which asserts, without any basis in fact, that there will be dire consequences if the Ordinance goes into effect. This assertion is apparently based solely on the number of operations by noncompliant aircraft within the last year. It ignores the fact that fractional operators have publicly stated that their participants may easily use compliant aircraft and that charter aircraft users may do the same. Thus, the statements in yesterday's communications perpetuate the FAA's practice of prejudging the outcome of this proceeding. The threatened cease and desist order against the City would only constitute further evidence of the FAA's bias. Such blind prejudgment has no place in governmental process. Even if your agency remains determined to ignore standard requirements of Due Process in its efforts to place the convenience of a small percentage of Airport users above public safety, you should consider the FAA's reputation. It can only be protected, or perhaps salvaged, by treating the City fairly and reasonably in this case.

To date, you have not done so. The FAA asserts that no emergency exists at this time that warrants implementation of the City's ban on C and D operations at the City's Airport. The FAA further asserts that the City is somehow attempting to "divest the FAA of its jurisdiction over its administrative process". Both statements are patently unreasonable. As the extensive record on file with the FAA clearly demonstrates, the Airport facilities are not, according to the FAA's own standards, adequate for C and D aircraft. There are no runway safety areas, and there are homes in singularly close proximity to the runway ends. The City is responsible and liable for the Airport's operation. The City must keep the Airport safe and is simply attempting to implement the FAA's own safety standards.

The City acted prudently to address these risks. The Ordinance was adopted through the standard municipal process – indeed, as explained above, that process was extended to ensure a full opportunity for consideration of the FAA's concerns and possible solutions. And, it was adopted to fulfill the most basic of governmental duties – the duty to keep the public safe. Your assertion that this effort is undertaken to divest your agency of jurisdiction reveals stunning self-absorption or institutional paranoia.

Nor, contrary to your assertions, does the law require that an emergency exist prior to the adoption of the Ordinance. Like your agency, the City serves the public and does so, by among other things, adopting laws that protect public health and safety. Moreover, as Airport proprietor, the City must both protect the public and safeguard against liability for failure to keep the Airport safe. Your agency's assertion that C and D aircraft have been using SMO for over twenty years without incident would not, even if true, establish that the City may not meet the

Kevin L. Solco  
Acting Director, Airport Safety and Standards  
April 22, 2008  
Page 3

FAA's own safety standards. The FAA's argument to the contrary is as foolish as saying that if a city bridge designed to handle 10,000 pound vehicles has been able to support some 25,000 pound vehicles in the past, the City is therefore required to allow all such overweight vehicles to use the bridge in the future. Indeed, if the "tombstone mentality" evidenced in your letter were national policy – which it is not – compliant runway safety areas would only be required at those airports which had already experienced serious runway overrun accidents.

Simply put, the law does not require Santa Monica to suffer a catastrophe in order to qualify to meet FAA runway standards. In recent years, the number of faster aircraft operating at the Airport has increased significantly. At the same time, federal acknowledgement of the importance of runway safety areas has grown. Indeed, James Hall, who served as Chairman of the NTSB for six years, concluded in his Declaration, on file in this case, that runway safety areas are "critically important" and "especially important to safety at [Santa Monica Airport] due to its unique topography and close proximity to residential housing." He also concluded that in the absence of meeting the federal standards, "Category C and D aircraft should not be permitted to operate due to the serious risks of injuries and deaths."

The City, as a prudent airport operator, cannot ignore these realities. And, we are confident that implementation of the Ordinance will greatly enhance public safety while only minimally inconvenience Airport users. When the Ordinance was adopted, there were about 25 C and D aircraft per day at the Airport. When the law goes into effect on April 24, 2008, the operators of affected aircraft can and will either switch to compliant aircraft or make adequate arrangements at one of the surrounding airports where C and D operations do not create serious safety risks. They have choices. The City simply does not have the choice of ignoring the growing safety risk.

Nor should the FAA ignore it. Your agency is already under criticism and pressure from Congress for putting aviation industry convenience ahead of public safety. The City urges you to change your course and steadfastly put safety first. Even if you will not, or cannot, the City must. Therefore, it must respectfully decline to withdraw Mr. Trimborn's letter notifying pilots that the Ordinance will go into effect on April 24<sup>th</sup>.

Very truly yours,



MARSHA JONES MOUTRIE  
City Attorney

cc: Mayor and City Council  
P. Lamont Ewell, City Manager  
Rob Trimborn, Acting Airport Director  
Marty Tachiki, Deputy City Attorney  
Frank San Martin, Office of Chief Counsel, FAA



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

800 Independence Ave., S.W.  
Washington, D.C. 20591

April 21, 2008

Mr. Robert Trimborn  
Airport Manager  
Santa Monica Municipal Airport  
3223 Donald Douglas Loop S.  
Santa Monica, CA 90405

RE: Santa Monica Municipal Airport – City Ban on Category C and D Aircraft

Dear Mr. Trimborn:

You have advised aeronautical users of Santa Monica Municipal Airport (SMO) by letter, dated April 14, 2008, that pursuant to a March 25, 2008 City Ordinance, Category C and D aircraft operations are prohibited at SMO effective as of Thursday April 24. Your letter further advises that operators of those aircraft will be subject to misdemeanor prosecutions, fines and possible jail sentences for violating the Ordinance. We have discussed this matter with the airport and with the Santa Monica City Council on a number of occasions and, as you know, the subject of the legality of the Ordinance is now part of an on-going FAA proceeding. While we have not yet concluded that proceeding, our initial view, as we have previously communicated to you, is that the City's ban on operation of these aircraft is unlawful. Accordingly, it is our view that the Ordinance cannot be allowed to go into effect, particularly while the FAA's proceeding is ongoing.

The legality of the ban on Category C and D aircraft at SMO is before the FAA pursuant to a Notice of Investigation under 14 C.F.R. Part 16. On March 26, 2008, one day after the City adopted the new Ordinance imposing the ban, the FAA moved to expedite the Part 16 proceedings, which until that time were stayed by the parties' attempts at negotiation. Presently, we are near to completing the initial determination but the administrative process may extend for some additional time


SMO maintains that Category C and D aircraft presently represent approximately 9,000 aircraft operations or 7 % of total annual aircraft operations. SMO is an important general aviation reliever for Los Angeles International Airport (LAX) in a regional airspace and airport system that is already taxed in terms of available airports. Furthermore, Category C and D aircraft operations have been landing and taking-off safely from SMO for over twenty years. There is no emergency requiring an immediate ban, and there is no basis for a change in the status quo that would bar these operations.

Your enforcement of the Ordinance on April 24, 2008, can only be interpreted as an attempt to divest the FAA of its jurisdiction over its administrative process to which the City, as a federally obligated airport, must adhere. Moreover, your attempted enforcement of the City's Ordinance also suggests a complete disregard for the FAA's authority and responsibility as the final arbiter of aviation safety in the National Air Transportation System.

The FAA cannot countenance enforcement of the Ordinance under these circumstances while the administrative proceeding is underway. Therefore, the FAA requests that, by close of business Tuesday April 22, 2008, you withdraw your letter to the aeronautical users and assure the FAA and those users in writing that the City will refrain from enforcing the ban on Category C and D aircraft operations pending the outcome of the Part 16 administrative proceeding. Please provide this office with a copy of your withdrawal letter by close of business Tuesday April 22, 2008.

Should the City fail to comply with this request, the FAA will issue a cease and desist order requiring the City not to enforce the Ordinance in order to preserve the status quo. In the event that, for whatever reason, the City does not comply with an FAA cease and desist order, we will pursue appropriate remedies through all means available.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelvin L. Solco", written over a circular scribble.

Kelvin L Solco  
Acting Director  
Office of Airport Safety and Standards