

# SANTA MONICA AIRPORT COMMISSION 2015 VISIONING WORKSHOP



## AIRPORT PROPRIETOR RIGHTS REVIEW

**SANTA MONICA AIRPORT COMMISSION  
2015 VISIONING WORKSHOP**

**PRESENTED BY  
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(NOT REPRESENTING THE CITY OF SANTA MONICA OR  
THE SANTA MONICA AIRPORT COMMISSION)**

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## Presentation

- Municipal Proprietor Power
- Authority Must Be Non-Discriminatory
- 1984 Santa Monica Airport Agreement

# **SANTA MONICA AIRPORT COMMISSION 2015 VISIONING WORKSHOP**

The Frank G. Wells Environmental Law Clinic at UCLA School of Law prepared an Evaluation of the City of Santa Monica's authority to address environmental impacts from Santa Monica Municipal Airport's operations in November 2006.

The following presentation was extracted from that Study.

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**MUNICIPAL PROPRIETOR POWERS  
UNDER THE FEDERAL AVIATION ACT**

## MUNICIPAL PROPRIETOR POWERS UNDER FEDERAL AVIATION ACT

The Federal Aviation Act (“Aviation Act”) broadly **preempts** most local regulation of airport operations.

Nonetheless, the City possesses municipal proprietor powers that enable it to take reasonable, non-discriminatory actions **to regulate airport operations to reduce the City’s exposure to liability** for nuisance and enhance the surrounding community’s “human environment.”

In 1973, the Supreme Court held in *City of Burbank v. Lockheed Air Terminal, Inc.* that federal regulation of airways was valid. However, **regulations imposed by municipal airport proprietors** (local governments that own or operate airports) **were allowed if based on a legitimate interest in mitigating liability.**

‘**Preemption**’ applies only where a state or local government is acting as a ‘**regulator**’. Where a state or local government acts in a ‘**proprietary**’ capacity, such as a landowner, **preemption** does not prevent state or local action.

## MUNICIPAL PROPRIETOR POWERS UNDER FEDERAL AVIATION ACT

The “municipal proprietor” exception to Aviation Act preemption was originally recognized in the context of allowing municipalities to regulate aspects of airport operations **to limit their own financial liability.**

In 1981, the **Ninth Circuit Court** found that the **proprietor power is not limited to those circumstances, and allows municipalities to regulate based on a “rational belief that the ordinance will limit the possibility of liability or enhance the quality of the city’s human environment.”**

In the 1981 Santa Monica Airport Ass’n. v. City of Santa Monica, the 9th Circuit stated **“a municipal operator can govern the noise levels of planes which have taken off from it both before and for a reasonable distance after the wheels have left the ground.”**

## MUNICIPAL PROPRIETOR POWERS UNDER FEDERAL AVIATION ACT

In 1990, the government passed the Airport Noise and Capacity Act which restricted state and local regulation of aircraft noise.

However, in 1998, the **Second Circuit Court** noted that the proprietor exception to preemption **allows cities to regulate** within the **“narrowly defined subject matter”** of **“noise and other environmental concerns at the local level.”**

In the 1998 *National Helicopter Corp. of America v. City of New York*, the **Second Circuit Court upheld a phase-out plan** which would eliminate weekend operations and impose **weekday and weekend curfews, for a reduction of 47% in total operations.** The court reasoned that all of these regulations were intended **to enhance the local human environment** and reduce liability to the municipal proprietor.

**The regulations** at issue in *National Helicopter Corp. of America* **go far beyond** the area of **simply regulating narrowly to reduce noise, and instead reach well into the basic operations of the airport.**

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**PROPRIETARY AUTHORITY  
MUST BE NON-DISCRIMINATORY**

## PROPRIETARY AUTHORITY MUST BE NON-DISCRIMINATORY

**Cities must exercise proprietary authority** over airports **in a reasonable, non-discriminatory fashion**. In enacting regulations, the municipal proprietor must be careful to **“avoid even the appearance of irrational or arbitrary action”** to satisfy equal protection concerns.

**Municipal ordinances will withstand constitutional challenge** based on alleged violations of the commerce clause **if the statute regulates “even-handedly to effectuate a legitimate local public interest.”**

In *National Helicopter*, the 47% reduction in operations was debated in a dissenting opinion which contested the seemingly “arbitrary and unreasonable” nature of the regulation. The majority reasoned, however, that **“it is unrealistic to insist that a proprietor justify by some scientific method a specific percentage reduction in operations in order to achieve the general result of a reduction of excessive noise.”**

It stated further that **“if there is a reasonable prospect of beneficial effect”** **the regulation should be upheld.**

## PROPRIETARY AUTHORITY MUST BE NON-DISCRIMINATORY

More recently, in the 2001 *Clay Lacy Aviation v. City of Los Angeles*, the “**Non-Addition Rule**,” a regulation that restricts the amount of time certain aircraft can be present at the Van Nuys Airport each year, **was upheld by a federal district court** against an equal protection challenge.

The court stated that “**the challenged law must be upheld if there is any reasonably conceivable set of facts that could provide a rational basis for the classification.**” It went on to hold that the challenged law, a de facto ban on all aircraft exceeding a noise threshold for 335 days per year, passed this equal protection test.

The **Non-Addition Rule** was adopted by Los Angeles in April 2000 and became effective in June. Generally speaking, **the rule prohibits most Stage 2 aircraft with noise levels of 77 dBA or greater that were not based at VNY during calendar year 1999 from being based at or otherwise parked, tied down or hangared at the airport for more than 30 days in any succeeding year**, creating the net effect that for 335 days each year these types of aircraft are banned from using the Van Nuys Airport.

## PROPRIETARY AUTHORITY MUST BE NON-DISCRIMINATORY

**Comprehensive bans** on certain types of aircraft that would otherwise be able to use the airport, however, **are not allowed**. These types of restrictions are viewed as **discriminatory and violate the equal protection clause of the Constitution**.

For example, in the 1979 *Santa Monica Airport Association v. City of Santa Monica*, the **comprehensive jet ban in Santa Monica was struck down**. The court held that other permitted types of aircrafts which utilized the Airport made just as much noise as the banned jets.

The court distinguished *Clay Lacy Aviation v. City of Los Angeles* from *Santa Monica Airport Ass'n. v. City of Santa Monica* by noting that under the non-addition rule, **loud aircraft “cannot, under any circumstances, use the Airport” more than is allowed by the rule**, and there was therefore no disparate treatment by the regulation as there was with the Santa Monica jet ban.

## **PROPRIETARY AUTHORITY MUST BE NON-DISCRIMINATORY**

**The courts have recognized both the delegation of regulatory power to airport proprietors and the limitation of this power to the issuance of nondiscriminatory regulations that are not arbitrary, but rather are based on reasonable and legitimate interests in mitigation of liability or enhancing the community’s “human environment.”**

A City can set forth regulations to further these interests, consistent with other applicable laws that are **non-arbitrary, nondiscriminatory, and have a rational relationship to legitimate purposes** such as reducing the City’s exposure to liability for nuisance or protecting the surrounding community’s “human environment.”

Overall, a City can take actions that would address local environmental impacts from airport operations without running afoul of the Aviation Act.

**SANTA MONICA AIRPORT COMMISSION  
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**1984 SANTA MONICA AIRPORT AGREEMENT**

## 1984 SANTA MONICA AIRPORT AGREEMENT

The 1984 Agreement **preserves the management and regulatory authority that is characteristic of proprietor powers.**

The Agreement states: “The City has the responsibility to manage the Airport, including the ability to take reasonable action designed to abate the impact of noise from aircraft operations on surrounding communities, in accordance with the principles of *Santa Monica Airport Association v. City of Santa Monica* and *British Airways Board v. Port Authority of New York.*”

Both of these cases recognized the existence of municipal proprietor powers and discussed their proper application, including **the authority to regulate to enhance the surrounding “human environment” or to reduce municipal liability.**

Source: Santa Monica Airport Ass’n. v. City of Santa Monica, 481 F.Supp. 927, 943 (C.D. CA 1979).

Source: British Airways Bd. v. Port Authority of New York, 558 F.2d 75, 83-83 (2nd Cir. 1977)

## 1984 SANTA MONICA AIRPORT AGREEMENT

The 1984 Agreement states:

**“The parties recognize and agree that it is appropriate for the City to exercise its proprietary authority to adopt ordinances and regulations applicable to lessees and users of the Airport consistent with the terms of the Agreement.”**

This language broadly and clearly states that the City retains proprietary authority, with the only limitation being consistency with the Agreement’s express terms.

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