



Office of the City Attorney
City Hall
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December 16, 2016

VIA E-MAIL (Kevin.Willis@faa.gov) AND U.S. MAIL

Kevin Willis
Federal Aviation Administration
Office of Airport Compliance and Management Analysis (ACO)
800 Independence Ave SW
Washington DC 20591

Dear Mr. Willis:

The City of Santa Monica is in receipt of an Interim Cease and Desist Order issued by the FAA on December 12, 2016 and electronically served on the City on December 13, *In the Matter of Compliance with Federal Obligations by the City of Santa Monica*, FAA Docket No. 16-16-13 (the "Order"). The City intends to file a formal response to the Order within the 30 day timeframe from service as set forth in the Order. (Order at 5.)

The purpose of this letter is to address inaccurate statements made by the FAA in the Order concerning the City's filings in the Part 16 proceedings brought by the two private FBOs: (i) *Atlantic Aviation FBO, Inc. v. City of Santa Monica*, FAA Docket No. 16-16-12; and (ii) *American Flyers, Inc. v. City of Santa Monica*, FAA Docket No. 16-16-14. The Order states that the City "chose not to oppose" motions for cease and desist orders brought by the private FBOs in these proceedings. (Order at 3, n.4 and 5, n.6.) That is an error. In both proceedings, the City opposed the FBOs' motions and no such order has issued from these proceedings, in any event.

In *Atlantic Aviation FBO, Inc. v. City of Santa Monica*, FAA Docket No. 16-16-12, the City argued that "no cease and desist order is warranted because the FAA is already investigating exactly the same issues Atlantic raises in its Complaint, Atlantic's Complaint fails to state a claim on the merits and there is no risk of irreparable harm to Atlantic or the public... The FAA should dismiss Atlantic's Complaint and deny Atlantic's Motion for a Cease and Desist Order." (Atlantic Reply at 3 (emphasis added).) The City, among other things, explained that:

Cease and desist orders are "based on a preliminary finding of grant assurance violation," and "this extraordinary relief is appropriate only in extraordinary circumstances." *Pro-Flight Aviation*, FAA Dkt. No. 16-15-03, at 2, 3 (denying motion for preliminary injunction to enjoin respondent from evicting complainant). As an initial matter, the FAA should not make a

“preliminary finding of grant assurance violation” in this case. Even if the City remains subject to historical grant assurances or deed restrictions - a proposition the City hotly disputes - Atlantic’s complaint is premature, there are no current grant violations and Atlantic is highly unlikely to prevail on the merits of its claims.

Further, no “extraordinary circumstances” justify the issuance of a cease and desist order, and there is no “clear and present danger” that Atlantic will be evicted soon after December 1, as Atlantic argues. Opposition at 2. Atlantic asserts that the City’s efforts to exercise its proprietary exclusive rights will result in a “de facto closure of SMO” and that the City’s actions will be “almost impossible to reverse.” Opposition at 2. This is inaccurate. The City has agreed not to seek to enforce any judgment obtained in the unlawful detainer proceedings against Atlantic until the City is poised to commence operations of its own FBO (see Exhibit 1). The City is seeking to establish its own proprietary exclusive FBO - which the City has a right to do - not to eliminate all FBO services from the Airport. If the City successfully implements its proprietary exclusive FBO and then displaces Atlantic, there will be no grant assurance violations upon which Atlantic could possibly base any claim before the FAA. (Whether Atlantic would have a viable claim for damages is not something the FAA can adjudicate.) Notably, the Los Angeles County Court rejected Atlantic’s arguments in support of a TRO and has not yet ruled on Atlantic’s motion for a preliminary injunction. Until the City establishes its FBO, Atlantic will be permitted to remain at SMO as an active FBO. There is no emergency that requires the issuance of an extraordinary cease and desist order nor is there any risk to the public that the Airport will be left without any FBO.

(Atlantic Reply at 7-8.) The City went even further, explaining that if the agency issues or proposes to issue a cease and desist order, “then the City requests a hearing on all issues addressed under such proposed order” pursuant to 14 C.F.R. § 16.109. (Atlantic Reply at 9.)

The City also dedicated multiple pages to explaining why no cease and desist should issue in *American Flyers, Inc. v. City of Santa Monica*, FAA Docket No. 16-16-14. The City stated:

Third, no cease and desist order is warranted because the FAA is already investigating the same issues America raises in its Complaint, American’s Complaint fails to state a claim on the merits and there is no risk of irreparable harm to American or the public.

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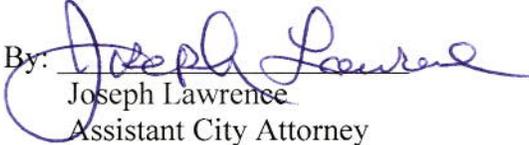
For all these reasons the reasons the City offered in its Memorandum in Support of its Motion to Dismiss, the FAA should dismiss American's Complaint and deny American's motion for a Cease and Desist order.

(American Reply at 3 (emphasis added); 7-9; *see also* American Motion to Dismiss at 1-2.) Again, the City explained that if the agency issues or proposes to issue a cease and desist order, "then the City requests a hearing on all issues addressed under such proposed order" pursuant to 14 C.F.R. § 16.109.

We trust that this letter will clear up any confusion concerning whether the City opposes Atlantic's and American's respective motions for cease and desist orders. To be clear: the City opposes the motions brought by Atlantic and American.

Sincerely,

Marsha Jones Moutrie
City Attorney

By: 
Joseph Lawrence
Assistant City Attorney

MJM/EK