

(Feb. 22, 2015, 10:45 a.m.) -- LBREPORT.com provides below salient testimony of Long Beach City Prosecutor Doug Haubert -- a former member of the City's Airport Advisory Commission -- in Feb. 19, 2015 testimony before that City body.

LBREPORT.com believes City Prosecutor Haubert's words are a must-read for Long Beach residents...and a must-understand for Councilmembers.

Two days prior to the testimony below, Mr. Haubert testified (Feb. 17) alongside Assistant City Attorney Mike Mais at a more high visibility City Council study session on the City's protective Airport ordinance. At the Council study session, Messrs. Mais and Haubert clearly conveyed that the Ordinance is a precious City asset that gives the City local control of its Airport operations and protects the City from unlimited, locally uncontrolled flights at all hours of the day and night.

However, the questions asked by Councilmembers weren't as pointed as those Mr. Haubert faced -- and answered -- at the Airport Advisory Commission meeting regarding possibly allowing international flights. Mr. Haubert's words aren't inconsistent with what Mr. Mais said at the study session but in our opinion, Mr. Haubert's Feb. 19 Airport Advisory Commission testimony is more plainly stated.

During his testimony, City Prosecutor Haubert referred to events that occurred in 2001-02 [not 2003 as Mr. Mais indicated in the Council study session.] LBREPORT.com has documented the 2001-02 events (most recently in "Amnesia File" coverage [at this link](#).) At that time, the Council didn't directly change the protective Ordinance but its action created an avoidable risk to the City's Ordinance and could have brought the uncontrolled outcome that City officials claimed they wouldn't invite. In 2001-02, a devastating outcome was averted by skillful lawyering by the City Attorney's office, which retained outside expert aviation counsel, and a cooperative settlement from JetBlue and other carriers.

The Airport Advisory Commission testimony by City Prosecutor/former AAC member Haubert speaks for itself. Our transcript is unofficial, prepared by us; bracketed material is added for clarity.]

**Q:** ...I have a few questions, and I think it was brought up at Tuesday night's [Feb. 17] City Council meeting, the challenge I think back in 2003 [actually 2001-02] that was specifically to the allocation [of flight slots], correct?...

**City Prosecutor Haubert:** [indicates yes]

**Q:** ...but that had the potential, correct me if I'm wrong, that had the potential to dismantle or allow for review of the actual Ordinance altogether?

**City Prosecutor Haubert:** Yes. This actually comes up with some frequency and Councilmembers have asked me, 'as long as we don't amend the noise ordinance, it'll always be there, right?' And I say: 'Well, no.' [notes Council action or a citizens petition could amend or repeal the ordinance, and adds]...Congress could take their pen and strike out our exemption

[from the federal Airport Noise and Capacity Act] and our entire noise ordinance would be gone [or] if someone were to sue in court, and a federal district court judge would invalidate our noise ordinance or any part of it...So if a judge were to invalidate our Ordinance it'd be gone...

**Q:** So why haven't airlines challenged it in the past?

**City Prosecutor Haubert:** Think of it this way: why would they? Who has a motive to challenge the noise ordinance? For many, many years, we had, what, 8, 6 or 10 flights...If you wanted another flight, you just ask for it and we'll give you another slot...If you remember, what happened [in 2001] was our flight allocation resolution, not an ordinance, just the...rules of how we're going to give out the slots. It required a 90 day ramp up period, you can have a slot but you have to start using it in 90 days. And JetBlue came along and said well we can't ramp up the fast but we want all 27 of your [then-available slots for large aircraft over 75,000 pounds] we'll take 'em if you allow us to ramp up service in 180 days. And so I'm sure the Council talked to the City Attorney and he said 'sure fine, you're not changing the ordinance, you're just changing how you give out the slots' and the Council said 'sure we'll give you 180 days to ramp up your service.' And so JetBlue took that and the other airlines said, 'now hold on here. If you had asked me if I wanted 180 days to ramp up service, I would have taken the slots, or some of them,' and this is after the fact...they're angry because JetBlue got the slots. That's when all hell breaks loose...[Airlines] are fighting with each other; we're just a casualty if another airline wants into the airport and all 41 slots are allocated, how are they going to get it?...So to answer your question, which is a great question, I think the crisis will come when someone sees an opportunity here in Long Beach, so the type of opportunity will dictate who challenges us and what form of challenge it will take.

**Q:** I've just been trying to wrap my head around lately community concern about what direction the Airport may take and certain perspectives that, where I thought may be slippery-slope argument, but it is valid that if you present certain opportunities, then someone may seize those opportunities to go a certain direction with the Airport...

**City Prosecutor Haubert:** I guarantee that at the time they gave those slots to JetBlue, nobody thought that action could have resulted in a lawsuit in federal district court to invalidate the noise ordinance but it came that close...

**Q:** Am I correct in assuming if they challenge the Ordinance and win, is the other side well then the government's going to come in and say we're in control now under the Act and open up the whole Airport?

**City Prosecutor Haubert:** ...[I]f a judge simply wipes out the entire ordinance, Long Beach would have no local control, no direct control, even though we own the Airport, aviation, landings, that's all handled by the [federal] government. The fact that we have a curfew at night, you can't fly on the lateral runways [25R/7L, 25L/7R], the limit on how much noise a plane can come in between 7 a.m., that's gone. All those are out the door unless the federal government came in and imposed those themselves but for the most part we would have no local control over the Airport...

Q: At the Tuesday meeting at City Council, the community had a lot of fears about international flights if JetBlue does request them. Is there any validation to that fear, which I was told, if there's international flights maybe they'll want to have more flights to come in and then they'll take us to court and then there goes our Ordinance. Is there any validation to that fear.

A: There's probably a different answer for each person in this room, as far as whether or not they believe it is. Since you're asking me, I'll give you my opinion and some of you may not agree with this, but here's how I look at it.

Remember the last time we had a close call with the noise ordinance? It was when one airline filled up the slots and another airline wanted some slots. That is the dynamic we [currently] have for domestic carriers. If we allow international flights and there's an international carrier that wants slots and comes here and says 'why can't I have more slots? I want more slots; I don't want JetBlue to fly into my territory; I want to compete with them head to head.' If that's what they say and there's not enough slots, you now have someone who has a motive to go into Long Beach and challenge the noise ordinance. In my opinion, it is an area the City should be extremely [emphasis in original] cautious because you're creating in addition to the domestic carriers who potentially might be the suspects to challenge our Ordinance, and I don't even know all the international carriers, but you're essentially creating a whole new list of suspects that might want to challenge our noise Ordinance. That's the first thing. The second thing is if you remember that first challenge was the result of someone feeling that the system was "gamed," that JetBlue came in, they got an extension, they were able to ramp up the service, and Long Beach didn't do it to game anything; I guarantee no one was trying to do something that was surreptitious...They just thought no one wanted our slots, somebody finally wants our slots, let's give it to 'em, if it takes 'em six months, fine. But it's that feeling of the unfairness. If someone looks at JetBlue and says 'JetBlue gets all these international flights because they're under-utilizing their existing slots' they may feel that that's unfair too and that may create that argument that they want to challenge the noise ordinance because they weren't treated fairly...So those are two things that I'd be extremely, extremely careful and if the City can do anything to guarantee that those dynamics don't create a motive or an environment for someone who has an interest in challenging the noise ordinance, it would be very smart.

Q: ...If you're saying that if we provide that incentive with...the international facility, we provided that incentive, then another carrier, albeit domestic existing or a new international want to compete or have those slots, we don't currently allocate where a slot goes, correct?

City Prosecutor Haubert: Correct.

Q: ...I just don't understand why at that point they would bring a lawsuit as opposed to now, I mean we're not currently regulating where aircraft fly to.

City Prosecutor Haubert: ...Airline X currently flies from...Long Beach to Texas and so who's their competition? Other airlines that fly from Long Beach to Texas, right? What if that airline is now going to fly from Long Beach to, say, Cabo San Lucas? I don't know who flies from the L.A. area to Cabo San Lucas...but whoever that person is going to feel threatened by another airline that now has a route to Cabo San Lucas....That's exactly what happened last time with

JetBlue. Someone felt threatened. I think there were two airlines that complained to the FAA because they felt threatened [by] another airline that's competing in their markets...JetBlue can [currently] fly anywhere in the country [domestically] they want to fly [but if LB allowed international flights] now you're opening up to a worldwide market...[Other carriers] may want to fly internationally as well [and would seek slots]...Wherever they go in the world they're going to be competing with somebody; whoever they compete with is going to feel threatened...just as happened 10 years ago...As a lawyer...I'm very cautious. I'm paid to worry.