



Airlines for America®

We Connect the World

September 12, 2017

Mr. Ron Reeves
Long Beach Airport
4100 E. Donald Douglas Drive, Second Floor
Long Beach, California 90808
ron.reeves@longbeach.gov

Airlines for America® (A4A) appreciates this opportunity to comment on the proposed amendments to the Long Beach's Airport Noise Compatibility Ordinance (Noise Ordinance), which would substantially increase fines and other penalties for violation of Long Beach's nighttime curfew.¹ As there appears to be a lack of common understanding regarding the applicability of the Noise Ordinance in situations where flights are unavoidably delayed, we urge Long Beach to fully engage with stakeholders to address any applicability issues prior to formally amending the Noise Ordinance as proposed. It does not appear other options were considered.² We believe working with airline stakeholders to ensure a common understanding of the existing Noise Ordinance could achieve the City's goals of enhancing compliance with the Noise Ordinance without amending it as proposed, which may raise concerns regarding both the reasonableness of the proposed penalties and their consistency with requirements relating to the amendment of grandfathered noise restrictions under the Airport Noise and Capacity Act of 1990 (ANCA).

We emphasize from the outset that A4A and our member airlines recognize that aircraft noise can be an issue for certain communities and we remain committed to further advancing the tremendous record of aircraft noise reduction achieved by U.S. airlines and aircraft operators. Our members are continuing to address aircraft noise by deploying new, quieter technology and implementing noise abatement operational procedures. Statistics from the Federal Aviation Administration (FAA) confirm that the number of people exposed to significant levels of aircraft noise in the United States has dropped by 95 percent since 1975, even as enplanements have more than tripled. U.S. airlines are acquiring a significant number of new, more fuel-efficient and quieter aircraft, which will help reduce noise levels even further. The top-ten U.S. passenger airlines took delivery of 353 new aircraft in 2016 and are projected to take delivery of an additional 337 new aircraft by the end of 2017, as part of more than 1300 firm orders for new aircraft scheduled for delivery in the coming years. Further, the new International Civil Aviation Organization (ICAO) noise certification standard will go into effect for large aircraft at the end of this year, followed by the new standard for small aircraft in 2020, continuing to bring noise reductions at source.

¹ A4A is the principal trade and service organization of the U.S. airline industry. A4A's members are: Alaska Airlines, Inc.; American Airlines Group; Atlas Air, Inc.; Federal Express Corporation.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² See, for example, the August 9, 2017 memo from Jesse L. Romo, Airport Director, to Patrick West, City Manager regarding possible amendments to the Noise Ordinance.

A4A and our members recognize the importance of complying with operating restrictions such as the Noise Ordinance, while also seeking to ensure that the terms of such restrictions, including exemptions for specific operational situations, are appropriately defined, understood and heeded. While we recognize that the City is concerned about the increase in late arrivals at Long Beach in recent years, this may result in part from a lack of common understanding regarding when flights that are scheduled in accordance with the curfew but arrive late because of unavoidable delay (such as air traffic control delay) are, in fact, in violation of the Noise Ordinance. Specifically, the existing Noise Ordinance requires that all operations be “*scheduled* between the hours seven a.m. and ten p.m.” and also provides an explicit exemption for “aircraft operating pursuant to explicit air traffic control direction”.³ It appears there is not a uniform understanding of this exemption and when it applies. Long Beach, however, has proposed increasing fines for curfew violations very substantially, from \$100-\$300 to \$2,500-\$10,000, depending on the number of violations during the previous 12 and 24 months, respectively. Accordingly, we recommend that Long Beach closely examine the plain language of the Noise Ordinance and consider whether further consultation with stakeholders could lead to clarification of the scope of the Noise Ordinance and enhance compliance without resorting to substantially increased fines and potential loss of operating privileges.

A4A believes clarification of the Noise Ordinance could substantially increase compliance and is a preferable solution as the proposed amendments raise potential concerns under ANCA. While the Noise Ordinance enjoys grandfathered status under ANCA, the statute requires that a subsequent amendment to a grandfathered noise restriction not “reduce or limit aircraft operations or affect aircraft safety.”⁴ The proposed administrative amendment to clarify that the Noise Ordinance covers operations generally and not merely schedules could be interpreted as a substantive amendment that would substantially increase the stringency of the curfew and necessarily reduce or limit aircraft operations.

The proposal to increase the fine schedule also raises potential issues under ANCA. While Long Beach cites the FAA’s tentative approval of a proposed (and since abandoned) increase in fines for San Diego’s ANCA-grandfathered noise restriction as support for its proposal, a close reading of FAA’s opinion letter in that proceeding demonstrates that an increase in fines would not violate ANCA *only if* the underlying grandfathered restriction penalizes only willful violations and does not penalize infractions caused by weather, air traffic control, or any other safety-based non-emergency circumstance. Specifically, the FAA stated that “ANCA applies to any proposal by the District to further directly or indirectly affect or reduce scheduled operations that were unavoidably delayed in accordance with applicable Federal Aviation Regulations.”⁵ Notably, nowhere in its opinion did FAA state that relevant air traffic control delays were limited to delays caused or directed by the subject airport.

While the FAA ultimately provisionally found that the proposed fine increase at San Diego would not be likely to reduce or limit aircraft operations or aircraft safety, it did so because of San Diego’s representation that it did not penalize unavoidable delays due to weather, mechanical malfunction, or air traffic control. That San Diego limited its curfew to departures also was

³ See Long Beach Municipal Code Chapter 16.43.060(E)(6) (emphasis added) and 16.43.070(G).

⁴ See 49 U.S.C. § 47524(d)(4).

⁵ See Letter from Nicholas G. Garaufis, FAA Chief Counsel, to David Chapman, Port of San Diego (August 8th, 2000).

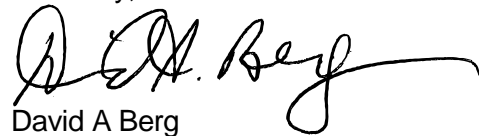
instrumental to the FAA's finding of ANCA compliance. This indicates that increases in fines targeting arriving flights, as is the case at Long Beach, could be more likely to implicate ANCA. Thus, it may be the case that in order to for a fine increase to avoid conflict with ANCA, Long Beach may have to show that the existing curfew does not sanction unavoidable delays.

The magnitude of the proposed fine increases also raises questions under ANCA. FAA noted in its letter to San Diego, for example, that an increase in penalties that would result in carriers reducing operations to avoid penalties due to factors beyond their control would potentially implicate ANCA. And the proposed fine schedule also may raise a reasonableness question since it appears that the City did not consider whether increased compliance could be achieved by other, less restrictive means. As noted above, increased outreach and dialogue on applicability could yield similar results without any fine increase at all.

Finally, while we note the similarity between the proposed fine schedule and the fine schedule at nearby John Wayne Airport, the fine schedule at John Wayne Airport predated ANCA and was not itself subject to the scrutiny required for amendments to ANCA-grandfathered provisions. It does not follow necessarily that a new fine schedule here satisfies ANCA so long as it closely resembles a schedule that was already grandfathered under ANCA.

A4A and our members are committed to working with Long Beach and the community to reduce the noise impact of airline operations, and our members are particularly mindful of the impact of nighttime operations. However we believe Long Beach can improve curfew compliance by clarifying the scope of the Noise Ordinance and expanding stakeholder engagement. We believe such an approach is preferable to the current proposal. Accordingly, we suggest that Long Beach reconsider its proposal and explore other options with stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read "D. A. Berg". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

David A Berg
Senior Vice President, General Counsel & Secretary