



City of Long Beach

Working Together to Serve

ROBERT E. SHANNON, CITY ATTORNEY

Memorandum

R-26

Date: March 6, 2006

To: Honorable Mayor and City Councilmembers

From: Michael J. Mais, Assistant City Attorney, Ext. 82230

Subject: **REPORT REGARDING LATE NIGHT FLIGHT PENALTIES AT
LONG BEACH AIRPORT**

Background

The City Council has requested information relating to the current fine structure for late night flights at the Long Beach Airport; the recent history of late night flight violations; and information pertaining to the City's "bridge time" policy.

Introduction

The rules pertaining to the monitoring of noise, the enforcement of the allowable noise limits and the assessment of noise violation surcharges are contained in the City's "Airport Noise Compatibility Ordinance" (Long Beach Municipal Code ("LBMC") Chapter 16.43). These rules were adopted in 1995 as part of the settlement of extensive litigation between the City and several air carriers over the City's right to control flights and noise emanating from the Airport. The Noise Ordinance is recognized as being one of the most restrictive in the country.

Although air carriers are required to "schedule" all operations between the hours of 7:00 a.m. and 10:00 p.m., the term "curfew" is somewhat of a misnomer because the Airport is, in fact, open for operation 24 hours per day. The Airport Noise Compatibility Ordinance (the "Ordinance") sets certain maximum Single Event Noise Exposure Levels ("SENEL") that cannot be exceeded at specified times during the day and night. For example, the maximum SENEL limit on Runway 30 between the hours of 7:00 a.m. and 10:00 p.m. is 102.5 decibels (dB) for departures and 101.5 dB for arrivals. Between the hours of 10:00 p.m. and 11:00 p.m., the maximum noise level for departures and arrivals on Runway 30 is 90 dB, and between the hours of 11:00 p.m. and 7:00 a.m., the noise limit is 79 dB for both departures and arrivals.

Noise violations are monitored by the Airport through its Airport Noise and Operations Monitoring System (ANOMS). There are some 18 monitors in proximity to the Airport that capture flight related noise events. The information obtained by the ANOMS system identifies the time of day, the aircraft or air carrier involved, whether the flight is an arrival or

departure, and the noise produced by a particular flight (i.e., SENEL). The information is provided to Airport staff on a daily basis in the form of a written report. Staff uses this information to track noise violations and to take appropriate enforcement action. The Airport reports that its violation identification rate exceeds 99.0% and a recent noise control audit resulted in a 100% validation of the noise analysis data as captured and reported by the Airport.

Enforcement

The penalties for violating the City's Airport Noise Compatibility Ordinance are set forth in Chapter 16.43. These penalties were originally adopted in 1995 as part of the settlement agreement between the City and the various air carriers involved in the Federal litigation. As part of the litigation, the City had proposed significantly higher penalties which were rejected by the Federal District Court. Since the adoption of the penalties in 1995, there has been no adjustment in the enforcement provisions of the Ordinance.

The Airport Noise Ordinance and its penalty provisions were adopted in an attempt to deter noise violations and penalize willful violators and to curtail flight operations during the late night and early morning hours (i.e., during the "curfew"). The regulatory scheme was designed to be "progressive" in nature.

The first violation by an aircraft operator results in a written notice from the Airport Manager that a violation has occurred. The second violation also results in a written notice of violation from the Airport Manager together with a demand that the aircraft operator prepare and implement a written compliance program. The compliance program is required to contain "feasible steps, consistent with safety, by which the [operator] expects to achieve compliance with the [Ordinance] and to minimize the noise of its operations." The third violation results in a "surcharge" of \$100 if the violation occurs within 24 months of the requirement to prepare a compliance program, and a "surcharge" of \$300 is imposed for subsequent violations occurring during the next 12 month period.

As a requirement of the Federal Aviation Administration (FAA) and in some cases the State, the Ordinance exempts certain types of operations from complying with the City's noise limits/curfew. These operations include flights by "public aircraft" (e.g., military aircraft), law enforcement, emergency, fire or rescue aircraft operated by any governmental entity, aircraft used for emergency purposes during an officially declared emergency, Civil Air Patrol (engaging in actual search and rescue missions), aircraft experiencing an in flight emergency, aircraft operating pursuant to the explicit directions of Air Traffic Control, and aircraft conducting operations in response to a medical emergency. Finally, the Airport Manager is permitted to exempt certain landings or takeoffs provided that the aircraft is conducting tests to determine whether or not a flight procedure can be conducted in accordance with the noise restrictions of the Ordinance.

Criminal Enforcement

In addition to the \$100-\$300 administrative "surcharges," the Ordinance also provides criminal sanctions as an alternative means of enforcement. Under the Ordinance it is a misdemeanor for any aircraft operator to exceed any established SENEL limits if the operator has reason to believe that a particular flight will not meet the applicable limit. For example, it would not be reasonable for an operator to land or take-off an MD-80 aircraft anytime after 11:00 p.m. when the SENEL limit is 79 dB. (A fully loaded MD-80 is known to produce, on average, noise at the 99.2 dB level on take-off and 94.2 dB at landing.) If an operator were to fly in such a circumstance it would most certainly violate the criminal provisions of the Ordinance unless the flight was "exempt" from the application of the Ordinance (e.g., emergencies, government flight, Civil Air Patrol, etc.). Misdemeanor convictions carry a fine of up to \$1000 and/or imprisonment in the county jail for periods of up to six months for each proven violation.

Consent Decree

On May 30, 2003, and on July 25, 2003, the City Prosecutor's office entered into a "Consent Decree" with both JetBlue Airways and American Airlines, respectively. Each Consent Decree was for a term of three years. The Consent Decree for JetBlue commenced on July 1, 2003 and will terminate on June 30, 2006. The Consent Decree for American Airlines commenced on June 1, 2003 and will terminate on May 31, 2006. Each Consent Decree carries an "option" period whereby the terms of the agreement can be extended in one year increments. The Consent Decree establishes predetermined sanctions for criminal violations of the ordinance. Pursuant to the Consent Decree, JetBlue made an initial payment of \$90,000 while American Airlines paid \$6,000. Thereafter, each carrier is/was required to pay penalties in the amount of \$3,000 for the first six violations that occur during any given quarter. For any violations over six occurring during any quarter, each of the carriers pays \$6,000 per violation.

Since the third quarter of 2003 through and including December, 2005, JetBlue has incurred 75 separate penalties that are subject to the Consent Decree and American Airlines has incurred one penalty. During this time period JetBlue has paid penalties totaling \$393,000 and American Airlines has paid penalties totaling \$3,000. All penalties collected pursuant to the Consent Decree are required to be remitted to the "Long Beach Public Library Foundation" to be used solely for the purchase of library materials and books by the Long Beach Public Library.

Unanticipated Delays

The Ordinance establishes a so-called "bridge period" between the hours of 10:00 p.m. and 11:00 p.m. During this period, violations of the noise restrictions are required to be waived provided that the violations are the result of "unanticipated delays beyond the reasonable control of the aircraft owner/operator." During this "bridge period," delays caused by mechanical failure (but not routine maintenance), by weather, or by Air Traffic Control are considered to be conditions beyond the control of the operator and therefore subject to relief

from the enforcement provisions of the Ordinance. In order to avail itself of this "exemption," an aircraft operator is required to provide satisfactory written proof to the Airport Manager that the late flight was as a result of a delay beyond its control.

During this period, the exemptions established by the FAA/State and discussed previously in this memorandum are also in effect. For example, emergency flights, police or fire operations; or other government flights are permitted to either land or take off during the 10:00 p.m. to 11:00 p.m. period without violating the Ordinance.

During calendar year 2005, there were 241 non-exempt air carrier flights that either landed or took off during the 10-11 p.m. period. Of these violations, 239 were "waived" after the involved carrier provided proof to the satisfaction of the Airport Manager that the late flights were the result of unanticipated delays beyond the reasonable control of the carrier. In each instance of "waiver" the carrier was required to provide credible evidence in regard to the cause of the violation. In most cases such evidence is related to weather conditions originating on the East coast.

Airline Flight Activity

In calendar year 2005, there were a total of 28,880 air carrier landings and take-offs. This figure includes commercial passenger planes and cargo planes. Of the 28,880 flights, a total of 298 non-exempt airline flights either landed or took off between the hours of 10:00 p.m. and 7:00 a.m. (one percent (1%) of the total flights). Of the 298 "late" flights, 241 flights were between 10:00 p.m. and 11:00 p.m. As previously mentioned, 239 of these flights were considered "waived" after the operator provided proof that the lateness of the flight was due to circumstances beyond the reasonable control of the operator. The remainder of the "late" flights (i.e., 59) (two tenths of one percent (0.2%) of the total flights) were subject to the penalty provisions of the Ordinance resulting in payments approximating \$180,000, which will be paid to the Long Beach Public Library Foundation in accordance with the Consent Decree.

Suggested Action

As indicated, the penalty/surcharge provisions of the Airport Noise Compatibility Ordinance have not been revised since 1995 and the surcharges imposed by the Ordinance are relatively minor. In August of 2000, the Board of Port Commissioners for the City of San Diego (operators of San Diego International Airport) received an opinion from the FAA's Chief Counsel opining that an increase in San Diego's "curfew" penalty provisions would not violate the provisions of the Airport Noise and Capacity Act of 1990 (ANCA) provided that the increased penalties were designed to deter curfew violations.

Although San Diego ultimately chose not to increase its penalty provisions, the letter received by San Diego from the FAA's Chief Counsel suggests that Long Beach's penalty structure could be revised upward in an effort to reduce total curfew violations. In exploring this option, Long Beach could consider a progressive penalty structure whereby the penalties

are increased for each violation that occurred in any 12-18 month period. For example, the initial penalty/surcharge could start at \$500 and then continue to double for each successive violation during the defined time period until a certain maximum penalty/surcharge was reached.


For violations occurring during the 10:00 p.m. to 11:00 p.m. "bridge period," the City could consider drafting strict written guidelines or policies defining what precisely will constitute an unanticipated delay beyond the reasonable control of the air carrier. For example, guidelines could be established that would only waive violations for a weather related delay at the final point of departure in route to Long Beach. Air carriers not excused would be subject to the same progressive penalty schedule as those flights landing or taking off between 11:00 p.m. and 7:00 a.m.

Finally, consideration could be given to rewriting certain of the City's "standard" lease provisions with all existing and future aircraft operators, including air carriers. Such provisions would make clear that a willful failure to abide by the City's Airport Noise Compatibility Ordinance could constitute a material breach of the operator's lease with the City. In egregious situations such breach could result in a suspension or termination of Airport privileges.

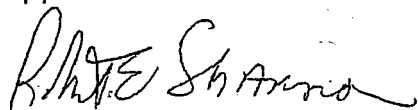
If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

ROBERT E. SHANNON, City Attorney

By 
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Assistant City Attorney

Approved:


ROBERT E. SHANNON
City Attorney

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cc: Gerald R. Miller, City Manager