



*Memorandum*

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** John Aitken, A.A.E.  
Assistant Director of Aviation

**SUBJECT:** INCREASING THE AIRPORT  
CURFEW VIOLATION FINE

**DATE:** May 23, 2016

Approved

*D. D. Syl*

Date

*5/27/16*

**BACKGROUND**

During the City Council Budget Study Session held on May 13, 2016, Staff was directed to submit a proposal to evaluate the fine for Airport curfew violations, and potentially bring forward a proposed increase to the fine based on the analysis.

The Airport currently issues citations with a \$2,500 fine for aircraft that violate the 11:30 p.m. to 6:30 a.m. curfew.

**ANALYSIS**

**The Curfew**

The City originally established its curfew in the 1980s. At the time, the established weight-based curfew prohibited flight operations from 11:30 p.m. to 6:30 a.m. by aircraft weighing more than 75,000 pounds. In 1990, the passage of the federal Airport Noise and Capacity Act (ANCA) resulted in severe restrictions on the ability of airports to regulate noise. Under ANCA, any new proposed airport curfews now require extensive analysis and Federal Aviation Administration (FAA) approval before they can be implemented. However, ANCA did allow the “grandfathering” of some curfew programs already in place. San José’s curfew program was among those grandfathered programs.

In the early 2000s, the City’s weight-based curfew faced a serious legal challenge because newer models of larger jet aircraft had become quieter to operate than older models of smaller jet aircraft. To maintain its curfew, the City transitioned from a weight-based to the current noise-based curfew that restricts flight operations of aircraft that generate in excess of 89 EpndB or Effective Perceived Noise Decibel Level\* (EpndB 89 is the level of noise that was determined to be the maximum equivalent of the noise level of aircraft allowed to depart under the previous weight-based curfew). Through the transition, the curfew hours of 11:30 p.m. to 6:30 a.m.

\* The Effective Perceived Noise Decibel Level – or EpndB – is defined by the International Civil Aviation Organization as the human annoyance level with aircraft noise.

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remained the same. Today, San José is one of only a small number of commercial airports in the nation with some form of curfew that significantly limits night time flight activity and is the only airport of the three major commercial airports in the Bay Area with a curfew.

The previous weight-based curfew had no fine to encourage compliance. To strengthen compliance with the curfew, when the City adopted the current noise-based curfew in 2003, the City also adopted the imposition of the current \$2,500 fine per curfew violation. The amount of \$2,500 was determined after first conferring with the FAA on an appropriate amount. The determination for the amount of the fine was based on the fine under state law for unfair business practices, which was an available remedy for curfew violations under the weight-based curfew program.

#### Flight Operations Permitted During Curfew Hours

*The curfew does not restrict all night time flight activity between 11:30 p.m. and 6:30 a.m.* The following flight operations are exempted from curfew restrictions:

1. Scheduled operations with events beyond the control of the operator (e.g., weather, mechanical problems, late departures or arrivals due to air traffic control and security delays);
2. Emergency operations (e.g., diverted flights as a result of the 2013 Asiana incident at SFO);
3. Government-operated aircraft;
4. Aircraft operating at 89 EpndB or less; and
5. Certain aircraft that exceed the 89 EpndB noise level, but were “grandfathered” in when the Airport transitioned from a weight-based to a noise-based curfew.

Flight operations that occur during the curfew hours under the aforementioned circumstances are *not* violations and thus are *not* subject to citation and fines, no matter the amount of the fine.

#### **Can the City Increase its Curfew Violation Fines?**

As noted above, when the weight-based curfew transitioned to the current noise-based curfew, the City established the current \$2,500 per violation fine. At the time, the FAA reviewed and concurred with the then proposed \$2,500 fine amount. As the City now considers increasing that amount, the City Attorney’s Office has advised that an increase of the curfew fines from the current \$2,500 amount would *not* require FAA review or approval. Now that a fine amount has been established, the City can raise the amount without consulting with the FAA.

Given this finding, Staff believes the key questions the Council should consider before raising the fine are:

1. How much will an increase in fines reduce curfew violations?

2. If increased fines are imposed, what could be the potential impacts on efforts to retain current flight service and attract new air service?

### **Key Factor and Questions that Should be Considered in Increasing the Curfew Fine**

A primary factor that should be considered in increasing the curfew violation fine is the number of curfew violations compared to the number of compliant/exempted flights during the curfew hours (compliant and exempted flights are not subject to curfew fines) – or the compliance factor. Consideration of the compliance factor should assist with answering the key question of: Would increasing the fine significantly reduce the amount of night time aircraft noise heard by residents and/or the number of curfew violations? To determine the compliance factor, Staff has reviewed the available activity data for the eight-year period from January 1, 2008 through December 31, 2015.

### **Flight Operations During the Curfew Hours and Curfew Violations – 2008-2015**

From January 2008 through December 2015, there were 1,083,688 commercial and general aviation flight operations at the Airport, an average of 135,461 flights per year. (A flight operation is either one takeoff or one landing). About two-thirds of the operations were commercial aircraft. Of the more than one million flight operations that occurred during the period 2008-2015, 20,911 of those operations occurred during the curfew hours, an average of about 217 flights per month during the curfew hours. Expressed in percentages, over the period 2008-2015, about 2% of all flight operations occurred during the curfew hours.

Of those 20,911 flight operations, 4,408 of those operations, an average of 46 operations per month, were considered “intrusions\*.” Intrusions are unauthorized flight operations under the curfew that *may or may not* be violations, depending on the circumstances. This means the great majority of flight operations during the curfew hours – 16,503 flights operations or 79% – that occurred during the curfew hours were either under 89 EpndB or grandfathered in under the previous weight-based curfew and thus *were allowed under the curfew, were not considered curfew violations and were not subject to the fine.*

Of the 4,408 intrusions that occurred during 2008-2015, 4,208 intrusions qualified for exemptions, leaving only 200 in true violation of the curfew and issued citations (25 violations a year or an average of about two violations a month). Citations issued by year were as follows:

<b>Year</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Total</b>
<b>Citations Issued</b>	34	16	26	31	25	22	20	26	200

Of the 20,911 flight operations that occurred during curfew hours between 2008 and 2015, 20,711 of the flight operations were either compliant with or exempted under the curfew. The 200 curfew citations issued represents *just under one percent* of all the flights that occurred

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\* Intrusions are flight operations that either exceed the 89 EpndB or were not grandfathered in the current noise-based curfew from the previous weight-based curfew.

during the curfew hours for the period 2008-2015. This means that 99% of the flight operations that occurred during the curfew hours during the time period 2008 through 2015 were either in compliance with or exempted under the curfew. These figures (summarized in the table below) demonstrate a high degree of compliance with the curfew and the limited size of the problem an increase in curfew fines would potentially address.

**January 2008 through December 2015**

	Landing or Takeoff	% of total	Avg. per month	Notes
<b>Flight Operations</b>	1,083,688		11,288	
Operations during curfew hrs	20,911	2%	218	11:30 p.m. to 6:30 a.m.
Intrusions	4,408	21%	46	No. of operations above 89 EpndB or not grandfathered
Citations Issued	200	1%	2	No. of operations not due to exempted reasons

By way of comparison, in 2014, Staff contacted San Diego, which uses an escalating fine structure and has about twice the passenger activity of San José. San Diego had essentially the same compliance rate as San José at about 99%.

In terms of increasing the curfew fine, a second key question is what might be gained and what might be lost in raising the curfew fine?

**An Airline Perspective**

One airline contacted by Staff in 2014 regarding the possibility of increased curfew fines responded that the airline would probably just pay the increased fines to get their passengers to their destinations without undue delay. However, the increased cost would be a factor in considering increased or new flight service, particularly if the cost of the fine forced aircraft to stay overnight and the airline had to put passengers in a hotel until the next morning.

**Potential Impacts of Increasing the Curfew Fines**

There could be at least two possible impacts or results from increasing the curfew fines:

1. *There could be a small reduction in the number of curfew violations.* One effect could be a small reduction in the number of curfew violations as a result of the airlines taking care to have better documentation to demonstrate their compliance with the curfew.
2. *It could become more difficult to attract new air service to San José.* While the Airport may see a small reduction in the number of curfew violations, Airport marketing efforts to add new flight service could become more difficult as some commercial airlines may be more reluctant to add flight service because of the increased curfew fine. The higher the fine, the more difficult it will be to attract new service – and perhaps retain the same level of flight service. To the extent it becomes more difficult for the airlines to do business in San José, the Airport becomes less marketable and the Airport could experience lost opportunities to:
  - Expand air service;
  - Better serve passengers; and

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- Generate additional revenues.

While some airports (e.g., San Diego) may have no difficulty in marketing their airport and attracting new flight service, higher curfew fines notwithstanding, San José's airport operates in a very competitive air service market. There are three major commercial airports in close proximity to serve the Bay Area population, including one of the nation's largest hub airports. If an airline concludes that operating a flight in San José is too costly or otherwise too difficult, it has the readily available alternatives of either San Francisco International Airport or Oakland International Airport to provide service to its South Bay customers, even if the 50+-mile drive to those airports would be a notable inconvenience for South Bay residents.

Even with an increased fine, the low number of curfew violations will likely still occur and, depending on the amount of the curfew fine, the airlines may simply pay the increased fine as a cost of doing business. However, it is likely that an increase in the curfew fine would not go unnoticed by the airlines and there is a real risk that it will be a consideration when route planning decisions involving San José are made. An increase in the degree of that risk is what could make the Airport less marketable for new service compared to its neighboring airports in San Francisco and Oakland.

After years of losing market share, flights and passengers, the Airport has now seen 40 consecutive months of much-needed passenger growth with an average growth rate of six percent per month. A large part of the reason for that growth has been the addition of new flight service, which has attracted more passengers and generated more revenues. Increasing curfew fines could make it more difficult to sustain that trend.

### **Conclusion**

Staff believes an increase in the fine is: 1) unlikely to result in a reduction in curfew violations or flight activity during the curfew hours; and 2) could make the Airport less competitive for new flight service. However, if Council desires an increase in the fine, Staff proposes the curfew violation fine be increased from \$2,500 to \$3,000 per violation, representing a 20 percent increase.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office and the City Manager's Office.

/s/

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