



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Kim Becker Aguirre
Director of Aviation

SUBJECT: AIRPORT CURFEW VIOLATION
FINES

DATE: May 22, 2014

Approved

Date

5/23/14

BACKGROUND

In late April 2013, the Rules and Open Government Committee directed staff to return with information on what can be done to enhance the City's Airport noise abatement programs. The Committee also directed staff to return with options for raising the fines for curfew violations. An August 19, 2013 staff report provided to the Committee for discussion (see Attachment A) contained information regarding:

- 1) the Airport's current noise programs;
- 2) the plans to improve those programs;
- 3) historical data on noise complaints received by the Airport; and
- 4) some factors that should be considered in increasing the curfew fines.

However, that report contained no options for increasing the current curfew fines but committed to bring forward options in a subsequent staff report.

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. The primary purposes of this report are to: 1) provide information on curfew fines at other airports; and 2) recommend whether the current \$2,500 should be increased.

To achieve its primary purposes, this report will briefly describe what curfew fines are imposed at other airports, particularly at other California airports. In addition, this report will review six years of historical data to provide some sense of the number of:

- curfew hour activity;
- curfew hour intrusions that have occurred; and
- curfew citations issued.

This report will also provide information on the most common reasons for curfew violations and who most frequently violates the curfew. Finally, the report will provide staff's best judgment on the effectiveness of increasing curfew fines as well as the potential impacts of increased fines on the ability of the Airport to attract needed air service.

ANALYSIS

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. 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, 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.

Addressing Community Noise Concerns

As part of the City’s efforts to monitor noise issues and to be a good neighbor to the residents of the adjacent neighborhoods, Airport noise issues were heard by the Airport Noise Advisory Committee (ANAC), a committee composed of representatives from the Airport Commission, San José and Santa Clara planning staffs, a Santa Clara elected official, the airlines, businesses, and other stakeholders. The Committee monitored intrusions, issued an annual report on noise, and provided a public forum to raise and discuss noise-related issues. However, with the structural changes to the City’s boards and commissions over the past several years, the Council decommissioned the ANAC as its advisory body on Airport noise and transferred the Committee’s responsibilities to the Airport Commission. With the transfer, the Airport Commission is now the public forum for community issues related to Airport noise. The Commission is also the City’s final arbiter for appeals of curfew violation citations.

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

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, tardiness 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 Epn dB or less; and
5. certain aircraft that exceed the 89 Epn dB noise level that 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 noted above, the fine amount was based on the fine in State law for unfair business practices, which was an available remedy for curfew violations under the weight-based curfew program. As the City 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, the question for Council consideration isn’t *whether* the City can increase the fine but rather *should* the City increase the fine? Will an increase in the fine solve a problem or potentially create a larger problem? To address those questions, in addition to the data identified above, staff also considered the additional key questions of:

1. What are the potential options for raising the curfew violation fine?
2. If increased fines are imposed, what could be the potential impacts on marketing efforts to retain current flight service and attract new commercial air service and general aviation flight activity?
3. To what extent might aircraft noise be reduced during the curfew hours if the fines were higher?

Fine Options – Curfew Violation Fines at Other Airports

To determine what options currently exist to increase curfew violation fines, staff looked at what other airports in the nation impose curfew violation fines and how much those fines are. There are few airports that have curfews as extensive as San José's. Nearly all of the airports with curfew violation fines are located in California. Through its review, staff was able to identify the following airports and fine structures:

Commercial Airports with Curfew Fines

San Diego: The airport issues a fine of \$2,000 for the first violation. A second violation within six months results in a \$6,000 fine. A third violation within six months results in a \$10,000 fine. San Diego's fine system operates in six-month increments. A multiplier is added based on the number of violations in the previous six-month period. For example, if an airline had three violations in the previous six-month period, the first violation in the next six-month period would be \$6,000 (\$2,000 x the three previous violations). In the same example, a second violation in the second six-month period would be \$18,000 (\$6,000 x the three previous violations). A third violation in the second six-month period would be \$30,000 (\$10,000 x the three previous violations).

Burbank: Burbank Bob Hope Airport operates 24 hours a day. However, between the hours of 10:00 p.m. and 7:00 a.m., the following general aviation activities are prohibited: 1) intersection takeoffs; 2) maintenance run-ups; 3) flight training operations; 4) practice approaches; and 5) touch and go landings. The fine for a first-time violation is \$1,416 and subsequent violations are each fined \$2,057. In addition, between the hours of 10:00 p.m. to 7:00 a.m., takeoffs and landings of "noisy" aircraft are prohibited. The Airport maintains a list of jet aircraft approved for 24-hour operations, which are not impacted by the restriction. Violations of these provisions carry monetary sanctions in amounts of up to \$4,117 per violation. Curfew restrictions apply only to general aviation aircraft. They do *not* apply to commercial aircraft although commercial carriers observe a *voluntary* restriction of flight activity between 10:00 p.m. and 7:00 a.m.

Long Beach: Fines are primarily tied to noise abatement but Long Beach does have a curfew that begins at 11:00 p.m. Warning letters are issued for the first two violations. A fine of \$100 is levied for the third violation and a fine of \$300 is levied for the fourth violation and every violation thereafter.

Washington/Reagan Airport (Washington D.C.): Washington/Reagan Airport has a noise-based curfew from 10:00 p.m. to 7:00 a.m. Violations result in a fine of \$5,000.

General Aviation Airports with Curfew Fines

Santa Monica: This general aviation airport does not have a curfew but does issue fines for aircraft that exceed 95 dB. The first violation results in a warning. The warning will be removed from the record if there are no further violations for three years. However, a second violation within three years will result in a \$2,000 fine. The third violation results in a \$4,000 fine, and the fourth violation results in a \$10,000 fine. This system of escalating fines has some similarity to

San Diego but the violation period is longer (three years vs. six months) and there is no multiplier effect after the first three-year period.

Van Nuys: The first violation at this general aviation airport results in a \$750 fine. A second violation within one year results in a \$1,500 fine. A third violation within a three-year period will result in a \$3,500 fine. The Van Nuys fine structure also contains some similarity to San Diego's escalating fine system.

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

Raising the curfew fines is a proposed solution. However, before reviewing the application and potential impacts of increasing curfew fines at the Airport, it would be beneficial to look at the problem the proposed solution would address (flights that violate the curfew). A primary factor that should be considered in determining whether the curfew violation fine should be increased would be the number of curfew violations compared to the number of compliant/exempted flights under the curfew (compliant and exempted flights would not be subject to curfew fines, no matter what the amount).

Consideration of the aforementioned factor should assist with answering two key questions, including:

1. Would an increased fine reduce the number of curfew violations and the amount of night time aircraft noise heard by residents?
2. What are the possible impacts of increased fines for the Airport's ability to maintain and attract needed air service?

A look at these key questions should be helpful in determining whether the advantages of increasing the current \$2,500 curfew fine outweigh the disadvantages. To review the aforementioned factors and key questions, staff reviewed the available activity data for the six-year period from January 1, 2008, through November 2013.

Flight Operations during the Curfew Hours and Curfew Violations – 2008-2013

From January 2008 through November 2013, there were 830,529 commercial and general aviation flight operations at the Airport (an average of 138,422 flights a year). (A flight operation is either one takeoff or one landing.) About two-thirds of the operations were commercial aircraft. Of the nearly 831,000 flight operations that occurred during the period 2008-2013, 16,155 of those operations occurred during the curfew hours (an average of 2,693 operations a year or about 225 flights a month during the curfew hours). Expressed in percentages, over the period 2008-2013, about 2% of all flight operations occurred during the curfew hours.

Of the 16,155 flight operations that occurred during the curfew hours, 2,890 of those operations (about 482 operations annually) 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 – 13,265 flights operations or 82% – that occurred during the curfew hours were either under 89 EpndB or grandfathered in under the previous weight-based curfew and thus *are allowed under the curfew and are not considered curfew violations.*

Of 2,890 intrusions that occurred during 2008-2013, 154 citations were issued for curfew violations (about 25 violations a year or an average of two to three violations a month). Citations issued by year were as follows:

Year	2008	2009	2010	2011	2012	2013	Total
Citations Issued	34	16	26	31	25	22	154

This means that of the 16,155 flight operations that occurred between 2008 and 2013, 16,001 of the flight operations were either compliant with or exempted under the curfew. The 154 curfew citations issued represents about *one percent* of all the flights that occurred during the curfew hours for the period 2008-2013. This means that 99% of the flight operations that occurred during the curfew hours during the time period 2008 through 2013 were either in compliance with or exempted under the curfew. This fact is important primarily because it provides a good sense of the size of the problem an increase in curfew fines would potentially address.

A graph of the total number of flight operations during the curfew hours, total intrusions and total citations issued for curfew violations for the period 2008-2013, broken out by year, is contained in Attachment B.

Most Common Reasons for Curfew Violations

A review of the 154 curfew citations issued between 2008 and 2013 showed 99 citations were issued to commercial airlines, most (65 citations or 66%) for customer service-related delays (late arrivals or departures created by waiting for boarding or disembarking customers). Of the 99 citations issued to commercial carriers, Southwest Airlines had the most with 57 – an average of about ten violations a year over six-year span (58% of all citations issued to commercial carriers and 38% of all citations issued). However, it is important to note that during the six-year time span reviewed by staff, Southwest conducted over 284,000 flight operations, of which 57 were found to be in violation of the curfew. The 57 violations represent .0002% (2/10,000^{ths} of one percent) of the total Southwest flight operations for the period reviewed. Between 2008 and 2013 Southwest flight operations accounted for 51% of all commercial flights at the Airport. Southwest currently accounts for 52% of all commercial flights at the Airport.

* 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.

Late arriving/departing sports team and private charters flights had the next highest number of violations with 40 (an average of seven flights a year). These charters are sometimes operated by commercial carriers (Allegiant, America West/USAir, Continental/United, Delta, Jet Blue, and Southwest Airlines) and sometimes operated by charter airlines (USA Jet, Sky King). Commercial carriers with customer service issues (65) and sports charters (40) accounted for the two most common reasons the curfew was violated with about 70% of the 154 citations issued during the six-year of curfew violation data reviewed by staff.

Other reasons the curfew was violated included insufficient documentation to show compliance with the curfew (at least 19 citations); departures before the end of the curfew (at least five citations); and unapproved ferry flights* (at least two citations). The citations issued due the lack of documentation are worth noting because the aircraft may have been in compliance with the curfew but had insufficient documentation to demonstrate it.

Key Factor Conclusions

The available data for flight activity during the curfew hours and the number of curfew violations lead staff to the following conclusions:

- ✓ The compliance rate with the curfew is very high. 99% of flight operations during the curfew hours are in compliance with the curfew.
- ✓ The most common violators of the curfew are commercial aircraft arriving or departing during the curfew as a result of customer service issues followed by sports charter flights.
- ✓ Of the 99 curfew violation citations issued to commercial carriers during the 2008-2013 time frame, Southwest Airlines had the largest single number of violations, not surprising given that Southwest, by far, had the most flight operations during the period reviewed. However the number of curfew violations committed by Southwest is infinitesimal in comparison to the number of flight operations it has conducted in San José over the past six years. Southwest's 57 curfew violations represents .0002% of the 284,000 flight operations Southwest conducted between 2008 and 2013.

Comparing Escalating Fine Structure vs. Current Fine

The above information provides a sense of the size of the problem increased curfew fines would address. With the aforementioned information, staff developed an order of magnitude comparison of the amount of revenue that *hypothetically* might have been generated if an escalating curfew fines structure were in place. To make this comparison, staff used the escalating curfew fine system of San Diego International Airport. Staff selected the San Diego system because it is the most financially aggressive of the fine structures identified by staff.

* Empty passenger aircraft that must be moved to other locations because they will be soon needed for flight service elsewhere or require repair or maintenance before they can transport passengers.

The effort was to compare what was actually collected under the current \$2,500 per citation fine over the six-year period 2008-2013 with what theoretically might have been collected had the Airport had San Diego's fee structure in place during that same time frame. In using the San Diego curfew fine system, the only modification made by staff was to use \$2,500 for the first violation (consistent with the City's current fine system) instead of the \$2,000 first-time fine in the San Diego system. After the first violation, staff used the same multipliers used in the San Diego fine structure.

Under the current fine structure, the 154 curfew citations issued by the Airport between during the 2008-2013 time frame had a revenue value of about \$362,500 in fine revenue. That is about \$60,500 in fines per year.

By way of comparison, if the Airport had the San Diego fine structure in place during the same 2008-2013 timeframe, the same 154 citations could have *hypothetically* generated approximately \$1.9 million in curfew fines for an average of about \$317,000 a year in fines. Of that amount, repeat violators would have paid a total of nearly \$1.8 million in curfew fines and of that amount, Southwest Airlines would have accumulated just over \$1.6 million in curfew citation fines compared to the \$132,500 under the current fine structure. For Southwest, that is an average of \$266,000 a year if San Diego's fine system is applied compared to \$22,000 a year under the current \$2,500 violation fine. All of the collected fine revenue would have gone to the Airport.

Because sports charters were rarely, if ever, repeat offenders in the six-month timeframe of the San Diego fine system, the total amount of curfew fines collected from the 40 citations issued to sports charters would have been \$134,000 compared to the \$100,000 in citations issued under the current fine system.

In projecting these fine amounts, particularly for the commercial carriers, it is important to understand that staff's projections are simple hypothetical calculations based on past events. The estimated calculations represent an order of magnitude to provide some idea of how the fines might have accumulated under an escalating fine structure based on the number of past citations issued.

However, it is important to note that *these hypothetical calculations are for illustrative purposes only*. Staff's calculations do not take into account that the airlines very likely would have taken action to avoid or contest at least some portion of the fines by having the documentation needed to demonstrate their flight operations were exempt under the curfew. The City might also have initiated some form of legal action to discourage violations before that amount of fines had been accumulated. It is also possible that the airline would violate the curfew and just pay the fine. If these factors are considered, it is not possible to say with any certainty how much in curfew fines would have been actually collected but it is very likely that it would have been significantly less than \$1.9 million hypothetically calculated by staff.

By way of comparison, San Diego staff reported that just \$48,000 in fines was collected in 2012 but \$166,000 in fines were assessed for curfew violations in 2013. San Diego reported 65 curfew violations in 2013. The San Diego curfew compliance rate in 2013 was 98.7%. San Diego has twice the flight activity of SJC. In comparison, in San José in 2012 \$57,500 in fines

were assessed. In 2013, \$58,000 in fines were assessed. San José had 22 curfew violations in 2013 and a curfew compliance rate of 99%.

It is important to again note that the 154 citations issued during the period 2008-2013 represents an average of about two violations a month. In comparison, during the same period there were over 16,000 flight operations during the curfew hours, 99% of which were in compliance with the curfew. In terms of increasing the curfew fine, a key question is what might be gained and what might be lost in raising the curfew fine to eliminate those two violations a month?

An Airline Perspective

One airline contacted by staff 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 several possible impacts or results from increasing the curfew fines, particularly if an escalating fine structure is adopted.

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 document their compliance with the curfew. However, there will still be curfew violations.
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 the increased curfew fine, particularly escalating curfew fines. To the extent it becomes more difficult for the airlines to do business in San José, the Airport becomes less marketable and the Airport would experience lost opportunities to:
 - expand air service;
 - better serve passengers; and
 - generate additional revenues.

While San Diego staff reports no difficulty in marketing its airport and attracting flight service as a result of its escalating curfew fine structure, there is a significant difference in the San Diego market when compared to the Bay Area market. Unlike the Bay Area, which has three major commercial airports in close proximity to serve its population, San Diego International is the only major commercial airport serving the San Diego area. Airlines that want to serve the San Diego market can only conveniently serve that market through San Diego International. San José does not have that geographic advantage. 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 plus-mile drive to those airports would be a notable inconvenience for South Bay residents.

The Airport is located in a market that contains two other major commercial airports so the airlines have viable alternatives to serve Silicon Valley travelers. 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.

Simply increasing the current \$2,500 fine by a significant amount, but without an escalator (like Washington/Reagan Airport), could generate the same possible impacts but to a greater or lesser degree, depending on the amount of the increase. The higher the increase the more likely the impacts will be similar to an escalating fine structure.

After years of losing market share, flights, and passengers, the Airport has thus far seen fifteen consecutive months of much-needed passenger growth, with the last several months showing healthy growth levels exceeding four percent. Part of the reason for that growth has been the addition of new flight service, which has attracted more passengers and generated more revenue. Increasing curfew fines could make it more difficult to sustain that trend.

Conclusion

In making a recommendation to the Committee, staff considered the following factors:

- ✓ There is currently a very high compliance rate with the curfew (99%).
- ✓ Since 99% of curfew hour flight operations either comply with or meet the criteria for exemption from the curfew, increasing the curfew fine will not have a notable impact on the number of curfew-hours flight operations.
- ✓ Any reduction in curfew violations will most likely be small.
- ✓ The Airport has experienced much-needed flight service and passenger growth over the past 15 months after years of decline in both areas.
- ✓ The Airport is in a very competitive market for flight service and passengers and faces strong competition for both from neighboring commercial airports.
- ✓ The potential results of increased curfew fines, particularly escalating fines, could impact flight service near the curfew hours.

- ✓ The Airport could experience an increased degree of difficulty in its marketing efforts to encourage the airlines to bring additional flight service to San José or to attract new carriers.

Given these factors and potential developments, the key question is whether the benefits of significantly increasing the curfew fine to reduce an average of two to three curfew violations a month will exceed the potential reduction of the Airport's competitiveness? Staff believes the answer to that question is no. For that reason, as long as there is a high degree of compliance with the curfew, staff recommends that the City *not* impose a higher curfew fine.

COORDINATION

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

/s/
KIM BECKER AGUIRRE
Director of Aviation

Attachment A – Staff Noise Abatement Memo of August 19, 2013
Attachment B – Flight Operations, Intrusions and Citations Issued during the Curfew Hours for the Period January 2008-November 2013



RULES: 8/28/13
ITEM: G(2)

Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

From: William F. Sherry, A.A.E.
Director of Aviation

**SUBJECT: AIRPORT CURFEW AND NOISE
ABATEMENT PROGRAM
IMPROVEMENTS**

DATE: August 19, 2013

Approved

Date

8/21/13

RECOMMENDATION

Accept staff's memorandum dated August 19, 2013 providing information on Airport noise programs and increasing the curfew fine.

BACKGROUND

In late April, the Rules and Open Government Committee directed staff to return with information on what can be done to enhance the City's Airport noise abatement programs. The Committee also directed staff to return with options for raising the fines for curfew violations. Staff originally committed to reporting back to the Committee by late May early June. However, due to limited staff resources, staff was unable to meet that timeline.

In the meantime, in late June the City Council received correspondence from the Shasta/Hanchett Neighborhood Association containing several suggestions to strengthen the Airport's curfew and noise abatement programs (see Attachment A). The suggestions touched on many of the areas of interest discussed at the April Rules Committee meeting. The suggestions contained in the Shasta/Hanchett correspondence, along with a request for staff's response, were forwarded to Airport staff by Councilmember Liccardo's office.

In response to both the Committee and the suggestions from the community, this memo provides information on: 1) the Airport's ongoing efforts to be a good neighbor to the adjacent community; 2) several new enhancements to the Airport's current noise abatement programs; 3) the status of staff's review of raising curfew fines; 4) some facts on the effectiveness of the curfew; and 5) an overview of implications that should be considered in any discussion of increasing the curfew fine.

DISCUSSION

The City's Airport Noise Abatement Program – A Program to be Proud of

The noise impact of the Airport on adjacent communities has been an issue of priority concern for the City for decades. Over that time frame, the City has implemented a number of noise abatement measures with the objective of maintaining the balance between the needs of the traveling public with the goal of limiting noise impacts on the adjacent neighborhoods. Before providing information on what the Airport is doing to enhance its noise abatement programs in the areas identified by the Committee and the Shasta/Hanchett correspondence, because context is important, it may be beneficial to summarize the measures the City has taken over the years to minimize the impact of Airport noise on nearby residents. Those noise abatement measures include:

Establishing and maintaining a curfew: As the Airport began to grow in the 1980's, the City adopted a curfew to reduce the night time noise impacts on nearby communities. When Congress passed the Airport Noise and Capacity Act (ANCA) in 1990, which took control of regulating airport noise away from the local airport and placed it under the Federal government, San José managed to get its weight-based curfew (which prohibited aircraft weighing more than 75,000 lbs from taking off and landing between the hours of 11:30 p.m. and 6:30 a.m.) grandfathered in. To the best of our knowledge, the nation has more than 12,000 public use airports and San Jose is one of nine with a grandfathered curfew.

In 2003, when the City's weight-based curfew faced a serious legal challenge because newer models of larger jet aircraft had become quieter than older models of smaller jet aircraft, to maintain its curfew, the City fought the legal challenge by transitioning from a weight-based curfew to the current noise-based curfew. Through the transition, the curfew hours of 11:30 p.m. to 6:30 a.m. did not change. 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 airports in the Bay Area with a curfew. To strengthen compliance with the new noise-based curfew, the City adopted the imposition of a \$2,500 fine per curfew violation.

The curfew does not restrict all night time flights (aircraft with a noise level under Epn dB or Effective Perceived Noise Decibel Level 89, aircraft operating as a result of events beyond the control of the operator, emergency operations, government-operated aircraft and grandfathered aircraft); it significantly limits night time flight activity.

The completion of the Acoustical Treatment Program: From 1995 to 2007, the Airport expended \$140 million to treat 2,500 homes experiencing aircraft noise impacts of 65 Epn dB or greater. (The treatment area was determined by the federal government.) These homes were located within or adjacent to the Airport's 1995 noise contour. The program treatment reduced interior noise levels in homes impacted by the Airport by installing noise-resistant windows, doors and air conditioning at no cost to the homeowner. With the concurrence of the federal government,

the Airport also provided “focused treatment” to another 1,000 homes experiencing Airport noise impacts between 60-65 dB, which is beyond the standard defined impact area defined by the federal government. Focused treatment consisted of limited treatment measure (e.g., replacing windows on the side of the house facing the Airport, etc.) Four schools and over 400 historical homes were also treated. When the program concluded in 2007, it was recognized as one of the best noise abatement programs in the nation.

Establishing the Airport Noise and Operations Monitoring System (ANOMS): The Airport established its noise abatement programs in the 1970’s. In the mid-1990’s the Airport established a listening system to monitor the level of noise at the Airport and to track flight activity over the San José area. ANOMS consists of several components, including microphones, radar, WebTrak (a program also accessible to the public that which tracks flight activity) and a telephone-based hotline to record noise and curfew violation complaints from residents.

In 2008 the Airport completed an upgrade to its ANOMS program. One of the improvements from this upgrade was transition from a telephone-based hotline complaint reporting system to an automated, computer-based reporting system. This upgraded reporting system provided the community with the ability to enter aircraft noise and curfew violation complaints directly into the ANOMS database through the Airport’s website. The upgraded reporting system has resulted in more accurate reporting and an improved correlation between the noise complaint and the aircraft operation compared to the telephone hotline system that utilized a voice recording system for noise complaints. Although there have been community suggestions that the voice recording system should be re-instated, staff believes the accuracy and efficiency of the current reporting system offers superior benefits to the previous voice hotline reporting system, which required a significant amount of staff time to transcribe information and could result in a higher probability for inaccuracies.

For example, in 2012, the Airport received 896 complaints through its computer-based reporting system. If the Airport were still using the telephone-based hotline, it would have required a considerable amount of staff time to transcribe those same 896 complaints.

The establishment and upgrading of the Airport’s compliance with procedures program: In June 2008 the Airport established the Fly Quiet program that would eventually become the Compliance with Procedures Report, a program that provides feedback to the airlines on how well they are complying with landing and taking off procedures designed to limit noise impacts on the community.

The Reduction of the Airport Noise Contour and the Lifting of the State-Imposed Variance

The aforementioned noise abatement measures have all played a significant role in reducing the Airport’s noise impacts on the community. In addition to the measures the Airport has implemented, over the years, the Airport’s noise contour has shrunk significantly, further reducing the noise impact on nearby neighborhoods. There are two major reasons the contour has shrunk:

1. jet aircraft has become increasingly quieter; and
2. the number of commercial flight operations has decreased. (In 2001, the Airport was accommodating over 14 million passengers a year. Today, the Airport is accommodating just over 8 million passengers a year. Fewer passengers mean fewer flights.)

The two aforementioned factors have combined to significantly reduce the contour of the Airport's noise impact. The noise contour map contained in Attachment B shows how much the Airport's noise contour has shrunk since 1997. The attachment also shows the residential areas that received acoustical treatment between 1995 and 2007 when the program concluded. As can be seen in Attachment B, the Airport treated homes located beyond the boundary of the 1997 contour and significantly beyond the current contour boundary.

In 2012 the State of California acknowledged the Airport's success in mitigating noise impact by lifting of its noise variance on the Airport. Although Airport noise still impacts adjacent residents, the lifting of the variance signifies the Airport has mitigated its noise impacts to the extent possible complies with noise levels standards set by the state for airports.

Noise Complaints Decreased – 2002-2013

All of these measures and developments have combined to reduce the number of noise complaints from residents. For example, for the five-year period 2002 through 2007, the Airport received nearly 7,000 noise complaints for flight operations occurring at all times of the day from 1,652 residents. However, from 2008 through early June of 2013, the Airport received just over 3,200 complaints from 700 residents (see Attachment C). That is about a 54% reduction in complaints and a 58% reduction in the number of residents from the previous five years. Part of that reduction is a function of fewer flights and part is a function of advancing technology enabling quieter aircraft. Even more interesting is the number of residents that call in with complaints about noise. Of the 3,200 noise complaints the Airport received from 2008 until early June 2013, just over 1,500 of those complaints (47%) came from just *nine* residents. Out of the 896 complaints received from 147 residents in 2012, 533 of those complaints (about 60%) came from just *three* residents, which means the other 144 residents accounted for the remaining 363 complaints (40%) the Airport received. Thus far in 2013, the Airport has received 358 noise complaints from 42 residents. Of that number 293 complaints – or 82% – have come from just *one* resident with just 65 complaints coming from the remaining 41 residents.

Staff believes that as the Committee considers what improvements the Airport is currently undertaking to strengthen its noise abatement program and whether the amount of the curfew fine should be increased, it is helpful to consider what measures the Airport has implemented thus far to minimize noise impacts on the surrounding community and how effective those measures have been to date in limiting the impact of noise on the adjacent neighborhoods.

Current Planned Improvements in Noise Abatement Program

Over the last five years, Airport staff allocated to curfew and noise abatement has been reduced from four full-time employees (FTEs) to less than one FTE. There are three reasons for the staff reductions:

1. The budgetary impacts of the Great Recession.
2. The increased use of technology to maintain noise abatement programs.
3. Significantly fewer noise complaints from the community as the number of flight operations has been reduced and aircraft have gotten quieter.

The significant staff reductions over the last several years notwithstanding, the maintenance of the City's Airport curfew and noise abatement programs remain an Airport priority. Staff has developed several improvements to the programs utilizing input and ideas from the community and several Council offices. In addition staff is implementing industry best practices in noise abatement. While currently, the budget situation and staffing resources limit how much and how quickly improvement can be implemented, staff is making progress in several areas.

Staff is updating the brochure to educate general aviation pilots on Airport noise abatement procedures and noise-sensitive areas. Staff is currently reviewing the previous version of the brochure (last produced in 2000) and has set a goal of updating and reprinting it in fall 2013. The brochure will include the updated locations of noise-sensitive areas. When the brochure is ready for distribution, staff will work with local pilot groups and the Airport's fixed-base operators to get the brochures distributed to as many general aviation pilots as possible.

Noise abatement training for general aviation (GA) pilots will be added to the GA safety meetings. Staff will add a component on noise abatement procedures and the location of noise-sensitive areas as part of the periodic safety meetings conducted for the GA community. A tentative date of August 26th has been established for the next General Aviation Safety Meeting.

The Airport's website will be updated. Staff plans to expand and update the Frequently Asked Questions (FAQ) section in the noise section of the Airport's website. The objective of the updated information will be to:

- encourage greater community understanding of aviation noise;
- communicate awareness of noise-sensitive areas; and
- educate the public about the Airport's work to minimize the impact of noise on the on adjacent neighborhoods.

Staff plans to have the website updated by fall of 2013.

Staff is reviewing options to expand the ways noise complaints can be reported. Staff is working with the ANOMS service provider to review the possibility of developing a “Smartphone app” that would allow the members of the community to report the same automated complaints from a mobile phone source. Although the service provider has not committed to the deployment of a smart phone application, the service provider has received requests from several airports for a Smartphone-type of application. Staff will continue to periodically encourage the service provider to develop such an application.

Review of Increasing the Current \$2,500 Curfew Fine

The Airport currently assesses fines of \$2,500 for every non-compliant operation during curfew hours. The original fine level was set after consultation with the FAA. However, recently members of the community and some Councilmembers have called for higher fines.

The staff review of options to increase curfew violation fines has only very recently begun. Although the FAA concurred with the establishment of the current \$2,500 fine in 2003 when the City transitioned from a weight-based to the noise-based curfew, the City Attorney’s Office has advised that an increase of the curfew fines from the current amount does not require further FAA review or approval. Thus Airport staff’s review, which will be conducted with support from the City Attorney’s Office, will focus on the primary questions of: 1) what are the potential options and methodologies for the raising the curfew fines? and 2) what are the implications for staff resources and retaining and attracting commercial air service and general flight activity if increased fines are imposed? Staff is committed to providing at least a preliminary report no later mid-October 2013 – and sooner if possible.

As the Committee considers whether to increase the fine level, it is important to be aware that the number of curfew violations has been very small in comparison to the number of intrusions (flights operations) during the curfew hours. Not all flight operations that occur during the curfew hours are violations of the curfew. The curfew allows flight operations (intrusions) under the following circumstances:

1. events beyond the control of the operator (e.g., weather, mechanical problems, tardiness due to air traffic control, and security delays);
2. emergency operations (e.g., diverted flights as a result of the Asiana incident at SFO);
3. government-operated aircraft; and
4. aircraft operating at 89 Epn dB or less (Epn dB is defined by the International Civil Aviation Organization as the human annoyance level with aircraft noise) ; and
5. aircraft “grandfathered” in when the Airport transitioned from a weight-based to a noise-based curfew.

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

Given the aforementioned exemptions allowed under the curfew, the number of curfew violations has been very small when compared to the number of intrusions during the curfew hours and the number of intrusions has been infinitesimal when compared to total number flight operations.

From 2008 through 2012, there were just over 383,200 flight operations at the Airport (commercial and general aviation). Of that total number, just over 2,336 of those flights occurred during the curfew hours (0.6 percent or about one flight out of every 170 flight operations). Of those 2,336 flights, just 132 were determined to be in violation of the curfew (5.7 percent of all intrusions or flights during the curfew hours). That would be an average of 26 flights a year or about two flights a month over the five-year period (see Attachment D).

These numbers are important because they provide a context for the size of the problem increased curfew fines would impact on an annual basis. As the Committee considers the size of the problem the solution of increased curfew fines would impact, it is also important to consider depending on the administrative construction of the fine system selected, the potential implications of increased fines on the staff resources that might be needed to administer increased curfew fines. More importantly, consideration must also be given to the impact of increased fines on the Airport's ability to retain current commercial air service and attract new air service – both domestic and international – because unlike most other airports that may impose curfew fines, air carriers providing service to the Bay Area have three commercial airports to choose from in providing their services. To what extent, if any, will increased fines impact the Airport's ability to attract more air service? Any loss of air service or opportunities for new air service would also make the Airport less competitive for current and potential future airlines. The potential specifics of the impacts of increased curfew fines on Airport staffing and the retention and attraction of commercial flight service will be addressed as best as possible when staff returns with options for increasing the curfew fines.

Finally, as the Committee considers the possibility of increasing the curfew fine, it will be important to consider what the objectives are and expected outcomes of raising the fine? If there are habitual violators of the curfew, will higher fines result in fewer intrusions and fewer violations and, thus, less noise on the neighborhoods? Will increased fines result in fewer noise complaints? Will higher fines impact the Airport's ability to secure new air service and, if so, how might that impact the Airport and General Funds? To try to address these questions, staff will review the circumstances that most frequently result in curfew citations and fines and to what extent increasing the fine will eliminate or reduce those circumstances.

Conclusion

Over the years the City has taken a number of measures to successfully minimize the impacts of noise on surrounding neighborhoods. The effectiveness of the Airport's noise abatement

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programs is evidence by: 1) the relatively small number of noise complaints compared to the number of flight operations over the past five years; and 2) the very small number curfew violations compared to the relatively small number of flight operations during the curfew hours. Although staffing reductions have required changes to the scope of the Airport's noise abatement programs over the last several years, Airport staff remains committed to the maintenance and improvement of an effective program that ensures compliance with the Airport's noise abatement procedures. Staff is committed to continuing to identify technology solutions that maximize staff efficiencies while allowing the community to effectively communicate its concerns regarding aircraft operations during the curfew hours. Staff will also continue to work with the Airport's tenant airlines, fixed-base operators and the pilot community to conduct outreach and education on the location of noise-sensitive areas and the noise abatement procedures designed to minimize the impact on nearby neighborhoods. Finally, staff will soon report back on options for increasing curfew fines as well as any potential additional resources needed to administer increased fines and the potential impact, as best as can be determined, on the retention and attraction of commercial flight service and the Airport and the City General Funds.

Staff hopes this report provides some valuable background information and context on the effectiveness of the Airport's noise abatement programs as the Committee considers to imposition of increased curfew fines. Staff also hopes the information contained in this report provides some reassurance that that staffing and jurisdiction constraints notwithstanding, the Airport remains committed to being the best neighbor it can be to the adjacent community.

/s/

William F. Sherry, A.A.E.

Director of Aviation

Please direct questions to Curt Eikerman, Airside Operations Manager, at (408) 392-3509.

Attachment A: Correspondence from the Shasta Hanchett Park Neighborhood Association

Attachment B: Airport Noise Contour Comparison: 1997 and 2013

Attachment C: Noise Complaints – 2008-2013

Attachment D: Curfew Citations Issued – 2008-2012



Shasta/Hanchett Park Neighborhood Association
P.O. Box 28634 • San Jose, CA 95159 • info@shpa.org • www.shpa.org

June 25, 2013

To: Honorable Mayor and City Council of San Jose
Re: Curfew Provisions

Dear Honorable Mayor and City Council,

On behalf of the Shasta/Hanchett Park Neighborhood Association I would like to add several comments to the discussion of the curfew and other regulations pertaining to operations at Mineta San Jose International Airport at the Rules and Open Government Committee meeting of April 24, Item G. 7.

We would like to see that this broadening discussion of curfew fines also would include:

- (1) an escalating fine system and/or a three strikes system,
- (2) that the fines are accumulated by vessel tail number as well as by pilot license number.

Further, we would advocate:

- (3) the development (or addition to the existing) Smart Phone App to report aircraft noise and curfew violations,
 - (4) a reactivation of the reporting hotline,
- and we would also refer to staff input on scope of options as per Councilmember Liccardo's suggestions on this topic.

We also respectfully request:

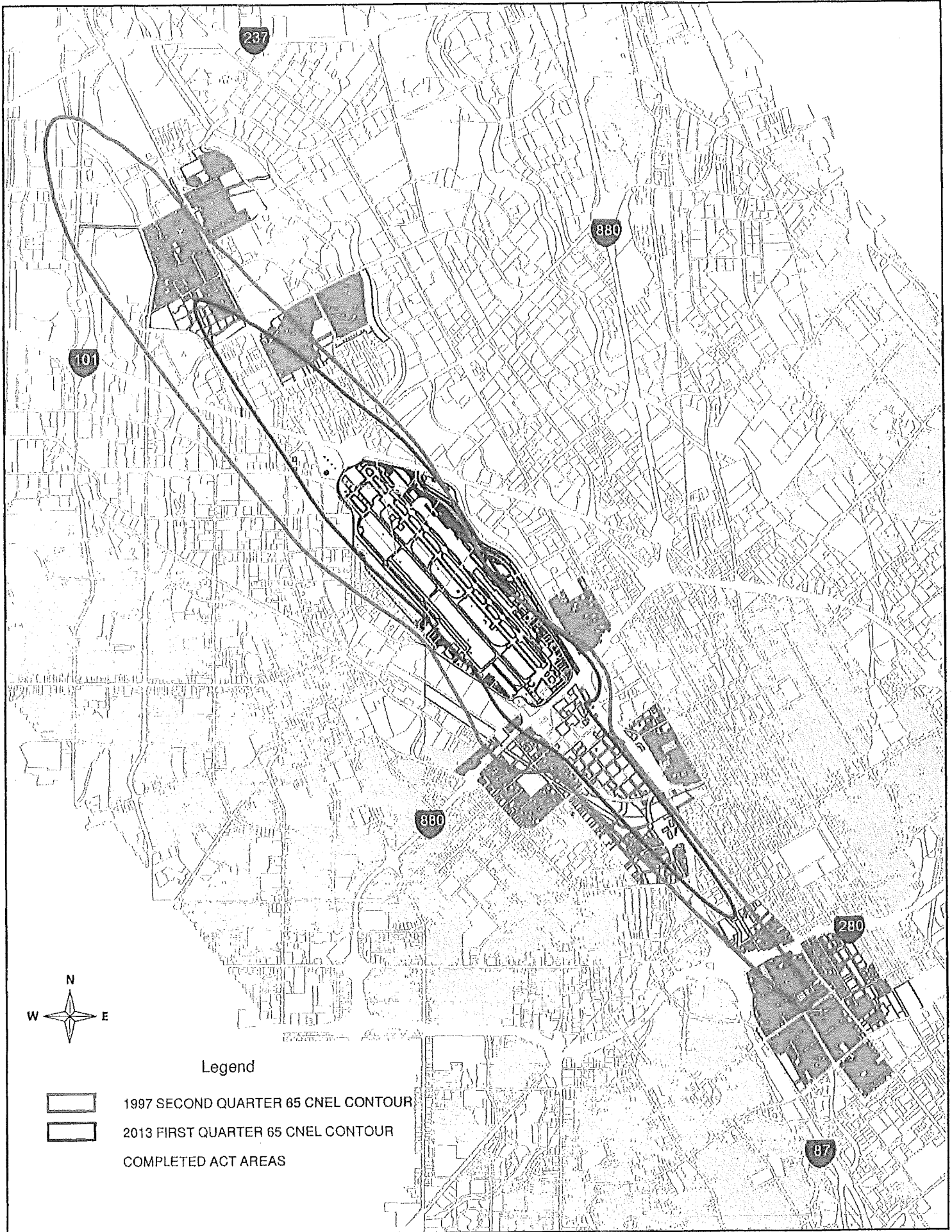
- (5) an update of the boundaries of the noise sensitive area to reflect the housing built since these were set, especially around the Garden Alameda / Stockton Avenue corridor,
- (6) as well as an overlay with Urban Village zoning map for the future high density Alameda Urban Village,
- (7) and that this Noise sensitive area map be posted online.

To reiterate the long held position of the Shasta / Hanchett Park Neighborhood Association, is that our community is **STRONGLY OPPOSED** to any new development at the airport that weakens the power and enforceability of the San Jose Airport Curfew Ordinance (San Jose Municipal Code Title 25, Chapter 25.03), and we respectfully request that you make every reasonable effort to ensure that any new development does not weaken the remedy for violations of the Curfew. We once again request that you take a long-term community view in the best interest of all of our community members and make every reasonable effort to ensure strong Curfew protections.

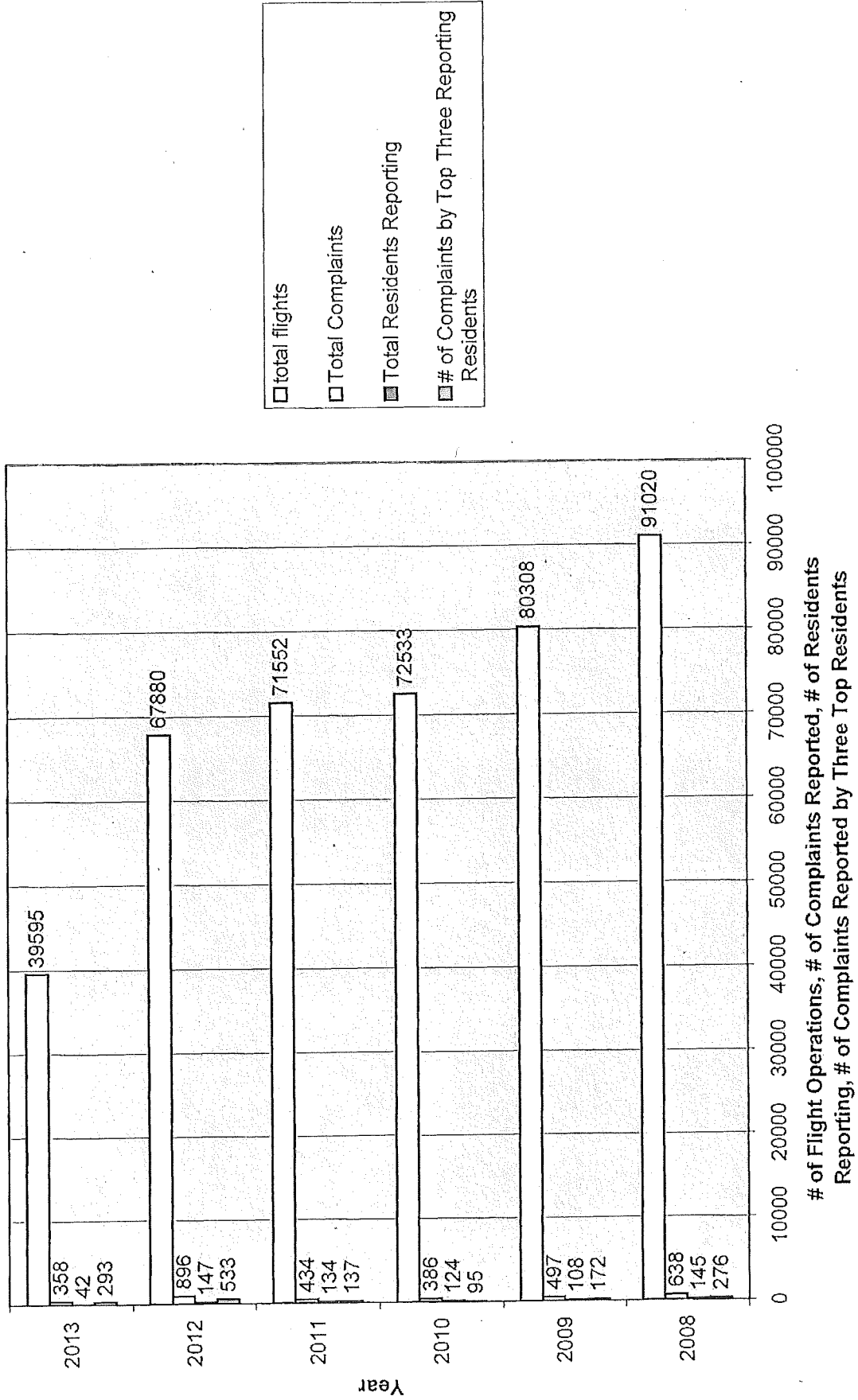
Thank your for your consideration in this matter.

Sincerely,

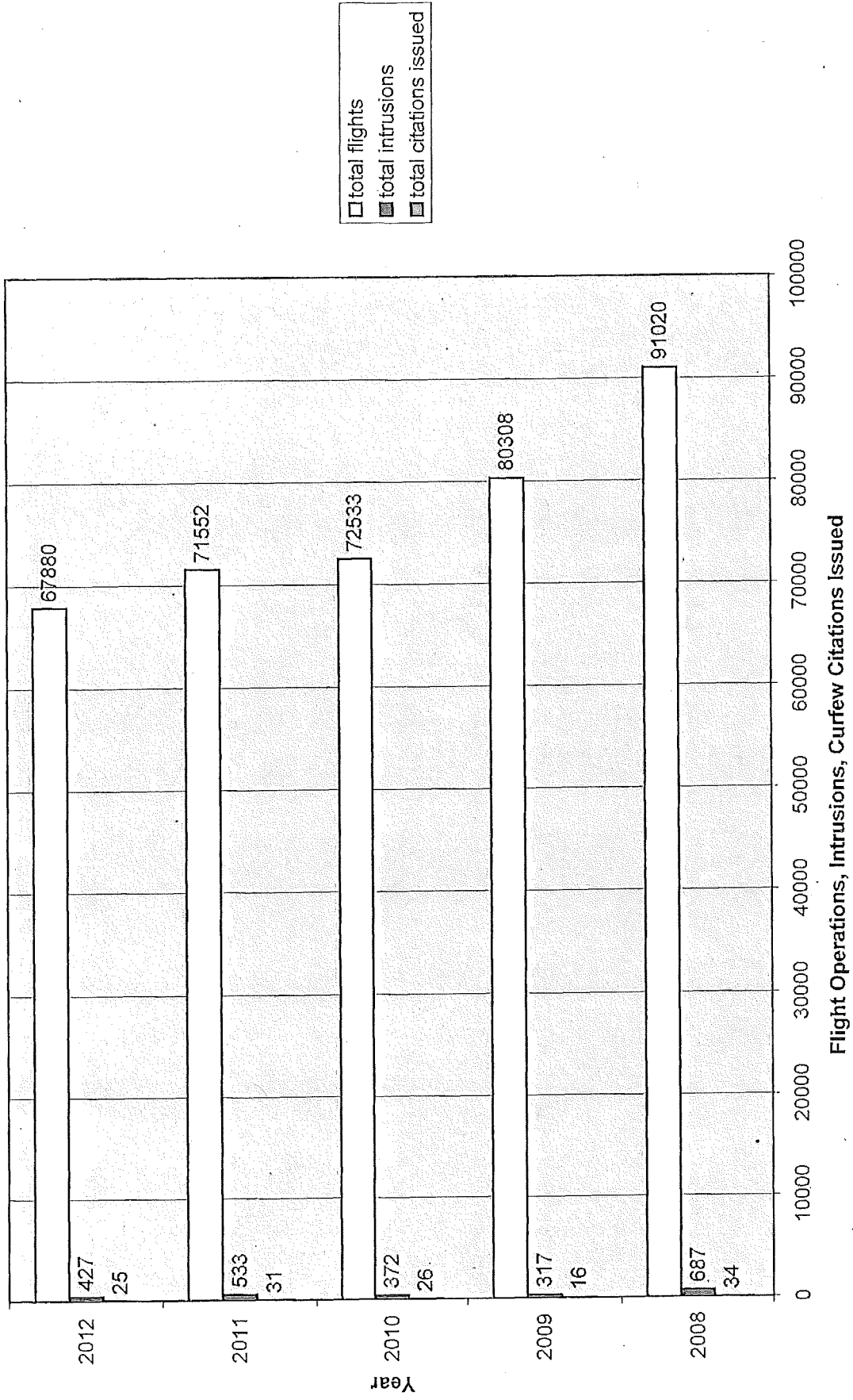
Eloy Wouters
President, Shasta/Hanchett Park Neighborhood Association



Noise Complaints Reported (all hours) - 2008-2013



Curfew Citations Issued (2008-2012)



Flight Activity, Intrusions and Violations During the Curfew Hours - 2008-2013

