

SUPPLEMENTAL

COUNCL AGENDA: 03-13-07

ITEM: 6.3



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William F. Sherry, AAE

SUBJECT: SEE BELOW

DATE: March 8, 2007

Approved

Date

3/8/07

SUBJECT: APPROVAL OF THE SIGNATORY AND NON-SIGNATORY AIRLINE AND AIRPORT LEASE AND OPERATING AGREEMENTS BETWEEN THE CITY AND ALL AIRLINES OPERATING AT THE AIRPORT – SUPPLEMENTAL INFORMATION

REASON FOR SUPPLEMENTAL

In recent days there have been news articles and letters written regarding the proposed new airline signatory lease scheduled for the March 13 City Council meeting. The purpose of the supplemental information below is to clarify the meaning and the benefits of the provisions of the airline lease agreement related to the curfew.

DISCUSSION

Curfew Lease Provisions

The airline lease agreement contains provisions affirming the obligation of each signatory airline to recognize and comply with the City's current curfew ordinance. In addition, the agreement contains language that goes beyond the curfew ordinance in which each airline agrees to voluntarily not conduct takeoffs and landings during the curfew hours of 11:30 p.m. to 6:30 a.m. – even if they have aircraft that are allowed to do so by the current City curfew ordinance. The curfew provisions also state that a violation of the curfew will not be a default of the lease agreement.

It has been said by some in our community that the City is “giving up” its ability to enforce the curfew or that these provisions allow an airline to ignore the ordinance. These conclusions are not correct. As noted above, the lease will require the airlines to recognize and comply with the provisions of the City's Curfew Ordinance. That means recognizing that non-compliant aircraft are not allowed to take off or land during the curfew hours. In the occurrence of the relatively few instances of non-compliance, the City retains all of the enforcement abilities contained in the curfew ordinance, including the ability to levy fines and seek injunctive relief for repeat violations. Staff believes that the curfew enforcement remedies available to the City under the Curfew Ordinance provide very effective curfew enforcement tools to protect the community's interests.

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However, in addition to agreeing to recognize and comply with the provisions of the Curfew Ordinance for non-compliant aircraft, the airlines are agreeing to voluntarily not conduct takeoffs and landings during the curfew hours with compliant aircraft. This voluntary portion of the agreement on the curfew therefore applies to takeoff and landing operations that would be allowed under the Curfew Ordinance. The airlines' agreement to voluntarily not conduct takeoff and landing operations that are allowed during curfew hours goes above and beyond what is required to comply with the provisions of the City's Curfew Ordinance. This provision recognizes the importance of the curfew to the City and is clearly an additional benefit to the community, especially those neighborhoods closest to the Airport.

It has also been said that the City is "relinquishing its right" to declare an airline in default of the lease and evict the airline for ongoing curfew violation problems. Currently, there are no provisions in existing airline leases that either expressly affirm an airline's obligation to comply with the City's Curfew Ordinance or that give the City the ability to evict an airline for violation of the curfew ordinance. It is therefore important to understand that the City currently has no "right" to either require the airlines to recognize the Curfew Ordinance in the lease or to unilaterally declare an airline in default of the existing lease and to evict it from the Airport for repeated curfew violations. The City Attorney's office is preparing a separate memo to Council detailing the legal constraints that effectively prevent the City from declaring a lease default and evicting an airline to enforce the Curfew Ordinance.

It is also important to remember that the lease agreement is a contract being executed by two consenting parties: the airlines and the City. Every provision in the lease reflects the understanding and agreement between the airlines and the City. Legal constraints on the City's ability to do so notwithstanding, there is no reason for the airlines to agree to terms that would leave their operations facing default and eviction from the Airport as the result of curfew violations. This is evidenced by the fact that many of our carriers are currently operating without a lease because of their refusal to sign such language. This situation exposes the City of San Jose to uncertain risks.

Benefits

To my knowledge, of the nine airports throughout the country with curfews, San José would be the first and only airport in the nation in which all of the tenant airlines agree to acknowledge and affirm their duty to comply with the local curfew ordinance as part of their lease agreement. This is a major accomplishment and it demonstrates the airlines' desire to partner with the City of San Jose.

Far from encouraging the airlines to ignore the curfew ordinance, airline acknowledgement of the ordinance in the lease agreement puts the ordinance front and center as a high priority policy to the City and the community, as an integral part of the relationship between the airlines and the City and as an important component in conducting business at the Airport. The airlines' agreement to continue their current practice of not conducting takeoffs and landings during the curfew hours, even if they have aircraft that could do so under the current curfew ordinance, is an extraordinary expression by the airlines of their intent and commitment to work with the City to be good corporate neighbors to the surrounding community.

Another provision in the lease that supports the reduction of noise to nearby residents is the rates and charges methodology. The proposed rates and charges methodology in the lease agreement encourages airlines to use larger planes to operate out of San José. By using larger planes, the airlines can bring in

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more passengers per flight and reduce the total number of aircraft operations, thus reducing noise and impacts on surrounding neighborhoods.

Staff currently plans to seek Council approval in June for the issuance of bonds to finance Phase I of the Terminal Area Improvement Program (TAIP). Since the Phase I projects are unconditionally approved by the airlines in the proposed new lease, any delays in moving forward with the approval of the proposed lease may delay the financing of Phase I of the TAIP.

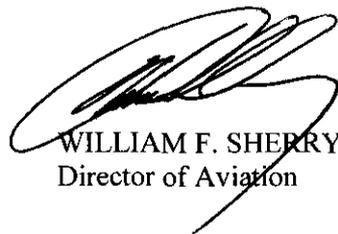
The proposed lease agreement was unanimously approved by the Airport Commission at its meeting of March 5.

Conclusion

San José has done perhaps more than any other city in the nation to limit and mitigate the impact of its airport's operation on its residents. Over the last ten years, the City has been the only airport in the nation to successfully transition from a weight-based to a noise-based curfew with substantial fines. In addition, the City has invested over \$140 million to mitigate noise impacts in over 2,500 homes in neighborhoods near the Airport.

The new lease further underscores the importance of the curfew to the City and the community. Though the airlines have no contractual obligation to eliminate flights during the curfew hours – even if the curfew allows them to do so with the proper aircraft – their acknowledgment of the curfew clearly signals their understanding of how important the curfew is to the City of San Jose.

For several years, the City has pursued the goal of “building a great airport that’s also a good neighbor.” I believe the proposed lease agreement – the result of many months of negotiations between the City and the airlines – is a significant step towards that goal. The new agreement will benefit the City, the community and the airlines as well as further protect the neighborhoods most impacted by the Airport’s operations. Far from weakening the City’s ability to enforce the current curfew ordinance, the proposed lease agreement reinforces its importance and therefore provides another layer of protection for the adjacent neighborhoods.


WILLIAM F. SHERRY, A.A.E.
Director of Aviation

For questions please contact James Webb, Jr., Assistant to the Director for Government and Legislative Affairs at (408) 501-7600.

cc: Airport Commission