



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William F. Sherry, A.A.E.
Christopher M. Moore

SUBJECT: SEE BELOW

DATE: November 5, 2012

Approved

Date

11/9/12

SUBJECT: RECOMMENDATION TO AMEND MUNICIPAL CODE RELATED TO DISCHARGING FIREARMS WITHIN THE PERIMETER OF THE AIRPORT

RECOMMENDATION

Approve an ordinance amending Section 10.32.010 of Chapter 10.32 of Title 10 of the San José Municipal Code to exclude properly trained Airport employees and contract biologists discharging firearms within the perimeter of the airport as part of the Airport's Wildlife Hazard Management Program from the prohibition on discharging firearms within the limits of the City.

OUTCOME

This proposed ordinance would allow properly trained Airport employees and qualified biologists under contract with the Airport Department, to utilize firearms as part of a comprehensive Wildlife Hazard Management Plan (WHMP) as required and approved by the Federal Aviation Administration. The purpose of the WHMP is to minimize risk to the safety of Aircraft operations.

BACKGROUND

Section 10.32.010 of the San José Municipal Code generally prohibits persons from firing or discharging a firearm within the City limits. Exceptions are provided for peace officers and military personnel during the conduct of their duties; persons using firearms in necessary self defense, and persons operating or participating in a gun club or shooting range that is properly licensed.

ANALYSIS

Airport Required to Adopt a Wildlife Hazard Management Plan

Norman Y. Mineta San José International Airport comprises approximately 1,000 total acres. Approximately 300 acres of this total consists of vegetated infield areas. Because of this large vegetated area, the Airport has historically attracted wildlife. For many years, the Airport has implemented a variety of wildlife mitigation strategies pursuant to applicable Federal Aviation Administration (FAA) guidance to ensure the safety of the traveling public and aircraft operating at the Airport. However, in recent years the potential safety implications of wildlife strikes upon aircraft have required the FAA to become increasingly involved in the regulation of airport wildlife mitigation programs.

The potential safety implications of wildlife strikes upon aircraft were dramatically illustrated on January 15, 2009, when Chesley Sullenberger, from Danville, California landed US Airways Flight 1549 in the Hudson River. The "Hero-on-the-Hudson" was a direct result of the ingestion of birds into the jet engine during takeoff from LaGuardia Airport. This incident was the most recent catalyst for increased FAA scrutiny of wildlife mitigation efforts at US Airports.

Similarly, United Airlines Flight 1220, a Boeing 757 departing Norman Y. Mineta San José International Airport on February 16, 2009, had to abort takeoff after striking several gulls and damaging both engines. As a result of this incident, the FAA required the Airport to conduct a formal Wildlife Hazard Assessment (WHA). This comprehensive assessment was conducted by an FAA approved wildlife biologist over the course of twelve months and was submitted to the FAA in compliance with regulatory requirements.

On February 21, 2012, the FAA notified the Airport that as a result of the WHA, completed on June 30, 2010, and subsequent observations by the FAA Safety and Certification Inspector, the Airport must develop and implement an official WHMP to be submitted and approved by the FAA. The City has contracted with the United States Department of Agriculture (USDA) to provide a qualified biologist to assist with the development of a comprehensive WHMP for the Airport. The WHMP will be submitted, reviewed and ultimately approved by the FAA in accordance with FAA regulatory requirements under 14 CFR Part 139.337.

The regulatory requirements include an integrated wildlife damage management approach. To implement the wildlife damage approach, it is essential that qualified Airport staff and contract biologists be exempt from the general prohibition on persons discharging firearms within the perimeter of the Airport.

Adoption of Muni Code Amendments Critical to Airport Wildlife Hazard Management Effort

The FAA-mandated WHMP is critical to airport safety and the ability to discharge firearms by qualified Airport and contract biologists is critical to the implementation of the WHMP. There

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are potentially serious implications and consequences for both the Airport and the traveling public if the WHMP is not successfully implemented.

Wildlife hazard mitigation measures and management plans are needed on airport property to control growth of wildlife (insects, mammals and birds) that can directly or indirectly create safety hazards for landing and departing aircraft that are incompatible with safe airport operations. At the Airport, raptors, seagulls and insect-consuming birds are the greatest risk to safe departures and landings, as birds seeking prey living on the airfield can strike departing and landing aircraft. Bird strikes can cause significant damage to aircraft and put the safety of passengers at risk.

In June 2012, seagulls, attracted to the Airport's airfield by high locus populations struck a Southwest 737 during landing, bending seven engine fan blades and leading to \$40,000 to \$50,000 in repair costs. Since 2009, there have been 180 incidents of reported bird strikes at the Airport. Nationwide, the reported cost of bird strikes on aircraft has averaged \$123 million a year. Since 1990 there have been 23 fatalities attributed to wildlife strikes with U.S. civil aircraft. Minimizing wildlife hazards and maximizing safe airport operations is a high priority for the FAA. As noted earlier, the 2009 bird strike of a departing United aircraft prompted FAA to direct the Airport to develop and implement a WHMP, which is a higher level of wildlife hazard control than the wildlife mitigation measures the Airport has been taking for years. To implement the WHMP, Airport and contract biologist will need to discharge live and blank ammunition.

Airport will continue Wildlife Conservation Efforts

As part of its Airport Master Plan Environmental Impact Report mitigation measures, the Airport has been implementing an Airport Burrowing Owl Management Plan since 1997. The Plan, which has been developed in consultation with the California Fish & Game Commission, has attempted to balance burrowing owl preservation and aircraft safety by maintaining portions of airfield land for burrowing owl habitat and conducting construction-related monitoring and mitigation, including the passive relocation of owls during the non-breeding season and creation of two artificial burrows for every occupied natural burrow closed. Staff will continue efforts to maintain that balance, even as it implements the WHMP as required by the FAA.

Airport Use of "Blank" and "Live" Ammunition

As noted above, the discharge of firearms at the Airport will involve the use of both live and blank ammunition. The blank ammunition are pyrotechnic shells, commonly referred to as "cracker" shells. These shells are noise-makers, similar to fireworks, designed to disperse wildlife through the use of non-lethal ammunition.

The use of live rounds will be limited to those instances in which the biologist has determined that non-lethal methods are not effective. The use of any live rounds will only occur in compliance with the Airport's federal wildlife hazard depredation permit used by the Fish and Wildlife Services of the U.S. Department of Interior. Like all airports that have wildlife

management programs, the use of live rounds is limited, controlled and documented in accordance with the terms and conditions of the federal depredation permit.

Firearms Safety Considerations

Understanding that Mineta San José International Airport is an urban airport surrounded by the community, firearms safety is a serious consideration. As a result of coordination and discussions with SJP, Airport staff is proposing the following firearms safety considerations be implemented if this exemption is approved;

- All firearms, when not in use will be stored within appropriate locked gun safes and behind locked doors or within SJP approved vehicle storage devices when authorized firearms personnel are not present.
- All ammunition will be stored in containers meeting the requirements established by the Bureau of Alcohol, Tobacco and Firearms (ATF). The storage locations shall be coordinated with SJP and SJFD in compliance with ATF requirements.
- Prior to the initiation of any firearms usage in compliance with the Wildlife Hazard Management Plan, notification will be provided to both the SJP-AD Duty Sergeant and the FAA Control Tower.
- All personnel will attend and successfully complete firearms familiarization and safety training providing by SJP as a condition of eligibility to discharge firearms within the Airport perimeter.
- The WHMP will be reviewed at least annually, as required by the FAA. This review will include participants in the WHMP as well as SJP, the FAA, tenants and other entities as necessary.

Comparable Airports in the State of California;

In an effort to analyze the proposed exemption to the Municipal Code, Airport staff conducted discussions with other similar commercial service airports to determine how firearms are utilized by there respective staff. The results demonstrate that this proposed exemption to allow properly trained Airport and contract biologists the ability to discharge firearms within the Airport perimeter is very similar to the actions of similar airports:

Oakland International Airport

Oakland International Airport utilizes a combination of Airport operations staff and USDA contract biologists to discharge firearms in support of their Wildlife Hazard Management Plan.

San Francisco International Airport

San Francisco International Airport utilizes internal Airport Operations staff to discharge firearms in support of their Wildlife Hazard Management Plan.

Sacramento International Airport

Sacramento International Airport utilizes two internal biologists and one contract USDA biologist to discharge firearms in support of their Wildlife Management Plan.

Los Angeles International Airport

Los Angeles International Airport utilizes USDA contract biologists to discharge firearms in support of their Wildlife Management Plan.

EVALUATION AND FOLLOW-UP

Approval of the proposed ordinance allowing Airport staff and contract biologists to discharge firearms within the Airport perimeter supports the Airport's goal to achieve a safe and secure air transportation system by providing a tool to mitigate wildlife/bird air strikes. The integration of the use of firearm discharge into the Airport's WHMP will reduce the possibility of aircraft bird strike incidents while supporting the annual Federal Aviation Regulation (FAR) 139 inspection process.

POLICY ALTERNATIVES

Alternative #1: Do not to provide an exemption for Airport staff and contract biologists to discharge firearms within the Airport perimeter.

Pros: No amendment of the Municipal Code is required.

Cons: The Airport's ability to reduce the probability of wildlife strikes by aircraft would be limited to existing measures and as a result the probability of incidents will remain significantly higher than without the additional measure.

Reason for not recommending: The recommended exemption will improve the safety of the traveling public and reduce potential costs related to damages to aircraft operating at SJC. Failure to provide this exemption, as a tool to manage airfield wildlife may result in additional liability costs, significant costs to our airline tenants and negative findings during FAA inspections.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

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- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Council Agenda Website for the November 27, 2012 Council Meeting.

COORDINATION

This Memorandum has been coordinated with the City Attorney's Office, San José Police Department, United States Department of Agriculture and the Federal Aviation Administration.

BUDGET REFERENCE

No additional costs are anticipated as a result of this action. As noted earlier the Airport currently has a contract with the USDA to provide a qualified biologist to support development and implementation of a comprehensive Airport WHMP including proactive and reactive measures to provide a safe airfield.

CEQA

Resolution Nos. 67380 and 71451, PP12-057.

/s/ Kimberly B. Aguirre for
WILLIAM F. SHERRY, A.A.E
Director, Airport Department

/s/
CHRISTOPHER M. MOORE
Chief of Police

For questions please contact Curt Eikerman, Airport Manager, Airside, 408-392-3509