

Airport Commission Appeal Hearing Procedures for Curfew Administration Citations

Office of the City Attorney
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Hearing Procedure

- Curfew Administrative Citations
 - Municipal Code § 25.03.460

Hearing Procedure (cont'd)

- Standard of Review: De Novo (brand new)
- Informal hearing
- **Relevant** evidence
- Oral testimony under oath
- Witnesses, documents and physical evidence
- Recorded by audiotape
- Chair decides on hearing length and procedural issues = FINAL

Hearing Procedure (cont'd)

- 6 votes needed
 - Municipal Code §§ 2.08.090, 2.08.410
 - Commission Rule 406
- < 6 votes = Director's decision upheld

Hearing Procedure (cont'd)

- Commission's Decision = FINAL
- Written Decision → Citation Recipient
 - Curfew Administrative Citations
 - Municipal Code § 25.03.470.E

Decision Options

- Curfew Administrative Citations
 - **Uphold** or **Cancel** Administrative Citation
 - Municipal Code § 25.03.470.A

- List reasons for decision

Curfew Administrative Citations

- SJC Curfew
 - No aircraft operations 11:30 p.m. to 6:30 a.m.
 - Municipal Code §§ 25.03.220, 25.03.225

- Administrative Citation Fine = \$2,500 per violation
 - Amount set by ordinance
 - Municipal Code § 25.03.420
 - No discretion as to fine amount

Curfew Exemptions

- Curfew Exemptions = Cancel Citation
 - * Force Majeure Event *
 - Municipal Code §§ 25.03.320, 25.03.245
 - Government-Operated Aircraft
 - Municipal Code § 25.03.330
 - Grandfathered Aircraft
 - Municipal Code § 25.03.255
 - <http://www.flysanjose.com/fl/environmental/curfew/schedule.pdf>

Force Majeure Event defined

- Force Majeure Event: Event beyond pilot's control that delay aircraft operation, including
 - Unforeseen mechanical problems
 - FAA Air Traffic Control directives
 - Compliance with federal, state or local security directives
 - Weather-related impacts

Force Majeure Event defined

- Force Majeure Event: Events beyond pilot's control, including
 - Weather factors
 - Unscheduled closure at scheduled destination airport (not SJC)
 - Emergency to preserve life or property
 - Emergency operations during official federal, state or city emergency

Questions?

Chapter 25.03 - AIRPORT CURFEW

Part 1 - INTENT

25.03.100 - Purpose.

The intent of the city council in enacting this chapter is to amend the existing Norman Y. Mineta San José International Airport Noise Control Program (the "NCP") to preserve the existing nighttime noise environment and the existing airport noise contour on which the city's approved Airport Master Plan is based. The city council further intends to preserve the benefits of the NCP to the communities surrounding the airport, and to balance the interests of the airport, the community, and airport users consistent with applicable federal legal requirements, including but not limited to 49 U.S.C. § 47524(d) (4).

(Ord. 27000.)

Part 2 - DEFINITIONS

25.03.200 - Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter. All references to times of day in this part shall be Pacific Standard Time or Pacific Daylight Time, as applicable.

(Ord. 27000.)

25.03.205 - Aircraft operation.

"Aircraft operation" means a takeoff or landing of an aircraft at the airport.

(Ord. 27000.)

25.03.210 - ATC.

"ATC" means FAA Air Traffic Control.

(Ord. 27000.)

25.03.215 - Certified composite noise level.

"Certified composite noise level" means the arithmetic average of the takeoff, sideline, and approach noise levels, in EPNdB, as listed in Appendix 1 or Appendix 2 of FAA Advisory Circular 36-1H, "Noise Levels for U.S. Certificated and Foreign Aircraft".

(Ord. 27000.)

25.03.220 - Curfew.

"Curfew" means a time use restriction that limits the hours in which the city will allow certain aircraft operations to be conducted and that prohibits the scheduling and operation of certain aircraft operations at the airport during curfew hours.

(Ord. 27000.)

25.03.225 - Curfew hours.

"Curfew hours" means the hours between 2330 and 0630.

(Ord. 27000.)

25.03.230 - EPNdB.

"EPNdB" means effective perceived noise decibel level, as defined and calculated in FAR Part 36.

(Ord. 27000.)

25.03.235 - FAA.

"FAA" means the United States Federal Aviation Administration.

(Ord. 27000.)

25.03.240 - FAR Part 36.

"FAR Part 36" means Federal Aviation Regulations, Part 36, "Noise Standards: Aircraft Type and Airworthiness Certification". Part 36 is codified under Title 14 of the Code of Federal Regulations.

(Ord. 27000.)

25.03.245 - Force majeure event.

"Force majeure event" means an event that is beyond the control of a person conducting an aircraft operation, including any one of the following:

- A. Unforeseen mechanical problems that delay an aircraft operation that had been scheduled prior to the curfew hours.
- B. FAA ATC directives that delay an aircraft operation that had been scheduled prior to the curfew hours.
- C. Weather-related impacts that delay an aircraft operation that had been scheduled prior to the curfew hours.
- D. Compliance with federal, state or local security directives that delay an aircraft operation that had been scheduled prior to the curfew hours.
- E. An emergency that requires an aircraft operation during the curfew hours to preserve either life or property.
- F. Weather factors or unscheduled closure at the scheduled destination airport for an aircraft operation, as shown in its FAA flight plan, only if the aircraft operation is a landing that was not scheduled at the airport.
- G. Aircraft operations conducted for emergency purposes during an emergency that has been officially proclaimed by the United States, the State of California or the city.

(Ord. 27000.)

25.03.250 - Jet aircraft.

"Jet aircraft" means an aircraft that is powered by one or more turbojet engines.

(Ord. 27000.)

25.03.255 - Schedule of authorized aircraft.

"Schedule of authorized aircraft" means the schedule issued from time to time by the director of aviation setting forth the jet aircraft authorized to operate during curfew hours. Attachment A of the schedule of authorized aircraft shall list all jet aircraft that generate a certified composite noise level equal to or less than 89.0 EPNdB as derived from FAA Advisory Circular 36-1H as in effect on the date of enactment and as revised from time to time by the FAA. Attachment B of the schedule of authorized aircraft shall list those grandfathered jet aircraft types that were previously authorized to operate during the curfew hours.

(Ord. 27000.)

25.03.260 - Stage 2 aircraft.

"Stage 2 aircraft" means a jet aircraft that has been shown to comply with the Stage 2 noise limits prescribed in FAR Part 36, but does not comply with the Stage 3 noise limits prescribed in FAR Part 36.

(Ord. 27000.)

25.03.265 - Stage 3 aircraft.

"Stage 3 aircraft" means a jet aircraft that has been shown to comply with the Stage 3 noise limits prescribed in FAR Part 36.

(Ord. 27000.)

Part 3 - CURFEW HOUR RESTRICTIONS ON AIRCRAFT OPERATIONS

25.03.300 - Curfew hour restrictions on aircraft operations.

- A. Except as otherwise expressly authorized herein, all persons shall be prohibited from scheduling and/or conducting a takeoff or a landing using a jet aircraft during curfew hours unless such takeoff or landing is conducted by a jet aircraft that is listed on the schedule of authorized aircraft.
- B. If a jet aircraft is not listed on the schedule of authorized aircraft, then the aircraft will be allowed to operate during curfew hours only if the operator demonstrates in writing to the director that the FAA Part 36 manufacturer certificated noise level of such aircraft (using the arithmetic average of the takeoff, sideline, and approach noise levels) is equal to or less than 89.0 EPNdB.

(Ord. 27000.)

25.03.310 - Other curfew hour restrictions.

Jet aircraft operators may only conduct aircraft operations by Stage 2 aircraft at the airport between the hours of 0700 and 2300.

(Ord. 27000.)

25.03.320 - Exemptions from curfew hour restrictions.

- A. A person may conduct an aircraft operation during curfew hours using a jet aircraft that is not permitted to conduct an aircraft operation during curfew hours under this part, only if such aircraft operation was delayed solely as the result of a force majeure event.
- B. Each person claiming an exemption from the curfew hour restrictions as set out in this section must provide the director of aviation or the director's designee a written curfew operation report on a form approved by the director within ten days of the date that a notice of aircraft operation

during the curfew hours was mailed or delivered personally to the person. Failure to file a curfew operation report within this ten-day period shall be grounds for denial of an exemption request. The curfew operation report must describe all facts necessary to support the claimed exemption.

- C. If the director determines that a curfew operation report documents facts sufficient to support an exemption from the curfew hour restrictions as set out in this section, no further action shall be taken.
- D. If the director determines that a curfew operation report does not document facts sufficient to support an exemption from the curfew hour restrictions as set out in this section, no exemption from the curfew hour restrictions will be approved.

(Ord. 27000.)

25.03.330 - Governmental exemptions.

- A. The following categories of aircraft operations are automatically exempt from the curfew hour restrictions:
 - 1. Aircraft operated by or on behalf of the United States of America or the State of California.
 - 2. Aircraft operated by any city, county or local unit of government for law enforcement, emergency, fire or rescue purposes.
- B. No curfew operation report is required for aircraft operations that are exempt under this section.

(Ord. 27000.)

Part 4 - ADMINISTRATIVE CITATIONS FOR VIOLATIONS OF CURFEW HOUR RESTRICTIONS

25.03.400 - Applicability.

- A. This part provides for administrative citations that are in addition to all other legal remedies that may be pursued by the city to address any violations of this chapter.
- B. Use of this part shall be at the sole discretion of the city.

(Ord. 27000.)

25.03.410 - Administrative citation.

- A. Whenever The director determines that a violation of this chapter has occurred, the director shall have the authority to issue an administrative citation to any person responsible for the violation.
- B. Each administrative citation shall contain the following information:
 - 1. The date of the violation;
 - 2. The section of this chapter violated and a description of the violation;
 - 3. The amount of the fine for the code violation;
 - 4. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 - 5. An order prohibiting the repeated occurrence of the code violation described in the administrative citation;
 - 6. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
 - 7. The name and signature of the director.

(Ord. 27000.)

25.03.420 - Fine amount.

The fine amount for code violations imposed pursuant to this chapter shall be two thousand five hundred dollars.

(Ord. 27000.)

25.03.430 - Payment of the fine.

- A. The fine shall be paid to the city within thirty days from the date of the administrative citation.
- B. Any administrative citation fine paid pursuant to Subsection A shall be refunded in accordance with Section 25.03.470.D. if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.
- C. Payment of a fine under this chapter shall not excuse or discharge any repeated occurrence of the code violation that is the subject of the administrative citation.

(Ord. 27000.)

25.03.440 - Hearing request.

- A. Any recipient of an administrative citation may contest that there was a violation of this chapter or that he or she is the responsible party by completing a request for hearing form and returning it to the director within thirty days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 25.03.450.
- B. A request for hearing form may be obtained from the director.
- C. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.
- D. If airport staff submits an additional written report concerning the administrative citation for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

(Ord. 27000.)

25.03.450 - Advance deposit hardship waiver.

- A. Any person who intends to request a hearing to contest that there was a violation of this chapter, or that he or she is the responsible party, and who is financially unable to make the advance deposit of the fine as required in Section 25.03.440.A. may file a request for an advance deposit hardship waiver.
- B. The request shall be filed with the director on an advance deposit hardship waiver application form, available from the director, within fifteen days of the date of the administrative citation.
- C. The requirement of depositing the full amount of the fine as described in Section 25.03.440.A. shall be stayed unless and until the director makes a determination not to issue the advance deposit hardship waiver.
- D. The director may waive the requirement of an advance deposit set forth in Section 25.03.440.A. and issue the advance deposit hardship waiver only if the cited party submits to the director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director the person's actual financial inability to deposit with the city the full amount of the fine in advance of the hearing.
- E.

If the director determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the city within ten days of the date of that decision or thirty days from the date of the administrative citation, whichever is later.

- F. The director shall issue a written determination listing the reasons for the director's determination to issue or not issue the advance deposit hardship waiver. The written determination of the director shall be final.
- G. The written determination of the director shall be served upon the person who applied for the advance deposit hardship waiver.

(Ord. 27000.)

25.03.460 - Hearing procedure.

- A. The airport commission shall conduct the administrative citation hearing for violations of this chapter pursuant to this section and any rules and procedures for the conduct of hearings as adopted by the airport commission.
- B. No hearing to contest an administrative citation before the airport commission shall be held unless the fine has been deposited in advance in accordance with Section 25.03.440.A. or an advance deposit hardship waiver has been issued in accordance with Section 25.03.450.
- C. A hearing before the airport commission shall be set for a date that is not less than fifteen days and not more than sixty days from the date that the request for hearing is filed in accordance with the provisions of this chapter.
- D. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- E. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
- F. The administrative citation and any additional report submitted by the director shall constitute prima facie evidence of the respective facts contained in those documents.
- G. The airport commission may continue the hearing and request additional information from the director or the recipient of the administrative citation prior to issuing a written decision.

(Ord. 27000.)

25.03.470 - Decision of the airport commission.

- A. After considering all of the testimony and evidence submitted at the hearing, the airport commission shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the airport commission shall be final.
- B. If the airport commission determines that the administrative citation should be upheld, then the fine amount on deposit with the city shall be retained by the city.
- C. If the airport commission determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the airport commission shall set forth in the decision a payment schedule for the fine.
- D.

If the airport commission determines that the administrative citation should be canceled and the fine was deposited with the city, then the city shall promptly refund the amount of the deposited fine, together with interest at the average rate earned on the city's portfolio for the period of time that the fine amount was held by the city.

- E. The recipient of the administrative citation shall be served with a copy of the airport commission's written decision.

(Ord. 27000.)

25.03.480 - Late payment charges.

Any person who fails to pay to the city the amount of any fine imposed pursuant to the provisions of this chapter on or before the date that fine amount is due shall be liable for the payment of an additional delinquency penalty. The delinquency penalty is equal to ten percent of the amount of the fine due to the city, or ten percent of the amount of the fine remaining unpaid to the city if a portion of the fine amount was timely paid. Interest shall accrue on all delinquent fine amounts, exclusive of delinquency penalties, at the rate of one half of one percent per month, pro rata, of the total delinquent fine amount, from the date the fine amount becomes delinquent until the date that all delinquent fine amounts are paid to the city.

(Ord. 27000.)

25.03.490 - Recovery of administrative citation fines and costs.

- A. The city may collect any past due administrative citation fine or late payment charge by use of all available legal means.
- B. Any person who fails to pay any past due administrative citation fine or late payment charge shall be liable in any action brought by the city for all costs incurred in securing payment of the delinquent amount, including but not limited to administrative costs and attorneys' fees.
- C. Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the past due administrative citation fine.
- D. Collection costs imposed under this section shall be added to and become a part of the underlying administrative citation fine.

(Ord. 27000.)

Part 5 - GENERAL PROVISIONS

25.03.510 - Notices.

- A. Whenever a notice is required to be given under this chapter, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his or her last known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.
- B. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

(Ord. 27000.)

25.03.520 - Right to judicial review.

Any person aggrieved by an administrative decision of the airport commission under this chapter may obtain review of the administrative decision by filing a petition for review with the Superior Court in Santa Clara County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

(Ord. 27000.)