

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: March 23, 1987

TO: Councilman Ed Struiksma
FROM: City Attorney
SUBJECT: Montgomery Field Master Plan - Adoption of
Restriction on Evening Touch and Go Operations

At a meeting on March 11, 1986 you requested this office to advise you whether any provisions of the Montgomery Field Master Plan, as amended, required further action by Council. You were specifically interested in restrictions on "touch and go" flight operations. As a consequence, the undersigned reviewed Council Resolution No. R-261161 and the provisions of the later ordinances adopted by the City Council regarding Montgomery Field flight operations.

On July 10, 1984 the City Council adopted Resolution No. R-261161 which approved the Montgomery Field Master Plan together with twenty-one (21) additional mitigating measures. The resolution also adopted certain environmental "findings" from Environmental Report EQD No. 80-09-34C to mitigate potential impacts on noise, safety and a unique biotic community in the vicinity.

The "findings" set forth in EQD No. 80-09-34C addressed two principal areas of concern pertinent to the subject at hand. The first related to noise abatement. Restrictions on flight activities were related to the conduct of flight operations within the parameters of single event noise levels (SENEL's). A curfew was proposed which would restrict late night and early morning flight operations which exceeded the maximum SENEL. The "findings" did not otherwise prohibit flight operations that could be conducted within the noise limit envelope. The second area, relating to flight safety, restricted the heights of structures in designated zones around the airport and recommended the acquisition of easements in order to further restrict structural heights.

The twenty-one (21) amendments to the principal resolution (R-261161) which adopted the Montgomery Field Master Plan are attached to this memorandum. Only amendment items 2A and 2N are pertinent to our discussion. The remainder address noise abatement, development of a noise monitoring system, education,

extension of runways and similar issues which are of a continuing

management action, and which are considered effected merely by virtue of their attachment to the Master Plan itself and thus incorporated.

Amendment item 2A established an interim late night and early morning curfew on flight operations between 11:30 p.m. and 6:30 a.m. until the City determined appropriate noise levels based on noise monitoring studies. Upon implementation of the noise monitoring system, the curfew was then to be established on the basis of noise standards for daytime and evening hours of operation. Those objectives were later met by the adoption of two ordinances (O-16517 N.S. adopted on October 14, 1985 and O-16720 N.S. adopted on October 6, 1986) which together established specified noise levels for the periods between 11:30 p.m. to 6:30 a.m. and 6:30 a.m. to 11:30 p.m.. Flight operations exceeding those noise limits within the designated time frames are prohibited.

Amendment item 2N of Resolution No. R-261161, on the other hand, prohibited all "evening touch and go landings." Ordinance No. O-16517 N.S., adopted October 14, 1985, added section 68.0160 to the Municipal Code which read as follows:

"No touch and go operation, stop and go operation, or a low approach shall be permitted at Montgomery Field Airport between the hours of 11:30 p.m. and 6:30 a.m."

This revision was part of the first ordinance which also dealt with the establishment of nighttime noise levels.

From a legislative perspective, it would appear that the adoption of Ordinance No. O-16517 N.S. in 1985 had incorporated the "evening" prohibition proposed in item 2N of the 1984 resolution when it prohibited touch and go operations between 11:30 p.m. and 6:30 a.m.. We make several observations: The word "evening," as used in the resolution, does not designate a specific time period. "Evening" commonly refers to the period of time between the close of day and the early part of darkness, or from noon to twilight, or from sunset or the evening meal to ordinary bed time; in the strictest sense, from sunset till dark. See Black's Law Dictionary 498 (5th Ed. 1979); Webster's Third New International Dictionary 787 (1965). By implication, Item 2N would not prohibit touch and go operations at any other time, including the period following darkness until sunrise. Some refinement and specificity was required.

We further note that in Item 2A of the 1984 resolution, the words "late night," "early morning," "daytime" and "evening" were used throughout, and not in a mutually exclusive sense. We opine

that where Item 2A initially established a flight operation

prohibition (curfew) applicable to "late night and early morning" during the hours of 11:30 p.m. to 6:30 a.m., but then later referred to "daytime" and "evening" hours of operations based on noise standards, this would then predicate the two time concepts governing flight operations restrictions as "daytime" and "evening." In any event, it cannot be said that the term "evening" is precise enough to exclude this interpretation or expression of legislative intent as not encompassing the period between 11:30 p.m. and 6:30 a.m. Conversely, since the 1985 ordinance adopted noise parameters which complied with the legislative intent of item 2A of the 1984 resolution on noise levels, it is also difficult to say that section 68.0160 of the Municipal Code did not thereby incorporate such standards. Informal discussion with representatives of the Airport Division based on the briefings conducted with Council staff suggests that the touch and go prohibition between 11:30 p.m. and 6:30 a.m. was fully considered to be consistent with the Council's intentions, based on the impreciseness of the term "evening," and that such impreciseness could allow for later interpretation as necessary. The City Manager has since issued an airport regulation which prohibits touch and go operations from sunset to 6:30 daily. (See attached memo dated February 20, 1987.)

It is therefore our observation that all of the twenty-one (21) items referred to in the motion to amend Resolution No. R-261161 have been effected or incorporated into the Master Plan. The Manager's action in extending the touch and go prohibition to the time following "sunset" is generally within his authority under San Diego Municipal Code sections 68.0123 and 68.0145 to the extent that such regulation furthers the legitimate operation of Montgomery Field by its owner or proprietor. Cf. Lockheed Air Terminal, Inc. v. City of Burbank, 457 F.2d 667, 673-74 (9th Cir. 1972), *aff'd*, 411 U.S. 624, 36 L.Ed 2d 547, 93 S.Ct. 1854 (1973); *Stuggs v. Municipal Court*, 2 Cal.App.3d 318, 82 Cal.Rptr. 578 (1969).

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Attachments

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