



McMinnville Municipal Airport Fly Friendly Program

Response to Questions Regarding Noise Restrictions

Summary

This memo is intended to inform stakeholders about questions surrounding the City of McMinnville (“City”) and the City’s legal authority to impose noise mitigating restrictions on air operations at the McMinnville Airport (“Airport” or “MMV”).

Questions and Responses

The City has prepared the following responses to address questions raised by Airport neighbors and pilots in various venues.

1. What does “Fly Friendly” mean?

One of the goals of the City’s Fly Friendly program is to collect comments from Airport neighbors, to create a brochure that documents information gathered during the comment period, and to distribute the brochure within the Airport user community. Although the users will not be required to follow the suggestions provided within the brochure, the Fly Friendly program creates an opportunity for Airport users to be made aware of the interests of the Airport neighbors and hopefully make operational/procedural decisions based on information shared as part of the program.

2. Where will pilots get info on sensitive areas?

As part of the Fly Friendly program, the City of McMinnville will distribute a brochure which will summarize and illustrate, for pilots, the sensitive areas surrounding the Airport. The City will be distributing the brochure directly to all operators who frequently use MMV, and will make the brochure available on the City website and aviation websites, like AirNav, which are often used by pilots to research unfamiliar airports. The brochure will also be posted in the Airport’s pilot’s lounge and FBO office.

3. How do you make “outside” pilots aware of the Fly Friendly program?

Airport users, who are not based at MMV, will be made aware of the Fly Friendly program through the resources listed in the response to question #2 (above).

4. How will this program affect the risk of a plane crashing and starting a fire?

The Airport is not able to restrict where aircraft fly. The Fly Friendly program will not change this. Through the distribution of the brochure, however, the program will help inform pilots of sensitive residential areas within the approaches.

5. Is Fly Friendly compliance going to be a requirement?

Due to federal aviation regulations, the City is unable to require compliance with the Fly Friendly program. The goal of the program is to inform pilots of the sensitive residential areas around the Airport.

6. Is there a phone number which neighbors can call with complaints about unsafe operations?

Neighbors can call FAA Flight Standard District Offices (FSDO), located in Hillsboro, at (503) 615-3200, about unsafe operations.

7. What is needed to provide evidence that pilots are flying at unsafe lower than required heights?

FAA FSDO will need an aircraft tail number (N-number) and precise time/location of the unsafe operation in order to research the incident and pursue action. Photographic or video evidence may also be provided to FSDO, if available.

8. Can the non-MMV based flight schools rotate their training to other airports?

During correspondence with non-MMV based flight schools, who frequently use the Airport, these groups have indicated that MMV is one of multiple airports in the region that they use for training. All of the groups indicated that they do rotate their training operations amongst the airports that are within the area and provide the necessary airport capacity required to perform flight training. The Fly Friendly program will help to inform these flight school operators of the sensitive residential areas that exist in the Airport vicinity.

9. Can approach paths be changed to avoid circling of helicopters?

Approach procedures and standard airport traffic patterns have been established by the FAA to allow aircraft to safely land at an airport while avoiding obstructions and other air traffic. The circling activity is likely a result of helicopters conducting missed approaches or conducting touch and goes. Both procedures are essential to maintaining pilot proficiency. While the missed approach procedures are fixed by the FAA, touch and go patterns may be reviewed with the helicopter flight schools to ensure the touch and go patterns are safe and efficient, while minimizing noise impacts to the greatest extent possible.

10. Does the City have the authority to control/restrict where aircraft (including helicopters) fly?

No, the City does not have authority over aircraft in flight. The Federal Aviation Administration (FAA) has exclusive legal authority to regulate the use of airspace and air commerce within the United States. 49 U.S.C.A § 40103(a)(1); *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944); *American Airlines, Inc. v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968) cert. denied 393 U.S. 1017. No municipality or airport proprietor can control aircraft (which includes helicopters) in flight.

11. Does the City have the ability to impose curfews or other restrictions on flight operations?

The City, as the airport proprietor, may have very limited authority to impose such restrictions, but this authority is highly regulated by federal law and requires federal review and/or approval. Federal law is so stringent that no airport has successfully imposed restrictions on the current generation of aircraft since the applicable federal law was enacted 25 years ago, and only one airport has imposed restrictions on older (Stage "2 ") generation aircraft. Additionally, as explained hereinafter, this particular Stage "2" restriction confirms that the City would be unsuccessful in the implementation of any restriction, even a restriction on older aircraft.

The Airport Noise and Capacity Act of 1990 (ANCA) and resulting federal regulations known as "FAR Part 161," impose stringent limitations on the legal authority of airports to implement restrictions or rules on aircraft operations. ANCA and FAR Part 161 apply to any regulation, lease provision, or other mandatory restriction or requirement that has the effect of limiting airport access to, or noise from, current generation aircraft. There are some exceptions for older aircraft - those built in the 1970s and before - of which there are few in service today.) Federal law and FAA regulations impose an onerous, costly, and time-consuming review process and require FAA approval for any restriction which has the effect of restricting current generation aircraft. It would be unlawful for the City to impose a restriction on use of the Airport without complying with federal law and FAA regulations.

In order for an airport to place restriction on older, Stage "2" aircraft, FAA "approval" is technically not required. One airport (Naples, Florida) did adopt restrictions on these older aircraft. However, the Naples case demonstrates how very difficult it is to adopt even this limited type of restriction. The airport operator first had to go through a complicated administrative proceeding, and then defend its actions in court against the FAA's assertions that it had violated its grant assurances. Although the airport operator "won" on certain grounds and the restrictions were allowed to stand, it was nevertheless found to have violated its grant assurances. Thus, FAA could challenge other airports attempting to follow in Naples' footsteps.

In order to impose any restriction, the airport proprietor must demonstrate that the benefits from the restriction outweigh the cost to the airport and its users. FAA almost certainly would limit the "benefit analysis" to reductions in non-compatible land uses (e.g. residential properties/population residing within the Day/Night Sound Level (DNL) 65). At MMV, there are no residents within the DNL 65. If there are no residents within the DNL 65, it is unlikely the City would be able to demonstrate that the benefit outweighs the cost as assessed by the FAA for purposes of FAR Part 161.

So, while the City might technically be able to impose a restriction on certain older light general aviation aircraft, it is unlikely this would ever come about. Even if ANCA did not apply to the proposed restriction, it would likely be considered discriminatory. And even if such restrictions were approved they would have no effect as all unmodified Stage "2" aircraft were banned completely at the end of 2015.

Further, the City cannot impose any proposed restriction without complying with federal grant assurances. (Grant assurances are contractual commitments, mandated by federal law, which the City makes to the federal government in connection with its receipt of federal grant funds.) Grant assurances require that MMV be made available for "public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport" as determined by FAA. If the City were to restrict operations, it could not do so in a way that either unreasonably restricted the use of the airport or unjustly discriminated against certain users. Based upon case law and previous FAA enforcement actions any restrictions the City might attempt to place on access and operations would likely be deemed "unreasonable" or "unjustly discriminatory" by the FAA and the courts. It would be likely very difficult to prove (and subject to legal challenge) that a restriction on access to MMV is both reasonable and not unjustly

discriminatory. Except for the restriction on older aircraft mentioned above, since the law changed in 1990, the FAA has never found that a restriction meets this standard.

One requirement that is common to the grant assurances is that the City cannot implement any restriction without first considering the impact on both residents and airport users. In order to prove that a restriction is legally permissible, the City would have to prove that its positive benefits outweigh the adverse impacts to anyone who could be affected by the restriction. Therefore, the City would have to weigh, for example, the effects on aircraft operators against any benefits to nearby residents.

One final important factor that must be considered is the extraordinary cost associated with attempting lawfully to impose a restriction. Not only would the required process be costly (likely several million dollars), but the City would have to anticipate subsequent litigation. Virtually every airport that has tried to impose a restriction on operations has faced vigorous legal challenges which themselves have cost millions to defend. The City might have a difficult time justifying this cost as being in the general public interest especially considering the low likelihood of success.

12. Can the City prohibit helicopter training?

The same concerns that apply to light fixed-wing aircraft, discussed above, apply to helicopters. In 2012, the FAA proposed new regulations to require FAA approval of helicopter restrictions just as is required for the latest generation fixed wing aircraft. Proposed restrictions on helicopters would likely be challenged for violating grant assurances.

FAA policy does allow limited restrictions on flight training if such restrictions are necessary for safety (FAA Order 5190.6A § 4-8(a)(2)). If the City were to impose such a restriction, it would need to demonstrate that the restriction is no more stringent than required to address a specific safety concern. The FAA has allowed airports to impose helicopter safety restrictions in only very limited circumstances. Noise impacts are not considered to be a valid justification for a limit on training.

Conclusion

The City does not have regulatory authority over aircraft operations in the air. The City, as the airport proprietor, could impose restrictions only if it could satisfy the numerous limitations on its authority imposed by the U.S. Constitution, by federal law (ANCA, among other statutes), FAA regulation (including Part 161) and the contractual grant assurances. It would be extraordinarily burdensome, time consuming and expensive for the City even to try to impose restrictions that would comply with all of these requirements. Furthermore, this effort would be highly unlikely to succeed, drawing into question the wisdom of such a use of public resources. As a demonstration of the difficulty of lawfully imposing a restriction, since the limitations on airports' authority were strengthened in 1990, only one airport in the nation has successfully navigated this process and that was only on Stage "2" aircraft which are now out of service.

As an alternative to restrictions, the City has chosen to implement the Fly Friendly program as a form of outreach and education aimed at aircraft operators, intended to minimize conflicts between aircraft operations and neighbors to the extent practical within the federal aviation regulation framework. The City will continue to look for alternative ways to balance the interests and reduce impacts on neighbors. In doing this, however, the City cannot lawfully mandate restrictions.

Information provided in the various responses contained within this memo were developed from public, governmental, and agency sources, including the Port of Portland, for similar discussions related to airport noise issues and fly-friendly programs.