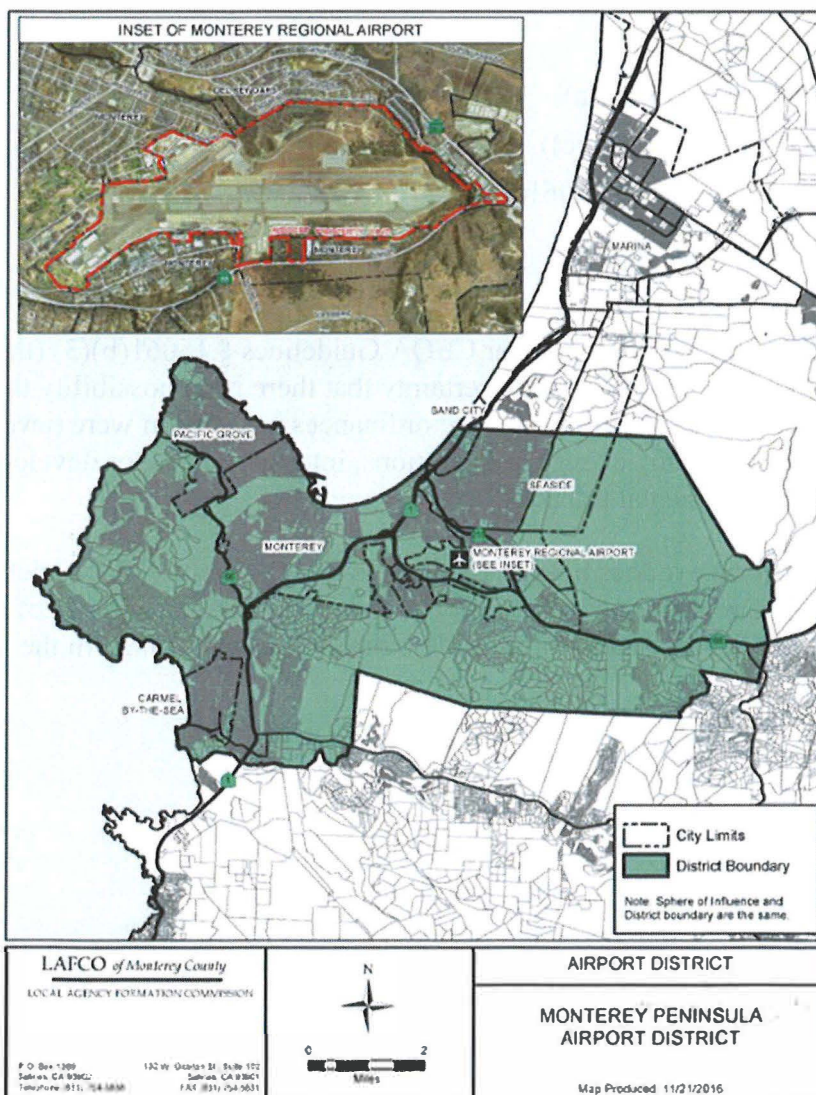


NOTICE OF EXEMPTION (Pub. Res. C. § 21152(b))

From: MONTEREY PENINSULA AIRPORT DISTRICT
200 Fred Kane Dr.
Monterey, CA 93940

Project Title:
Repeal of Monterey Peninsula Airport Ordinance Nos. 308, 309, and 310

Project Location – Specific:



Project Location – City/County: MONTEREY AIRPORT DISTRICT BOUNDARY (ALL)
City or portions thereof of: Monterey, CA; Pacific Grove, CA; Seaside, CA; Carmel-by the Sea, Sand City, CA; Del Rey Oaks, CA and portions of the Monterey County unincorporated area, California.

Description of Nature, Purpose, and Beneficiaries of Project:

This matter consists of the repeal of three outdated ordinances previously adopted by the Monterey Peninsula Airport District. These ordinances have never been enforced, are not consistent with current federal law, and have no practical effect on Airport operations. The purpose of the repeal is to eliminate obsolete regulations and clarify the Airport District’s regulatory framework. The repeal will not result in any expansion, modification, or intensification of use, nor will it result in any physical change to the environment.

Name of Public Agency Approving Project:

Monterey Peninsula Airport District

Name of Person or Agency Carrying Out Project:

Monterey Peninsula Airport District

Exempt Status:

- Ministerial (Sec. 21080(b)(1); 15268)
- Declared Emergency (Sec. 21080(b)(3); 15269(a))
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
- Categorical Exemption – CEQA Guidelines § 15061(b)(3)
- Not a “Project” – CEQA Guidelines § 15378(b)(5)

Reasons Why Project is Exempt:

The repeal of the ordinances qualifies for exemption under CEQA Guidelines § 15061(b)(3) (the “common sense” exemption), because it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The ordinances in question were never enforced, and their repeal will not result in any change in operations, intensity of use, or development. There is no potential for physical environmental impacts.

Additionally, the action is exempt because it does not constitute a “project” under CEQA as defined in CEQA Guidelines § 15378(b)(5). The repeal is an organizational and administrative activity of a public agency that does not result in a direct or reasonably foreseeable indirect physical change in the environment.

Lead Agency Contact Person:

Name: Chris Morello
 Title: Interim Executive Director
 Phone: (831) 648-7000, ext. 212
 Email: cmorello@montereyairport.com
 Date: 7/16/2025

Signature: 
 Chris Morello, Interim Airport Executive Director

APPROVED AS TO FORM:


 Scott Huber, General Counsel

TO: Monterey Peninsula Airport District Board of Directors
FROM: Scott E. Huber, District Counsel
SUBJ: Pass to Print Ordinance No. 933, An Ordinance of the Monterey Peninsula Airport District to Repeal Ordinances 308, 309, and 310 Related to Limiting Airport Hours of Operation, Regulating Altitude of Aircraft within Certain Distances of the Airport, and Regulating Touch and Go and Stop and Go Operations

BACKGROUND. The Board passed Ordinance 308 on January 10, 1979, and Ordinances 309 and 310 on December 13, 1978. On May 12, 2025, the Air Carrier Service, Marketing and Community Relations Committee received a report from District Counsel related to the applicability and effectiveness of the Ordinances and recommended that the Board repeal the Ordinances. The Board will consider repealing Ordinances 308, 309, and 310.

DISCUSSION. Ordinance 308 purports to limit the hours of operation of the Monterey Regional Airport, but contains exceptions for emergency aircraft and all aircraft that meet the “lowest takeoff and landing levels of Amendment 8 to the Federal Air Regulation 36,” as well as some runway use requirements. Ordinance 309 purports to regulate the altitude of aircraft under various components of flight (i.e. turns while departing the pattern, flying in the pattern, overflight of terrain, etc.) within 5 miles north or south of the Airport. Ordinance 310 attempts to establish regulations related to touch-and-go and stop-and-go operations by aircraft at the Monterey Regional Airport.

Staff is informed and believes that these ordinances have never been enforced since their adoption. Further, the Ordinances are preempted by the Federal Aviation Act. Specifically, 49 U.S.C. section 40103(a)(1) and (2) provide, in pertinent part, that “[t]he United States Government has exclusive sovereignty of airspace of the United States” and that “[a] citizen of the United States has a public right of transit through navigable airspace”. These provisions bar state and local governments, such as MPAD, from enacting ordinances which limit airport hours of operation, limit aircraft movements and operations, or which mandate certain aircraft altitudes. [See *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 633; 49 U.S.C. § 47107(a)(8); and Grant Assurance 19.]

Because these Ordinances are superseded by federal law and have never been enforced by MPAD, they should be repealed. Staff recommend approval of Ordinance No. 933.

FISCAL IMPACT. None.

RECOMMENDATION. Pass to Print Ordinance No. 933, An Ordinance of the Monterey Peninsula Airport District to Repeal Ordinances 308, 309, and 310 Related to Limiting Airport Hours of Operation, Regulating Altitude of Aircraft within Certain Distances of the Airport, and Regulating Touch and Go and Stop and Go Operations.

ATTACHMENTS.

Ordinance No. 933

Ordinances 308, 309, and 310

PowerPoint Slides Provided to the Air Carrier Service, Marketing and Community Relations Committee

**MONTEREY PENINSULA AIRPORT DISTRICT
ORDINANCE NO. 933**

**AN ORDINANCE OF THE MONTEREY PENINSULA AIRPORT DISTRICT TO
REPEAL ORDINANCES 308, 309, AND 310 RELATED TO LIMITING AIRPORT
HOURS OF OPERATION, REGULATING ALTITUDE OF AIRCRAFT WITHIN
CERTAIN DISTANCES OF THE AIRPORT, AND REGULATING TOUCH AND GO
AND STOP AND GO OPERATIONS**

NOW, THEREFORE, the Board of Directors of the Monterey Peninsula Airport District DO ORDAIN as follows:

SECTION 1: Findings and Purpose. The Board finds and declares as follows:

A. WHEREAS, the Ordinances of the Monterey Peninsula Airport District (“MPAD”) have been supplemented over the years with the passage of new ordinances in an effort to regulate certain practices and activities surrounding the airport; and

B. WHEREAS, the Ordinances of MPAD must comply with federal law and the subject matter of each Ordinance must be within the subject matter jurisdiction of MPAD; and

C. WHEREAS, it is well settled that the Federal Aviation Act gives FAA “sovereignty of airspace of the United States,” [49 U.S.C. § 40103(a)(1)], which bars state and local governments, such as MPAD, from enacting ordinances which limit airport hours of operation, limit aircraft movements and operations, or which mandate certain aircraft altitudes. [See City of Burbank v. Lockheed Air Terminal Inc., 411 U.S. 624, 633; 49 U.S.C. § 47107(a)(8); and Grant Assurance 19.]

D. WHEREAS, a citizen of the United States has a public right of transit through navigable airspace pursuant to 49 U.S.C. § 40103(a)(2), which may not be limited by local ordinance or regulation.

E. WHEREAS, Ordinance 308 purports to close the Monterey Regional Airport to all aircraft operations during certain nighttime hours, with some exceptions; and

F. WHEREAS, Ordinance 309 restricts aircraft that are taking off from making turns until the aircraft has reached a certain altitude, and mandates minimum altitudes for aircraft within five miles to the north and south of the Airport centerline; and

G. WHEREAS, Ordinance 310 attempts to prohibit touch and go and stop and go operations during certain hours, and attempts to limit the number of touch and go operations and stop and go operations to four within a two-hour period; and

H. WHEREAS, MPAD is aware that Ordinances 308, 309, and 310 have never been enforced, and the subject matter of each is precluded from regulation by a local agency by federal law; and

I. WHEREAS, leaving invalid, ineffective or unconstitutional ordinances in place is not a policy of good governance by a public agency; and

J. WHEREAS, should Ordinances 308, 309, and 310 remain as adopted by MPAD, such a condition would be a violation of MPAD's grant assurances to the FAA and could cause the FAA to withdraw grant opportunities to MPAD.

SECTION 2: Repeal of Ordinance 308. Ordinance 308 is hereby repealed and is of no further force and effect.

SECTION 3: Repeal of Ordinance 309. Ordinance 309 is hereby repealed and is of no further force and effect.

SECTION 4: Repeal of Ordinance 310. Ordinance 310 is hereby repealed and is of no further force and effect.

SECTION 5: CEQA Exemption. The MPAD Board of Directors find and declare that the repeal of the above-listed ordinances is exempt from CEQA pursuant to California Code of Regulations sections 15301 and 15061(b)(3) because their repeal will not cause any expansion of use since the ordinances have never been enforced by MPAD, and because the repeal is not a "project" pursuant to CEQA Guidelines.

SECTION 6: Severability. It is hereby declared to be the intention of the Board that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or without effect by any final judgment or decree of a court of competent jurisdiction, such judgment or decree shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

This ordinance shall take effect on the 30th day after its adoption.

PASSED TO PRINT by the Board of Directors of the Monterey Peninsula Airport District at a meeting of July 16, 2025 by the following vote:

AYES:	DIRECTORS:	Ahmadi, Gaglioti, Leffel, Miller
NOES:	DIRECTORS:	None
ABSTAIN:	DIRECTORS:	None
ABSENT:	DIRECTORS:	Pick

Signed this 16th day of July, 2025



Carl M. Miller, Chair

ATTEST:



Christine Morello
District Secretary

ORDINANCE NO. 308
ORDINANCE LIMITING THE HOURS OF OPERATION OF THE MONTEREY
PENINSULA AIRPORT DISTRICT

THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA AIRPORT DISTRICT FIND
AS FOLLOWS:

WHEREAS, the Monterey Peninsula Airport District is surrounded on three sides by residential housing, and

WHEREAS, State and Federal law requires the Airport District to decrease the effect of aircraft noise on residents living in the communities surrounding the Airport, and

WHEREAS, aircraft operations between the hours of 11:00 P.M. and 7:00 A.M. have been the subject of noise complaints from residents living in the communities surrounding the Airport, and

WHEREAS, no scheduled commercial flights have been scheduled at the Airport between the hours of 11:00 P.M. and 7:00 A.M. for at least the past five years, and

WHEREAS, Airport surveys have indicated that the numbers of general aviation flights occurring between the hours of 11:00 P.M. and 7:00 A.M. have averaged less than five per week, and

WHEREAS, a closing of the airport, with the exceptions hereafter stated, between the hours of 11:00 P.M. and 7:00 A.M. would have a minimum impact on interstate commerce while providing some relief from noise to nearby residents during normal sleeping hours, and

WHEREAS, certain exceptions to a total ban on aircraft operations between the hours of 11:00 P.M. and 7:00 A.M. should be granted as hereafter provided:

NOW WHEREFORE, the Board of Directors of the Monterey Peninsula Airport District do hereby ordain as follows:

FIRST: That all aircraft operations occurring between the hours of 11:00 P.M. and 7:00 A.M. shall be prohibited with the exceptions of emergency operations, necessary operations by military aircraft, operations by aircraft which meet the lowest take-off and landing levels of Amendment 8 to Federal Air Regulation 36 issued by the Federal Aviation Administration, and to operations

by scheduled commercial carriers which have been delayed due to equipment, weather, or other operational problems beyond the reasonable control of said carriers. In addition, general aviation aircraft which do not ordinarily meet the landing noise levels of Amendment 8 to Federal Air Regulation 36 issued by the Federal Aviation Administration shall be permitted to land at the Airport after 11:00 P.M. and before 7:00 A.M. if:

(1) The arrival of said aircraft was delayed by weather, equipment or other operational problems beyond the reasonable control of the pilot, and

(2) If the pilot has demonstrated to the Manager of the Airport's satisfaction that the aircraft can be operated in a manner which will yield noise levels at or below the landing levels established in Amendment 8 to Federal Air Regulation 36. The permission to land said aircraft shall be subject to such reasonable conditions as may be established by the Manager of the Airport and said permission may be revoked by the Manager at any time.

SECOND: All landings after 11:00 P.M. and before 7:00 A.M. shall be made on Runway 28 unless the aircraft is otherwise directed to use another runway by the FAA Tower.

THIRD: All take-offs after 11:00 P.M. and prior to 7:00 A.M. shall take place from Runway 10 unless the FAA Tower directs the use of some other runway.

FOURTH: That this Ordinance shall be effective thirty (30) days after it has been approved by the Federal Aviation Administration.

FIFTH: That violation of this Ordinance shall be punishable by a fine not exceeding the sum of Five Hundred (\$500.00) Dollars for each violation of the Ordinance.

In the event that any person has been convicted of three (3) or more cumulative violations of the provisions of this Ordinance or of any other Ordinance regulating the operation of aircraft at the Airport (including forfeiture of bail after being arrested or charged by citation or complaint with any such violation within a three (3) year period) then for a period of three (3) years thereafter, such person shall be denied the right to land or take-off from the Airport, except in a bonafide emergency for the preservation of life or property as reasonably determined by the Airport Manager and shall be denied the right to lease, rent or use space for aircraft (including tie-down) at the Airport.

In the event that any aircraft has been operated by any person or persons who have cumulatively been convicted of three (3) or more violations of the provisions of this Ordinance or of any other Ordinance of the Airport regulating the operation of aircraft at the Airport, (including forfeiture of bail after being arrested or charged by citation or complaint with any such violation), then it shall be presumed that operation of such aircraft will result in continued violation of the provisions of valid Ordinances and such aircraft will not be permitted to land or tie-down, be based at or take-off from the airport except in emergencies as reasonably determined by the Airport Manager.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE MONTEREY AIRPORT

DISTRICT: This 10th day of January, 1979, by the following roll call vote:

AYES: DIRECTORS: Fry, Nakamura, Schmidt, Smith, Chairman Tourangeau

NOES: DIRECTORS: None

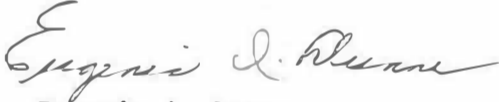
ABSENT: DIRECTORS: None

Signed this 10th day of January, 1979



Richard Tourangeau
Chairman

A T T E S T



Eugenia I. Dunne
District Secretary

ORDINANCE NO. 309

AN ORDINANCE REGULATING ALTITUDE OF AIRCRAFT MAKING TURNS WHILE DEPARTING THE PATTERN, AND SETTING TRAFFIC PATTERN ALTITUDES

THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA AIRPORT DISTRICT FIND AS FOLLOWS:

WHEREAS, the Monterey Peninsula Airport District is the proprietor and operator of the Monterey Peninsula Airport; and

WHEREAS, the Monterey Peninsula Airport is surrounded on all sides by residential housing, and

WHEREAS, numerous complaints have been received from residents living in the surrounding communities complaining of low flying aircraft.

NOW, THEREFORE, the Board of Directors of the Monterey Peninsula Airport District does ordain as follows:

SECTION I: No aircraft departing VFR from any runway shall commence a right or left turn prior to reaching an altitude of 900 feet Mean Sea Level, unless cleared or advised to do so by the Federal Aviation Administration Tower or required to do so because of an impending flight emergency.

SECTION II: No aircraft shall fly over that portion of the traffic pattern lying within the airport operating area extending five (5) miles to the north of the center line of the main 10-28 runway at the Monterey Peninsula Airport unless said aircraft is flying at an altitude of at least 1500 feet Mean Sea Level, if powered by propeller, or 2000 feet Mean Sea Level, if powered by turbine, unless said aircraft is specifically cleared or advised to fly at a lower altitude by the Federal Aviation Administration Tower, or is required to do so because of some operating emergency, or is climbing to pattern altitude.

SECTION III: No aircraft shall fly over that portion of the traffic pattern lying within an area extending five (5) miles to the south of the center line of the main 10-28 runway at the Monterey Peninsula Airport unless said aircraft is flown at an altitude not less than 1800 feet Mean Sea Level, if powered by propeller, or 2500 feet Mean Sea Level, if the aircraft is powered by a turbine. The limitation established herein shall not apply if the aircraft is cleared or advised to fly at a lower altitude by the Federal Aviation Administration Tower or is required to fly at a lower altitude in response to an operating emergency or is climbing to pattern altitude.

SECTION IV: Any violation of this Ordinance shall be an infraction and shall be punished by a fine not to exceed the sum of Five Hundred (\$500.00) Dollars for each such violation.

SECTION V: In the event that any person has been convicted of three or more cumulative violations of the provisions of this Ordinance or of any other Ordinance regulating the operation of aircraft at the Airport (including forfeiture of bail after being arrested or charged by citation or complaint with any such violation within a three (3) year period) then for a period of three (3) years thereafter, such person shall be denied the right to land or take-off from the Airport, except in a bonafide emergency for the preservation of life or property as reasonably determined by the Airport Manager and shall be denied the right to lease, rent or use space for aircraft (including tie-down) at the Airport.

SECTION VI: In the event that any aircraft has been operated by any person or persons who have cumulatively been convicted of three (3) or more violations of the provisions of this Ordinance or of any other Ordinance of the Airport regulating the operation of aircraft at the Airport, (including forfeiture of bail after being arrested or charged by citation or complaint with any such violation), then it shall be presumed that operation of such aircraft will result in continued violation of the provisions of valid Ordinances and such aircraft will not be permitted to land or tie-down, or based at or take-off from the Airport except in emergencies as reasonably determined by the Airport Manager.

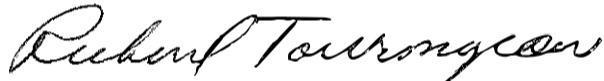
PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA AIRPORT DISTRICT: This 13th day of December, 1978, by the following roll call vote:

AYES: DIRECTORS: Fry, Schmidt, Smith, Chairman Tourangeau

NOES: DIRECTORS: None

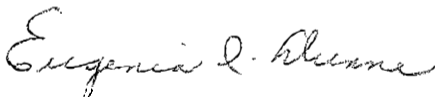
ABSENT: DIRECTORS: Nakamura

Signed this 13th day of December, 1978



Richard Tourangeau, Chairman

ATTEST



Eugenia I. Dunne
District Secretary

ORDINANCE NO. 310

AN ORDINANCE REGULATING TOUCH AND GO
AND STOP AND GO OPERATIONS

The Board of Directors of the Monterey Peninsula Airport District find as follows:

WHEREAS, the Monterey Peninsula Airport District is the proprietor and operator of the Monterey Peninsula Airport; and

WHEREAS, the Monterey Peninsula Airport is surrounded on three sides by residential housing, and whereas residents of the surrounding communities have made complaints over the hours of operation of and the number of general aviation aircraft making touch and go and stop and go operations at the Airport, and,

WHEREAS, the District Board has an obligation to the citizens of the surrounding residential areas to reduce aircraft noise annoyance where it is reasonably possible to do so.

NOW THEREFORE, the Board of Directors of the Monterey Peninsula Airport District does ordain as follows:

SECTION I - Touch and Go Defined:

For purposes of this Ordinance, a touch and go operation shall mean an action by an aircraft consisting of a landing and departure on a runway without stopping or exiting the runway.

SECTION II - Stop and Go Defined:

For purposes of this Ordinance, a stop and go operation shall mean an action by an aircraft consisting of a landing followed by a complete stop on the runway and a take-off from that point.

SECTION III - Prohibited Operations on Weekdays:

No touch and go operation or stop and go operation shall be permitted on the Airport between 8:00 P.M. of one day and 8:30 A.M. the following day, Monday through Friday inclusive.

SECTION IV - Prohibited Operations on Weekends:

No touch and go operation or stop and go operation shall be permitted on the Airport on Saturdays and Sundays except between 9:00 A.M. and 6:00 P.M.

SECTION V - Prohibited Operations on Holidays:

No touch and go operation or stop and go operation shall be permitted on the Airport except between 10:00 A.M. and 5:00 P.M. on any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day; providing, however, that if any of such holiday falls on Saturday or Sunday and, as a result a holiday is observed on the preceding Friday or succeeding Monday, then such Friday or Monday, as the case may be, shall be considered to be a holiday for purposes of this Section.

SECTION VI - Limitation on Number of Touch and Go, Touch and Stop, or Low Approaches:

No person shall perform more than four (4) touch and go or touch and stop operation or any combination thereof within a two hour period.

SECTION VII - Limitation on Use of Runways 6 and 24:

No person shall use Runways 6 or 24 for touch and go or stop and go operations unless directed to do so by the FAA tower.

SECTION VIII - Any violation of this Ordinance shall be an infraction and shall be punished by a fine not to exceed the sum of Five Hundred (\$500.00) Dollars for each such violation.

The pilot-in command of the offending aircraft shall be responsible for all violations of this Ordinance.

SECTION IX - Denial of Use of Airport:

In the event that any person has been convicted of three (3) or more cumulative violations of the provisions of this Ordinance or of any other Ordinance regulating the operation of aircraft at the Airport (including forfeiture of bail after being arrested or charged by citation or complaint with any such violation within a three (3) year period) then for a period of three (3) years thereafter, such person shall be denied the right to land or take-off from the Airport, except in a bonafide emergency for the preservation of life or property as reasonably determined by the Airport Manager and shall be denied the right to lease, rent or use space for aircraft (including tie-down) at the Airport.

SECTION X - In the event that any aircraft has been operated by any

person or persons who have cumulatively been convicted of three (3) or more violations of the provisions of this Ordinance or of any other Ordinance of the Airport regulating the operation of aircraft at the Airport, (including forfeiture of bail after being arrested or charged by citation or complaint with any such violation), then it shall be presumed that operation of such aircraft will result in continued violation of the provisions of valid Ordinances and such aircraft will not be permitted to land or tie-down, be based at or take-off from the Airport except in emergencies as reasonably determined by the Airport Manager.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA AIRPORT DISTRICT: This 13th day of December, 1978 by the following roll call vote:

AYES: DIRECTORS: Fry, Schmidt, Smith and Chairman Tourangeau

NOES: DIRECTORS: None

ABSENT: DIRECTORS: Nakamura

Signed this 13th day of December, 1978


Richard Tourangeau, Chairman

A T T E S T



Eugenia I. Dunne
District Secretary

MONTEREY PENINSULA AIRPORT DISTRICT -


**Effectiveness of Ordinances 308, 309, and 310
MAY 12, 2025 – Air Carrier Service – Marketing – Community
Relations Committee Meeting**

Scott E. Huber
Cole Huber LLP
General Counsel

Monterey Peninsula Airport District

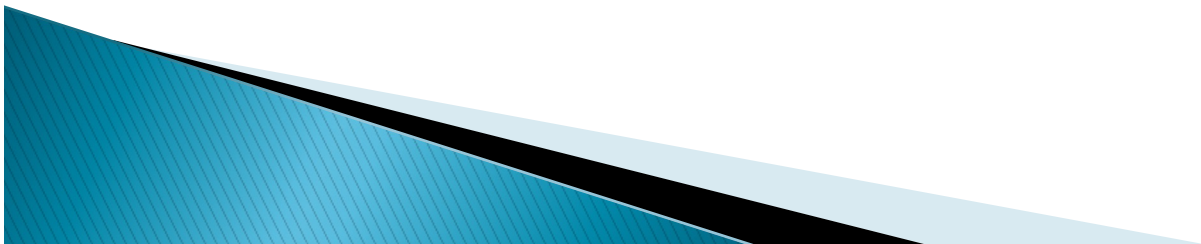


Ordinances 308, 309, and 310

- The Board passed Ordinance 308 on January 10, 1979, and Ordinances 309 and 310 on December 13, 1978.
 - Ordinance 308 purports to limit the hours of operation of the Monterey Regional Airport, but contains exceptions for emergency aircraft, military aircraft and all aircraft that meet the “lowest takeoff and landing levels of Amendment 8 to the Federal Air Regulation 36,” as well as some runway use requirements.
 - Ordinance 309 purports to regulate the altitude of aircraft under various components of flight (i.e. turns while departing the pattern, flying in the pattern, overflight of terrain, etc.) within 5 miles north or south of the Airport.
 - Ordinance 310 attempts to establish regulations related to touch-and-go and stop-and-go operations by aircraft at the Monterey Regional Airport.
- 

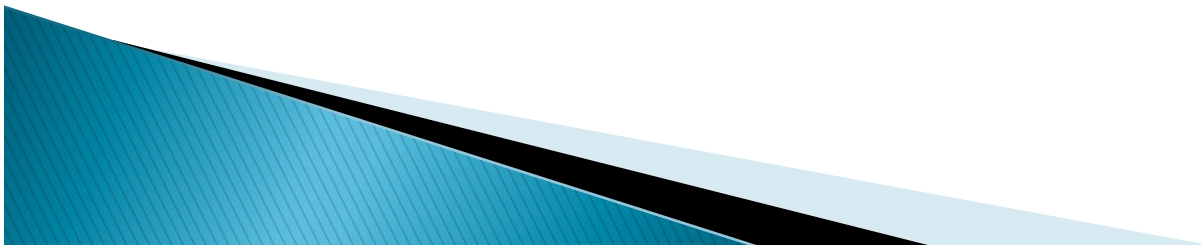
Ordinance 310

- Sections 3, 4, and 5 attempt to prohibit touch and go operations and stop and go operations during various hours on weekdays, weekends, and holidays
- Section 6 attempts to limit the number of touch and go operations and stop and go operations four within a two hour period.
- Section 9 contains fines, penalties and other provisions that would ban the use of the airport to anyone who has violated the above provisions for a period of three years.



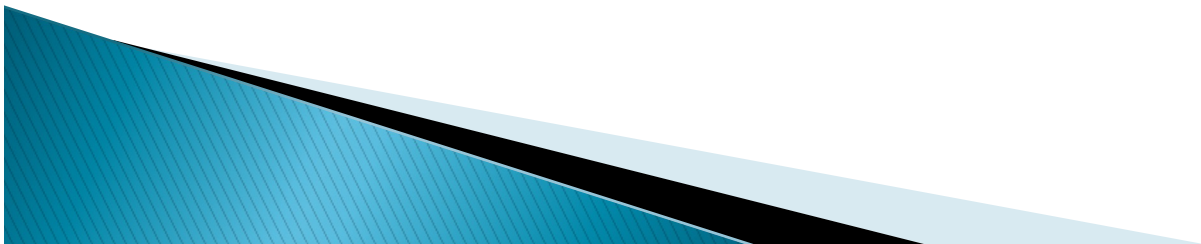
Ordinance 310

- Ordinance 310 appears to have never been enforced by the Airport



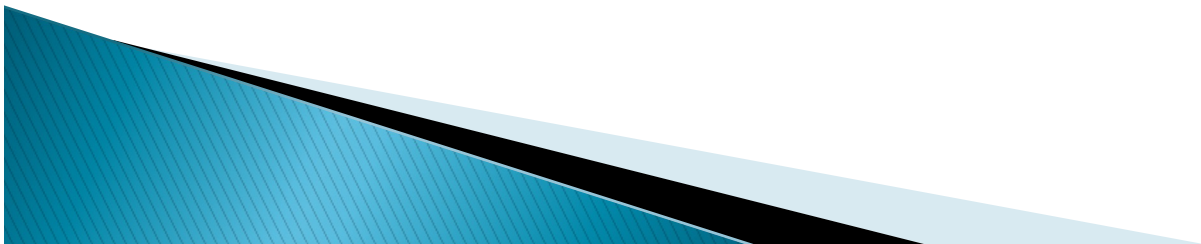
Ordinance 310

- Issues with the language of the Ordinance:
 - For a provision of an ordinance that restricts certain behavior to be valid and enforceable, it must have a justification that connects the activity being restricted with the desired outcome.
 - In this instance, there is no evidence included in the Ordinance that connects the restriction of touch and go operations and stop and go operations, or limiting the number of touch and go operations is connected to the overall reduction of noise.
 - There is no discussion of decibel levels, cumulative noise levels, or anything related in the Ordinance.
 - Given the lack of studies or evidence adopted by the Board which connects the restrictions with an overall noise reduction, the provisions are very likely unenforceable for this reason



Ordinance 310

- The greatest concern with the Ordinance is that it contains provisions (Sections 8 and 9) that restrict the right to use the airport and imposes fines, penalties and a possible ban from using the Airport for any violations of the Ordinance.
- In *Santa Monica Airport Association v. City of Santa Monica* (659 F.2d 100; 1981), the Court held, “The district court did find, however, that the categorical ban on all jet aircraft and the penalty statute violated the Equal Protection and Commerce Clauses. We affirm.”

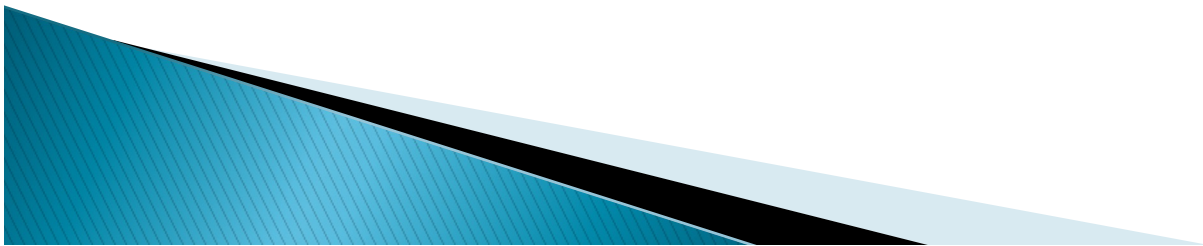


Ordinance 310

- Under ordinance drafting statutes in California, if an ordinance contains a severability clause, and a part is found to be unconstitutional, that part may be severed and the balance of the ordinance can remain in place, if the rest of the ordinance can stand on its own.
- If there is no severability clause and an ordinance contains language that is unconstitutional, the entire ordinance is struck down.
- The California Supreme Court held, “The rule is well settled, where such a severability clause is included, that the valid portion of a statute or ordinance which is partially unconstitutional will be upheld if the remaining portion is severable and constitutes a completely operative expression of the legislative intent.” (In re Portney (1942) 21 Cal.2d 237)

Ordinance 310

- Because Ordinance 310 contains unconstitutional provisions related to a ban of all aircraft during certain hours, and penalties for violations, it falls under the umbrella of the *Santa Monica Airport Association case* and is an unconstitutional provision.
- In Ordinance 310, there is no severability clause, which means that the entire statute is unconstitutional if one portion of it deemed unconstitutional



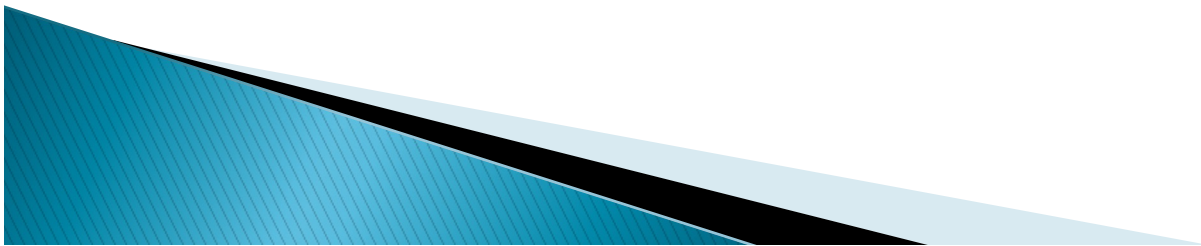
Ordinance 310

- Section 9 of the Ordinance contains a restriction of the use of the Airport by someone found to be in violation of the Ordinance
- This violates the grant assurances between the Airport and the FAA and is contrary to federal statute
- All proposed closing of airport access (i.e., passenger and aircraft access) must be approved in advance by the FAA. As noted in **Compliance Guidance Letter, 2020-01**, the FAA does not permit temporary closure or restriction of federally obligated airports for non-aeronautical purposes. An airport sponsor must obtain FAA approval to allow airport closure for a non-aeronautical purpose. (Grant Assurance 19 and 49 U.S.C. § 47107(a)(8)).
- Grant Assurance 19 further requires that airport sponsors will not cause or permit any activity or action on the airport that would interfere with its use for airport purposes. This includes all airport structures and operational areas.



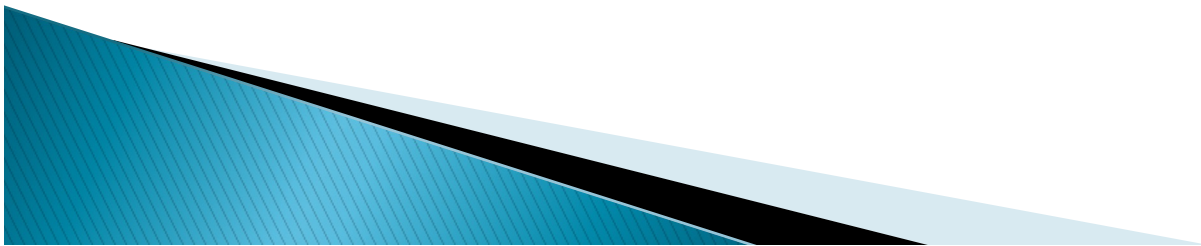
Ordinance 309

- Section 1 attempts to restrict a plane from turning until it has reached a certain altitude after takeoff from the Airport
- Section 2 and 3 purport to limit the minimum altitude for planes within 5 miles to the north, and 5 miles to the south of the centerline of runway “10-28”.
 - Runway 10-28 is now 10R-28L.
- Sections 4, 5, and 6 contain provisions that issue fines and penalties, including banning a pilot from using the Airport for 3 years.



Ordinance 309

- Ordinance 309 appears to have never been enforced by the Airport



Ordinance 309


- "The United States Government has exclusive sovereignty of airspace of the United States." 49 U.S.C. 40103(a).
- An Airport Operator's attempt to limit altitudes at which planes can fly is squarely contrary to federal law.
- Congress has plenary authority over the navigable airspace. Congress has charged the FAA with administering this airspace in the public interest as necessary to ensure the safety of aircraft and its efficient use.
- This Ordinance is void as a result of its conflict with federal law.



Ordinance 309

- In addition, much like Ordinance 310, Ordinance 309 contains similar provisions related to penalties, fines and a potential ban from using the Airport, and it does not contain a severability clause.
- This violates the grant assurances between the Airport and the FAA and is contrary to federal statute
- All proposed closing of airport access (i.e., passenger and aircraft access) must be approved in advance by the FAA. As noted in **Compliance Guidance Letter, 2020-01**, the FAA does not permit temporary closure or restriction of federally obligated airports for non-aeronautical purposes. An airport sponsor must obtain FAA approval to allow airport closure for a non-aeronautical purpose. (Grant Assurance 19 and 49 U.S.C. § 47107(a)(8)).
- Grant Assurance 19 further requires that airport sponsors will not cause or permit any activity or action on the airport that would interfere with its use for airport purposes. This includes all airport structures and operational areas.

Ordinance 308

- Ordinance 308 closes the Airport to all aircraft operations during certain nighttime hours, with the exception of “emergency operations, necessary operations by military aircraft, operations by aircraft which meet the lowest take-off and landing levels of Amendment 8 to the Federal Air Regulation 36 issued by the Federal Aviation Administration, and to operations by scheduled commercial carriers which have been delayed due to equipment, weather, or other operational problems...”
 - Similar to Ordinance 309 and 310, this Ordinance contains provisions that issue fines and penalties, including banning a pilot from using the Airport for 3 years.
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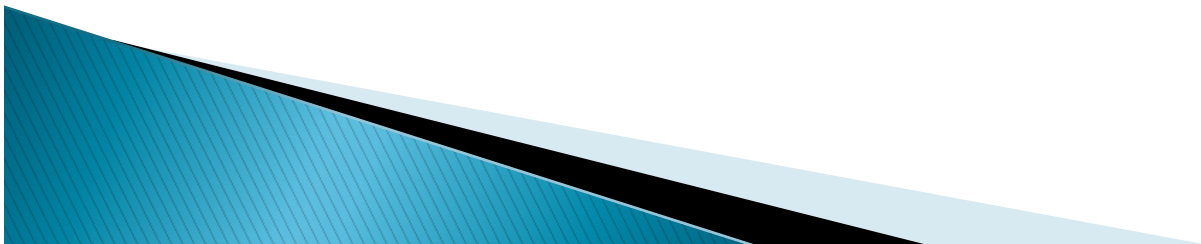
Ordinance 308

- In addition, this Ordinance attempts to mandate landings and takeoffs to a certain runway and direction during particular nighttime hours
- Unlike Ordinances 309, and 310, Section 4 of this Ordinance contains a provision that, "...this Ordinance shall be effective thirty (30) days after it has been approved by the Federal Aviation Administration."
- Staff has found no records that this Ordinance was ever (1) sent to the FAA; (2) considered by the FAA; or (3) approved by the FAA.




Ordinance 308

- Ordinance 308 appears to have never been enforced by the Airport

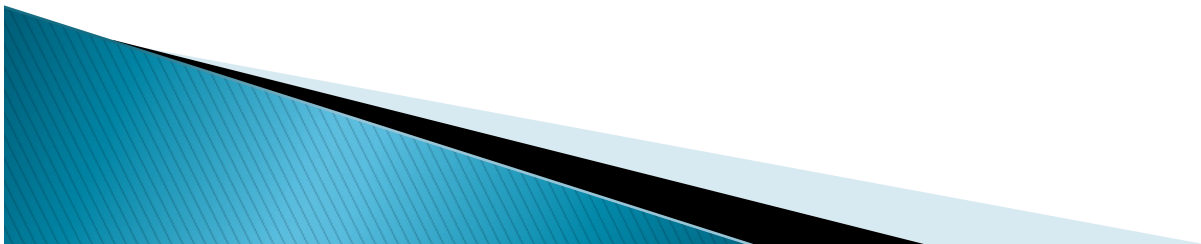


Ordinance 308

- In addition, much like Ordinances 309 and 310, Ordinance 308 contains similar provisions related to penalties, fines and a potential ban from using the Airport, and it does not contain a severability clause.
 - This violates the grant assurances between the Airport and the FAA and is contrary to federal statute
 - All proposed closing of airport access (i.e., passenger and aircraft access) must be approved in advance by the FAA. As noted in **Compliance Guidance Letter, 2020-01**, the FAA does not permit temporary closure or restriction of federally obligated airports for non-aeronautical purposes. An airport sponsor must obtain FAA approval to allow airport closure for a non-aeronautical purpose. (Grant Assurance 19 and 49 U.S.C. § 47107(a)(8)).
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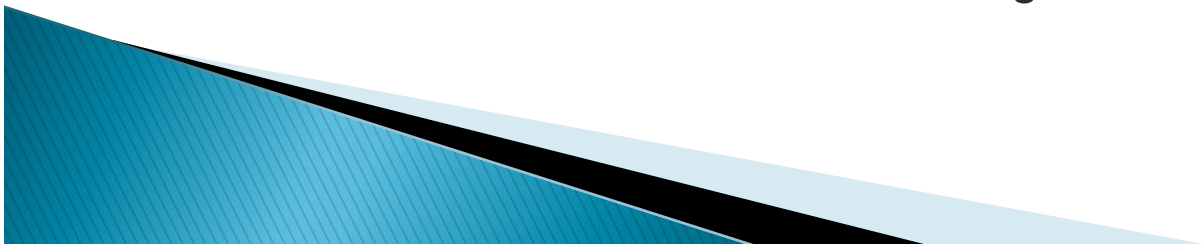
Ordinance 308

- Even if we overlook all of the aforementioned infirmities, Ordinance 308 is still ineffective.
- Section 1 of the Ordinance provides an exception to the nighttime closure for “...operations by aircraft which meet the lowest take-off and landing levels of Amendment 8 to the Federal Air Regulation 36...”
- I have a copy of “Amendment 8 to the Federal Air Regulation 36” which was published on March 2, 1978.
- On page 8731, the FAA revised “Paragraph C36” entitled Noise Levels



Ordinance 308

- The then enacted State 3 noise levels were as follows for takeoff:
 - For aircraft with more than 3 engines:
 - 106 EPNdB for maximum weights of 850,000 pounds or more, reduced by 4 EPNdB per halving of the 850,000 pounds maximum weight down to 89 EPNdB for maximum weights of 44,673 pounds or less;
 - For airplanes with 3 engines:
 - 104 EPNdB for maximum weights of 850,000 pounds or more, reduced by 4 EPNdB per halving of the 850,000 pounds maximum weight down to 89 EPNdB for maximum weights of 63,177 pounds or less: and
 - For airplanes with fewer than 3 engines:
 - 101 EPNdB for maximum weights of 850,000 pounds or more, reduced by 4 EPNdB per halving of the 850,000 pounds maximum weight down to 89 EPNdB for maximum weights of 106,250 pounds or less.



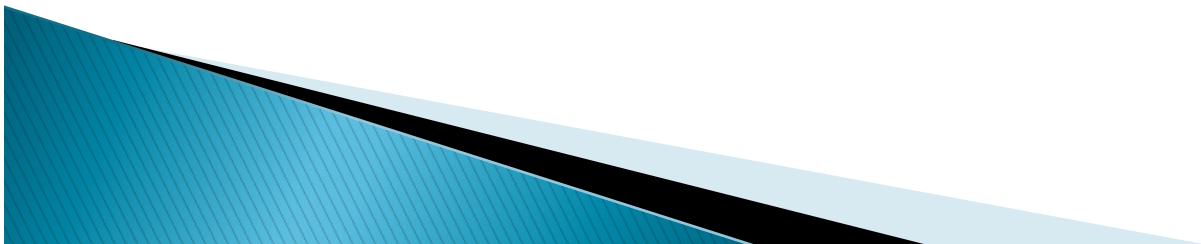
Ordinance 308

- The then enacted State 3 noise levels were as follows for sideline:
 - regardless of the number of engines – 103 EPNdB for maximum weights of 882,000 pounds or more, reduced by 2.56 EPNdB per halving of the 882,000 pounds maximum weight down to 94 EPNdB for maximum weights of 77,200 pounds or less.
- The then enacted State 3 noise levels were as follows for approach:
 - regardless of the number of engines – 105 EPNdB for maximum weights of 617,300 pounds or more, reduced by 2.33 EPNdB per halving of the 617,300 pounds weight down to 98 EPNdB for maximum weights of 77,200 pounds or less."



Ordinance 308

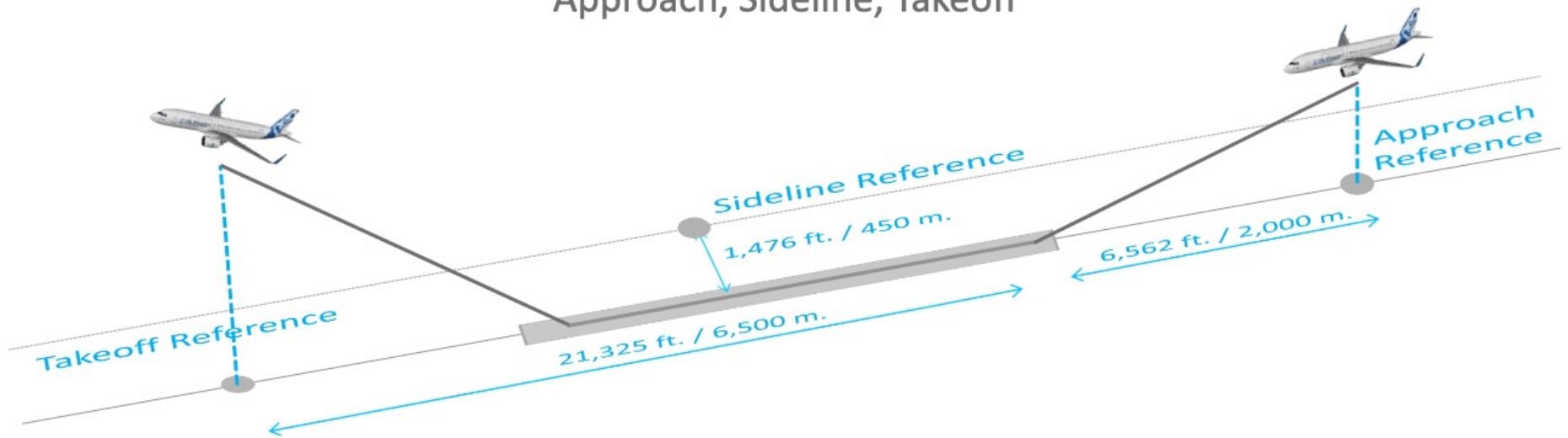
- What is EPNdB:
 - Effective perceived noise in decibels (EPNdB) or Effective Perceived Noise Level (EPNL)
 - It is a measure of the relative noisiness of an individual aircraft pass-by event. It is used for aircraft noise certification and applies to individual aircraft.
 - Every type of aircraft, when certified by the FAA, must have a published EPNdB. The FAA has issued guidelines for how to measure each type of aircraft and this is typically done during aircraft certification flights by the manufacturer.



Ordinance 308

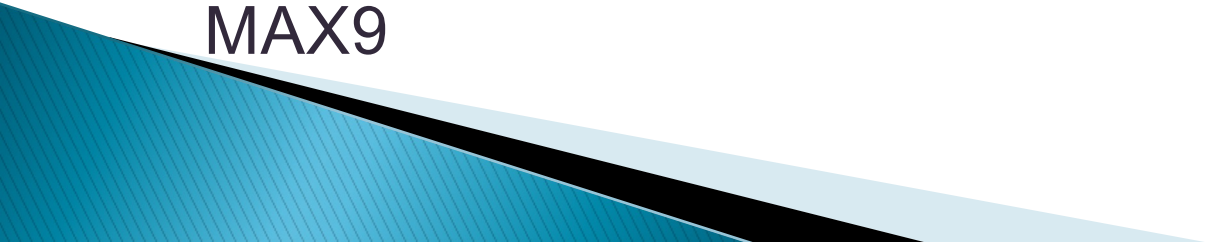
- How is Noise Measured?

Aircraft Noise Certification Points:
Approach, Sideline, Takeoff



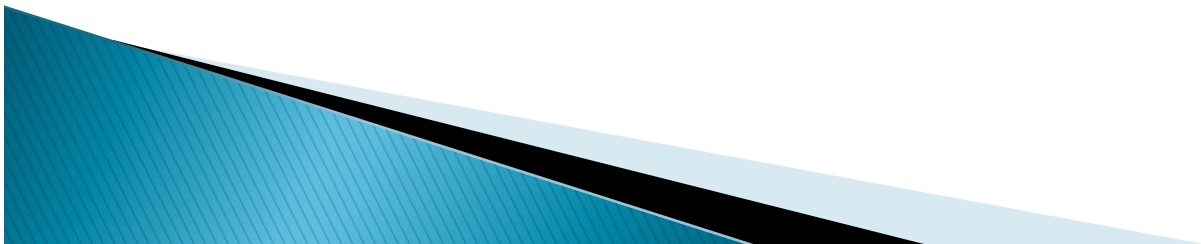
Aircraft Noise is measured in A weighted decibels (dBA)

Ordinance 308

- In looking at all airlines that fly into MRV, all have aircraft that are below the lowest levels of EPNdB published in “Amendment 8 to Federal Air Regulation 36”.
 - American Airlines: A319-100; A320-200; A321-200 and Neo; 737-800; 777-200 and -300; 787-8 and -9
 - Skywest: CRJ 100; CRJ 200; CRJ 550; CRJ 700; CRJ 900; Embraer 175
 - Alaska: 737-700; 737-800; 737-900; 737-MAX8; 737 MAX9
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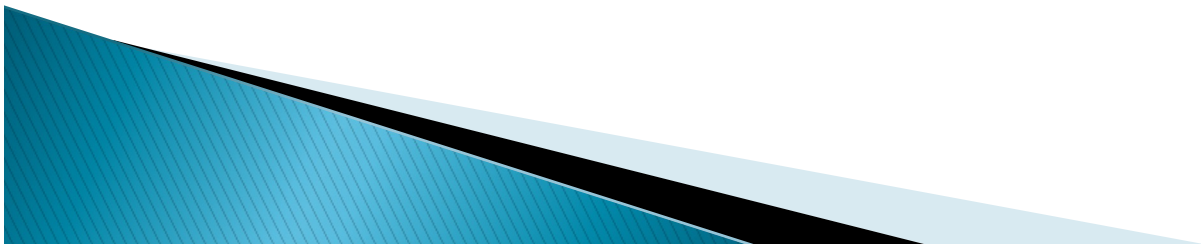
Ordinance 308

- United: A319-100; A320-200; A321Neo; 737-700; 737-800; 737-900; 737-MAX8; 737 MAX9; 737 MAX10; 757-200 and -300; 767-200, -300, and -400; 777-200 and -300; 787-8, -9, and -10
- Allegiant: A319-100; A320-200; 737 MAX-8
- Sun Country: 737-700, -800, and -900
- JSX: Embraer 135 and 145



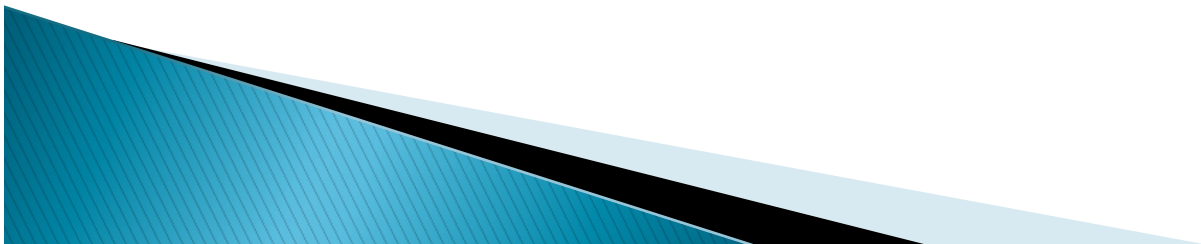
Ordinance 308

- Aircraft Noise Levels – FAA Advisory Circular 36-3H
- Every aircraft that flies in and out of MRY is below the threshold required by Amendment 8 to Federal Air Regulation 36.
- As such, even if this ordinance were left in place, it is totally ineffective because all aircraft flying in and out of MRY are exempt from the time restrictions.



Summary

- Each of the three Ordinances are invalid, unconstitutional, and/or are ineffective.
- As your counsel, it is my recommendation that the three Ordinances be repealed for those reasons.
- Leaving an invalid, ineffective or unconstitutional ordinance in place is not a policy of good governance



Questions?

