



City of
Santa Monica[®]

Office of the City Attorney
City Hall
1685 Main Street
PO Box 2200
Santa Monica
CA 90407-2200

Joseph Lawrence
joseph.lawrence@smgov.net

March 24, 2017

VIA E-MAIL (JOE.MANGES@FAA.GOV) AND U.S. MAIL

Joseph E. Manges, Esq.
Office of the General Counsel
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Self-Serve Fueling at Santa Monica Airport (KSMO)
Reply to letter from Santa Monica Airport Association/American Flyers, Inc.

Dear Mr. Manges:

I am in receipt of a letter dated March 21, 2017 that was sent to you and to several others by David M. Shaby II. Mr. Shaby stated that he was counsel for the Santa Monica Airport Association ("SMAA"), but then he also stated that he was counsel to American Flyers, Inc. ("American Flyers"). For purposes of this response, the City of Santa Monica assumes that Mr. Shaby's letter was sent on behalf of both SMAA and American Flyers.

The City considers the SMAA/American Flyers' letter to be extraordinarily self-serving and inaccurate.

The City was as surprised as anyone else when American Flyers announced unexpectedly on March 7, 2017 that it intended to leave completely Santa Monica Airport on April 15, 2017. Since American Flyers' announcement, the City has been exploring numerous ways for how the kind of fuel services that American Flyers has offered can be continued at the Airport with as little interruption as possible. While the selection of a long term operator may take a few months, SMAA/American Flyers are wrong to claim that the City intends not to allow fuel sales to occur before then. Rather, the unanticipated decision by American Flyers to leave the Airport requires the City to address both the short and long term fuel services' needs at the Airport, and in each instance to do so prudently, in the public interest and consistent with its legal obligations. The City intends to have an interim solution to the problem created by American Flyers in place soon, hopefully before American Flyers even leaves the Airport.

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Several other matters in the SMAA/American Flyers' letter merit comment.

First, for several months and dating back to last year, American Flyers was quite clear: American Flyers would leave completely Santa Monica Airport but before doing so, it wanted the City to pay American Flyers a very substantial sum. Over time this figure dropped, but as recently as last month American Flyers still wanted the City to pay it a significant sum for American Flyers to completely leave the Airport. Even then, there was a caveat. In addition, American Flyers was mulling over whether just to curtail some of its Airport operations while continuing to sell fuel. Given American Flyers' statements, that instead American Flyers would decide to totally quit Santa Monica Airport in April 2017 was completely unexpected.

For its part, the City offered American Flyers a three year lease to remain at the Airport, as the City agreed to do under the terms of the Consent Decree. Rather than enter into lease negotiations, on March 7, 2017, American Flyers suddenly announced that it would vacate Santa Monica Airport on April 15, 2017. The City did not agree to pay American Flyers any compensation.

Second, SMAA/American Flyers has not been "harassed" into leaving Santa Monica Airport. Rather, American Flyers has made a self-interested business decision to do so. Currently, American Flyers prefers to leave the Airport rather than to have a three year lease. Just a few months ago, American Flyers' position was the opposite. At that time, American Flyers *insisted* that the City was being unfair to it by not offering American Flyers a lease. Indeed, in December 2016, American Flyers sued the City requesting a "declaratory judgment" that "the City has the obligation [] to negotiate in good faith for and lease facilities at the airport..." to American Flyers. *Ameriflyers of California, Inc. v. City of Santa Monica*, Superior Court, County of Los Angeles Case No. BC639379 (First Amended Complaint). Now that the City has offered such a lease pursuant to the Consent Decree, American Flyers has inexplicably changed its tune.

Third, SMAA/American Flyers' asserted concern about the fate of American Flyers soon to be ex-customers is admirable, but under the circumstances, it is suspect. American Flyers' decision to leave the Airport may affect some Airport users, but American Flyers was well aware of this before it announced its intention to leave the Airport. Nonetheless, American Flyers considered its customers' interests to be of secondary importance to American Flyers' preference to leave the Airport on short notice, before any transition plan was put in place.

Fourth, having made the decision to hastily leave the Airport, American Flyers and SMAA apparently want to shift the responsibility to the City to correct any market shortcomings that may occur as a result of American Flyers' decision to leave. As you know well, the City has not dictated to American Flyers the price at which American Flyers sells fuel at the Airport, and the City does not dictate to Atlantic Aviation the price at which Atlantic Aviation sells fuel at the Airport. The aeronautical market determines those prices, as is customary under our economic system. SMAA/American Flyers now seem unhappy with this reality and instead, they want the City to control the market and set price controls on aviation fuel at the Airport.

Fifth, as you also know, the type of services offered by American Flyers differs from the type of services offered by Atlantic Aviation. Atlantic Aviation is a full service fueling operation, which American Flyers is not. Presumably the different types of services provided by the two different business operations determine in large part the fuel pricing differential between American Flyers and Atlantic Aviation. This too is quite typical under our economic system.

Sixth, about the claim that there is some hardship to the aviation community because American Flyers operates on the south side of the Airport while Atlantic Aviation operates on the north side, as you know, Santa Monica Airport is a relatively small airport. It has but one runway. The distance from the south side to the north side of the Airport is not far, is easy to traverse and is readily accessible by aircraft and fuel trucks alike. Moreover, it is disingenuous for SMAA/American Flyers to suggest that fueling from a stationary fuel pump is more convenient and causes less delay in fueling operations than into-plane fuel delivered by truck, as is customary at most general aviation airports.

Seventh, under the terms of American Flyers' current and long standing obligations to the City, when American Flyers surrenders the premises it must "clean up and remove all debris and other materials on the Premises at [American Flyers'] sole expense." Further, American Flyers is also obligated "to perform and complete environmental remediation of the premises..." American Flyers agreed to this on June 23, 2006, almost 11 years ago. SMAA/American Flyers can hardly be surprised that, when American Flyers leaves the Airport, American Flyers may have to drain the fuel tank, if that becomes necessary.

Eighth, contrary to the claim of SMAA/American Flyers concerning Airport standards, the lease offered to American Flyers incorporated the requirement that American Flyers would need to adhere to any adopted Airport standards.

Ninth, American Flyers abrupt announcement to leave the Airport was made on short notice to the City. American Flyers' sudden decision impacts not only its customers, but the City as well. Yet, SMAA/American Flyers wish to ignore the full impact of *American Flyers'* actions. Instead, SMAA/American Flyers apparently believe that American Flyers' decision to leave the Airport imposes obligations on the City to forego customary governmental processes on how to select a possible replacement operator. In this regard and without legal support, SMAA/American Flyers seem to argue, at least implicitly, that because of American Flyers' hasty decision, the City needs to disregard its normal rules concerning competitive selection and review of potential successors to American Flyers. This is nonsense. Regardless, as noted at the outset and consistent with applicable legal requirements, the City is acting expeditiously to try to ensure that there is little to no interruption in fuel services caused by American Flyers' precipitous action.

Lastly, and this is not part of SMAA/American Flyers' letter, yet it is noteworthy. American Flyers has not paid rent to the City for American Flyers' use of Airport property for more than six months. Seemingly American Flyers believes that all other Airport users and the public should subsidize its use of the Airport. Nothing can be further from the truth.

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It is obvious that the SMAA/American Flyers' letter is but a thinly veiled effort to interfere with the Consent Decree. No doubt it is also an orchestrated attempt to create a record, albeit a false one, of a needless and self-imposed "emergency" at SMO for the purpose of influencing the pending litigation in the D.C. Circuit, including the NBAA's recent request for an injunction. *NBAA, Inc. et al v. FAA, et al.*, No. 17-1054. We urge the FAA to ignore such gamesmanship and to discourage further manufactured disputes intended to undermine the Consent Decree, which both the City and the FAA have "agreed not to undermine directly or indirectly".

Please feel free to contact me if you need any further information. The City of Santa Monica continues to look forward to working cooperatively with the Federal Aviation Administration as we each utilize our best efforts to work together to successfully implement all aspects of the Consent Decree.

Sincerely,



JOSEPH LAWRENCE
Interim City Attorney

JL/EK

cc: David M. Shaby II
Ed Bolen, NBAA President
Mark Baker, AOPA, President
Jol Silversmith, Esq.
Kathy Yodice, Esq.
Richard Simon, Esq.
Stelios Makrides, Santa Monica Airport Manager
Alan Seltzer, Esq., Interim Assistant City Attorney, City of Santa Monica
William V. O'Connor, Esq., Morrison & Foerster LLP