



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Office of Airports
Safety and Standards Branch

ATTACHMENT III

777 S. Aviation Blvd., Suite #150
El Segundo, CA 90245

September 27, 2018

Mr. Lloyd W. Emberland
Lead Representative
Hayward 206 Hangar Group
26771 Contessa Street
Hayward, CA 94545-3149

Mr. Doug McNeeley, C.M. C.A.E.
Airport Manager
20301 Skywest Drive
Hayward, CA 9451

Dear Messrs. Emberland Et Al. and Mr. McNeeley:

**Hayward Hangar Group
Hayward Executive Airport (HWD)
Part 13 Informal Determination**

The Federal Aviation Administration (FAA) San Francisco Airports District Office (SFO-ADO) has completed its investigation of your allegations that the City of Hayward (City), sponsor of Hayward Executive Airport, is operating the airport in a manner inconsistent with its applicable federal obligations.

To investigate this complaint, our office has reviewed the Hayward 206 Hangar Group's December 11, 2017, complaint letter sent by Mr. Lloyd W. Emberland (that also included over 55 names of the HHG's members) and subsequent two letters dated December 17, 2017 and January 2, 2018, submitted by Mr. Gerald Turney, member of the Hayward Hangar Group (HHG). HHG made allegations related to economic discrimination by the City in its treatment of revising hangar rental rates as unfair and unreasonable. HHG's other concerns include the City not addressing airport fees disputes under 49 U.S.C. 47129, not being transparent in the hiring of a consultant that conducted an *Airport Rent Study* report, and the City's undisclosed plan for the demolition of aircraft hangars. HHG also referenced several conditions from FAA final *Policy Regarding Airport Rates and Charges* as published in the Federal Register on September 10, 2013. Upon providing a copy of the complaint to the City, we received the City's response letter, dated March 15, 2018, defending its hangar rates claiming they were fair and reasonable. We also requested from the City various aircraft hangar leases for review of the conditions agreed to between the City and hangar users. The City has conveyed to the SFO-ADO, it also sent HHG a copy of its response letter and the supporting information.

Airport Sponsor Grant Assurances/FAA Compliance Program

When airport owners or sponsors, planning agencies, or other organizations accept funds from FAA-administered airport financial assistance programs, they must agree to certain obligations (or assurances). These obligations require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. The

Airport Improvement Program (AIP), Title 49 U.S.C. § 47107, *et seq.*, sets forth the statutory sponsorship requirements to which an airport sponsor receiving federal financial assistance must agree. FAA Order 5190.6B, *Airport Compliance Manual*, issued on September 30, 2009, provides the policies and procedures to be followed by the FAA. The Order discusses the obligations in the standard airport sponsor assurances and addresses the application of the assurances in the operation of public-use airports.

Under the Airport Compliance Program, the FAA ensures airport owners comply with their federal obligations. The Airport Compliance Program does not control or direct the operation of airports. The Compliance program is designed to achieve voluntary compliance with federal obligations accepted by sponsors of public-use airports. Therefore, in addressing allegations of noncompliance, the FAA will make an informal determination as to whether an airport sponsor is *currently in compliance* with the applicable federal obligations. Upon review of the HHG's allegations, the FAA considered the applicability of all the relevant Federal Grant Assurances that have a bearing on the allegations. The review focused primarily with Federal Grant Assurance 22, *Economic Nondiscrimination*, as this assurance was most relevant to the allegations in the report. Grant Assurance 22, in part requires that an airport sponsor make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial services to the public at the airport. Grant Assurance 22 implements the provisions of 49 U.S.C. § 47107(a)(1) through (6). To comply with Grant Assurance 24, *Fee and Rental Structure*, the airport sponsor will maintain a fee and rental structure for the facilities and services at the airport, which will make the airport as self-sustaining as possible under the circumstances at the time.

HHG Allegations:

1. Since 1999, HHG had an agreement that allowed airport rents to be increased 75% of the consumer price index (CPI) every two years. Under the new methodology, the rental rate will be increased by 50% over 5 years and this would be an inconsistent methodology regarding the City's Master Fee Schedule past practices. Also, the City was not transparent in hiring a consultant to conduct a market rental rate cost analysis and that the consultant's report was flawed and not independent from the City. Specifically, HHG alleges that the hangar rent study performed by Aviation Management Consulting Group (AMCG) was solicited, negotiated, and executed in secret without Council discussion or approval. "AMCG's recommendation ignores eighteen years of the City's Master Fee Schedule's past practices."
2. The new rate fee system is unfair and discriminatory against the lessees because the City is not applying a consistent methodology in establishing fees for comparable users of the airport.
3. The City is unwilling to negotiate and compromise with hangar tenants at the local level on the planned increase in the rates and charges and when requesting information from the City, the City did not comply with the California Public Records Act.
4. The City is secretly planning to demolish City-owned hangars.

City Response:

1. The Hayward Executive Airport has maintained a consistent rates and charges policy since 1999 that includes hangar rental fees adjusted by both changes in the local CPI and FMV. There was never a "deal" to adjust rates based solely upon CPI, but on four occasions in the past, Council has agreed to waive scheduled CPI and FMV rate increases due to adverse economic conditions, to the benefit of tenants. Although difficult, the City strives to meet FAA requirements for financial self-sustainability. The airport currently uses an independent consultant to objectively determine whether hangar rental fees at HWD are commensurate with those of other, similar airports, and in the most recent instance, the City followed its procurement procedures in executing a contract with Aviation Management Consulting Group.
2. Hayward Executive Airport has established separate rental rates for commercial tenants with a ground lease and for individual tenants in airport owned and operated hangars. This is a common practice that is permitted by FAA policy.
3. The airport gave ample notice of the most recently proposed adjustment to hangar rental fees, provided many opportunities for tenant input, and responded to tenant inquiries. The City has consistently complied with all provisions of the California Public Records Act.
4. It is reasonable for the City to assess the physical condition of its hangars, including the remaining useful life, to determine if the hangars should be repaired, renovated, or replaced. There is no hidden agenda to demolish City-owned hangars regardless of their condition.

FAA Review, Analysis, and Discussion

In regards to Allegation 1, we found that the City's rate change methodology has been consistent. When evaluating rates and charges, the FAA examines whether the airport sponsor has established a rate setting methodology that is transparent, uniform in its application, and consistently applied over time. The FAA does not set rates for airports or replace its own preferred rate for that of an airport sponsor. The FAA does not instruct airport to raise rates that may appear to be too low or to lower rates that may appear to be too high. Rather, the FAA attempts to judge whether or not the rate setting methodology is reasonably formulated, transparent, and equitably applied to all users in accordance with the rate structure policy. The FAA will not ordinarily investigate the reasonableness of a general aviation airport's fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

To determine if surplus aeronautical revenues accumulated throughout a period, we reviewed the Hayward Executive Airport's Airport Operating Fund account from Fiscal Years (FY) 2008 to 2017. We also reviewed the next year FY2018 budget. The information provided did not indicate that there was a progressive accumulation of surplus aeronautical revenues. The review of the airport's operating fund indicates that the financial performance of the airport for the last 10 years was almost breakeven but not underperforming as the airport achieved a small net gain of approximately \$6,377. We observed the airport in the last two years, FY2016 and FY2017, realized a net gain.

Reasonable reserves and other funds to facilitate financing and to cover contingencies are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the *FAA Revenue Use Policy*.

On reviewing the City's records, the City of Hayward has established a Master Fee Schedule since 1976. The Master Fee Schedule consists of rates and charges that are reviewed and approved by the City Council and made public to the airport users. From 1984, the policy was that storage fees for aircraft were adjusted upwards on each January 1 of every year in the same percentage proportion according to the increase in the All Urban Consumer's Price Index" (CPI) for the San Francisco-Oakland area of the United States Department of Labor, Bureau of Labor Statistics. However, the adjustment methodology for airport fees changed in 1999. Since 1999, airport rental rates were adjusted every two years by 75% of the local CPI. Records show that the City may augment the adjusted fees up to fair market value (FMV) by a market survey or analysis of airport fees every 4 years. However, records also show that the City has chosen not to always increase rates to FMV as the occasion allowed. From the information provided by HHG and the City, we did not find any evidence that there was an agreement between HHG and the City on the 1999 rate adjustment policy based only on the CPI as HHG claimed.

On the City's determination of airport fees for FY 2018, the City hired Aviation Management Consulting Group (AMCG) to conduct a study and analyzed hangar rental rates to provide an opinion of the market rental rates on the airport hangars that can be applied at the Hayward Executive Airport. AMCG completed the *Airport Rent Study* report based on the fees from a survey of comparable airports in the San Francisco Bay Area and throughout the United States. The study found that an increase in hangar fees from 5% to 51% depending on the type of facility to be leased, was warranted.

On the latter part of Allegation 1, we saw no evidence from the information provided for our investigation to support HHG's allegation that the consultant was solicited, negotiated, and executed in secret without City Council approval or that the report was flawed and not independent from the City. Furthermore, on reviewing AMCG's report, we found the recommended rates were not unreasonable as four groups of data were evaluated, that include national airports data, regional airports data, comparative airport data, and competitive airports data providing a range of rates (minimum, maximum, mean) for the City's review and determination.

In regards to Allegation 2, HHG alleges the new rate fee system is an unfair and discriminatory rate fee system, but we find that this is not supported. We found the City employed a transparent (clear and justified) and not unreasonable method of establishing the hangar rates and adjusting the rates based on a timely and predictable schedule per the City's initial practice. We reviewed several airport's hangar leases to confirm that the amount of the rent in the lease was stated or can be based on rates set in the Master Airport Fee schedule. Essentially, the methodology followed past rate change practices that hangar rates in the Master Airport Fee schedule can be adjusted by conducting a market survey.

The City can set different lease rates for different categories of hangars or facilities. We agree with the City's response, allowing the sponsor to have different or separate rental

rates methodologies for different types of leases as referenced from FAA's *Policy Regarding the Establishment of Airport Rates and Charges*, Part A, *Scope of Policy*. This policy states, "airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, e.g., for the airfield and terminal area, and for different aeronautical users, e.g., air carriers and fixed-base operators." We also agree with the City's response as referenced from the *Policy* at Section "*Fair and Reasonable Fees*," paragraph 2.6.1, "Reasonable methodologies may include, but are not limited to, historic cost valuation, direct negotiation with aeronautical users, or objective determinations of fair market value." Also, circumstances may allow for differences in rental rates among tenants. Per FAA Order 5190.6B, *Airport Compliance Manual*, "An airport sponsor does not engage in unjust discrimination simply by imposing different lease terms on carriers and users whose leases have expired. FAA recognizes rate differences based partly on differences in other lease terms and facilities."

On Allegation 3, we found the City did provide the hangar tenants adequate information and notice regarding the hangar rate change. According to FAA policy on airport rates and charges, airport proprietors should consult with aeronautical users well in advance, if practical, when introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in fees. Similarly, aeronautical users should give due regard to the views of the airport sponsor and the financial needs of the airport. The information from HHG and the City indicates that on multiple occasions in 2017 and early 2018, the City communicated with HHG either through public meetings, discussions, or written correspondences on the rental rates. The City provided a copy of AMCG's *Airport Rent Study* report to HHG for review. The information reviewed indicates HHG began discussions with the City in April 2017 regarding hangar rates. Regarding HHG's claim that the City did not fulfill HHG's requests for information under the California Public Records Act, please be aware that the FAA has the responsibility to see that airport sponsors comply with federal laws, regulations, and grant assurance obligations and not state laws or regulations. State regulators would have the jurisdiction to enforce state regulations.

We conclude that the City has made the effort to having open communications with the members of the HHG on the City's adjustment of the rental rates. Regarding the airport sponsor not addressing airport fees disputes under 49 U.S.C. 47129, we believe the City gave due regard to the views of the hangar tenants and the impact of the higher rates by deciding to gradually raise the rental rates at 10% increments to fair market value instead of the full determined FMV rate.

On Allegation 4, upon review of the information provided, we did not identify any evidence to demonstrate that the City had a "secret" plan to demolish hangars. Please be reminded that it is an airport sponsor's right to develop, operate, and maintain the airport in accordance with the latest approved airport layout plan. FAA approval of the ALP represents the concurrence of the FAA in the conformity of the plan to all applicable design standards and criteria. It also reflects the agreement between the FAA and the sponsor

regarding the proposed allocation of airport areas to specific operational and support functions.

Conclusion

In accordance with Grant Assurances 22, *Economic Nondiscrimination*, the airport is required to be available on reasonable terms and without unjust discrimination, and to be in accordance with Grant Assurance 24, Rates and Charges, the City should charge rates that will make the airport as self-sustaining as possible. We conclude the HHG did not support its allegations with regard to Grant Assurance 22, Economic Nondiscrimination. Based on our review of the Part 13 informal complaint filed by the HHG, it is our conclusion that City did not unreasonably raise rates and charges for the use of aircraft hangars in violation of Grant Assurance 22, *Economic Nondiscrimination*. Also, we found that the City is in accordance with Grant Assurance 24, *Rate and Charges*.

Based on our investigation, we have determined that the City is in compliance with the Grant Assurance obligations. The Western Pacific Region, Airports Division considers this matter closed and we find this matter warrants no further FAA action. This determination is not a final agency action subject to judicial review. If you believe this office has erred, you may file a formal complaint under 14 CFR § 16, Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.

If you have any questions, please contact Mr. George Aiken, Compliance Program Manager, Western Pacific Region, at (474) 405-7306.

Sincerely,



Robert Lee
Airports Compliance Specialist

Cc: Mr. Gerald Turney
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