

CITY OF LONG BEACH

LONG BEACH AIRPORT

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November 20, 2018

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Adopt a Resolution amending Resolution No. C-28465 with respect to the utilization of flight slots allocated at the Long Beach Airport and related administrative amendments to the Resolution, in accordance with the Airport Noise Compatibility Ordinance set forth in Chapter 16.43 of the Long Beach Municipal Code. (Citywide)

DISCUSSION

The City of Long Beach (City) is the owner and operator of Long Beach Airport (Airport). The City restricts flight activity and the time of day that aircraft operations may be scheduled and occur at the Airport, requires minimum utilization of allocated flight slots, and prescribes administrative penalties and an alternative enforcement process for operators who violate the regulations. These regulations date back to a pre-existing court order and subsequent settlement agreement that was originally entered into in 1989 and included various noise-based restrictions and regulations on aircraft operations at the Airport. In 1995, a negotiated Stipulated Final Judgment was approved by the court that provided the City with the ability to enforce its noise regulations. The Noise Ordinance (Long Beach Municipal Code Chapter 16.43) remains in effect today and has not been amended or modified by the City Council since its first enactment in 1995.

The implementing provisions for the Noise Ordinance are provided in Resolution No. C-28465 (Allocation Resolution). The Allocation Resolution provides important allocation preferences, flight slot allocation processes, minimum and maximum use provisions, and related allocation provisions necessary for implementing the Noise Ordinance. The Federal Aviation Administration (FAA) has previously acknowledged that the fundamental provisions of the City's Noise Ordinance and Allocation Resolution, including those related to the noise and curfew provisions, are exempt from the provisions of the Airport Noise and Capacity Act of 1990 (49 U.S.C. 47521 et seq.) (ANCA) and its implementing regulations (14 C.F.R. Part 161).

In September 2017, the City initiated a public process to consider possible amendments to the Noise Ordinance and Allocation Resolution to modify certain administrative penalties, slot utilization, and related administrative provisions. In light of the recent increased demand for permanent flight slots at the Airport, lack of availability of permanent flight slots, and based on the continued and anticipated further underutilization of allocated flight slots compared to current load factors and industry trends in the region, it is recommended that the City Council adopt the attached Resolution amending the Allocation Resolution, on an expedited basis, separate from any proposed amendments to the Noise Ordinance relating to curfew penalties and related issues. This approach is also appropriate in light of an agreement the City reached with JetBlue Airways earlier this year regarding compliance with the existing curfew provisions of the Noise Ordinance.

The City has always been vigilant in assuring the Airport operates within the defined parameters and in strict compliance with all provisions of the Airport's Noise Ordinance and Allocation Resolution. In addition, the City has always sought to regulate in a manner that protects its legitimate interests and concerns as the proprietor of the Airport but does not unnecessarily interfere with or affect competition between the air carriers serving the Airport or the economic evolution of the airline industry. It is current City policy to provide the best possible air transportation services and opportunities to the traveling public in a manner that supports a healthy and competitive business environment at the Airport within the existing environmental and operational constraints. The City and Airport have determined the Allocation Resolution requirements relating to minimum use provisions conflict unnecessarily with these vital objectives and policies.

The proposed amendments to the Allocation Resolution are intended to allow the City and Airport to continue to meet two important policy objectives as follows:

1. The Airport should not allow air carriers to operate in a manner that creates artificial advantages for any carriers operating at the Airport unrelated to the basic objective of the City in providing air transportation facilities and services to the public and might even encourage anti-competitive conduct at the Airport. Essentially, this is the "fairness" issue underlying the proposed amendments to the Allocation Resolution.

In addition to the basic public policy reality that "fairness" is always a desirable regulatory objective, the City has contractual obligations to the FAA to operate the Airport on "fair and reasonable" terms and without "unjust discrimination" as between similarly situated airport users. The proposed amendments to the provisions of the Allocation Resolution continue to ensure compliance with these obligations.

2. Slot allocations are not, and must not be permitted to become, property rights or property interests of the commercial operators at the Airport. The slots (and all other capacity) at the Airport are not transferable by the air carriers, and the proposed amendments to the Allocation Resolution do not alter this basic premise of commercial operations at the Airport in any respect. This is the "property rights" issue underlying the proposed amendments to the Allocation Resolution.

Proposed Amendments

The proposed amendments to the Allocation Resolution are primarily focused on ensuring that air carriers adequately utilize their flight slots, which are allocated by the Airport. The historical failure by air carriers to adequately utilize their allocated flight slots is minimizing the opportunities for other incumbent and new entrant air carriers to increase or initiate service at the Airport. This is particularly problematic with the recent increase in demand for Airport flight slots and the current and anticipated future failure by some incumbent air carriers to fully utilize their slot allocations.

Existing Flight Slot Utilization Requirements

Slot utilization requirements are contained in Section 2(l) of the Allocation Resolution (definition of "Operations"). As stated in the Allocation Resolution, "Operations means averaging at least four Flights per Slot per week over any 180-day period [57 percent]; provided, however, failure to conduct at least 30 Flights per Slot in any 60-day period [50 percent] shall constitute failure to Continuously Operate such Slot." The requirements enable a carrier to maintain a slot with a minimum of 57 percent utilization. This level of utilization arguably provides for the potential to engage in anti-competitive behavior by maintaining flight slots that are underutilized and, thereby, restrict opportunities for new entrants or other incumbent air carriers that might otherwise be able to operate the slots.

Proposed Amendments to Flight Slot Utilization Requirements

The proposed amendments to the flight slot utilization requirements would require flight slot utilization of 60 percent during any calendar month, 70 percent during any calendar quarter, and 85 percent during any calendar year. These proposed, minimum utilization requirements are similar to the minimum utilization requirements at other airports in the region, including at John Wayne Airport, Orange County¹ and are consistent with average load factors and seat and passenger utilization at the Long Beach Airport.

In addition to these modifications, the proposed amendments include administrative penalty provisions for failure to comply with the minimum utilization requirements that would, among others, subject air carriers to penalties including reduction in the number of flight slots consistent with actual utilization and potential disqualification from receiving additional permanent or supplemental flight slots for a period of time after violation of the minimum utilization provisions and under certain specified circumstances. These proposed administrative penalty provisions would allow the Airport to reallocate underutilized flight slots to incumbent and new entrant air carriers.

Additional Recommended Amendments

The Airport is recommending other administrative amendments, including modifications to the definition of flight slot and ferry operations and other minor administrative amendments that will facilitate continued implementation of the Allocation Resolution.

¹ The minimum utilization requirements at John Wayne Airport, Orange County are as follows: 50 percent per calendar month, 70 percent per calendar quarter, and 90 percent per calendar (Plan) year.

Public Review and Comment on Proposed Allocation Resolution Amendments

The City initiated the process for the City Council to consider possible proposed amendments to the Noise Ordinance and Allocation Resolution in September 2017 to ensure that all interested parties had an opportunity to provide input to the Airport and City as it considers these important possible amendments. This process included written correspondence to, and request for comment from, air carriers and other interested parties. The Airport also reached out to the greater community to discuss the proposed amendments through public input meetings. The Airport received written comments from the air carriers during this process and oral comments from community members and other interested parties. In the late spring of 2018, the Airport resolved an ongoing dispute with JetBlue relating to its curfew operations and interpretation of the existing curfew provisions, and, based on assurances from JetBlue as well as recent schedule changes by the air carrier, the Airport anticipates the number of curfew operations will decrease. Based on the written and oral comments received during the public review and comment process, and the agreement reached with JetBlue regarding the enforcement provisions of the Noise Ordinance, the Airport decided to take a more focused approach to the proposed amendments as they relate specifically to the Allocation Resolution.

On May 16, 2018, the Airport Director sent a letter to the air carriers and other interested parties requesting comments on the proposed Allocation Resolution amendments (Attachment A). The Airport received only two comment letters from Southwest and JetBlue (Attachment B). As indicated above, additional comment letters were received in the context of the broader Noise Ordinance amendment process initiated in 2017. In light of the Airport's decision to proceed at this time with only the Allocation Resolution amendments, these comments letters have not been attached but are available upon request.

The two airline comment letters received fall into two separate camps: JetBlue opposes staff's recommendations and appears to prefer the minimum utilization policies status quo.³ In contrast, Southwest supports staff's recommendations. Because this is obviously an important issue to both JetBlue and Southwest, staff has responded to each of the principle arguments advanced by the air carriers.

JetBlue Comments

The bedrock of many of the objections made by JetBlue regarding the proposed amendments to the Allocation Resolution relates to its perception that the proposed amendments are "...specifically designed to harm JetBlue..." and are not necessary because JetBlue is in "... full compliance with the Allocation Resolution and Ordinance." Contrary to JetBlue's assertions, the proposed amendments are not targeted at JetBlue; rather the proposed amendments are a result of the continued underutilization of flight slots at the Airport. The new minimum utilization requirements will apply equally to all incumbent and potential, new entrant air carriers at the Airport, not just to JetBlue.

³ As noted in JetBlue's recent comment letter, JetBlue has submitted two sets of comments. Because the comments submitted relating to the proposed minimum utilization provisions are similar, the balance of this report addresses the specific issues raised by JetBlue's most recent comment letter.

In addition, JetBlue's minimal compliance with the existing utilization provisions is not the issue at hand; rather, the issue is that the Airport is increasingly concerned that given the existing minimum utilization provisions in the current Allocation Resolution, air carriers have the ability to essentially "slot squat" on flights without permanently returning the underutilized flight slots. This in turn impacts the ability of other air carriers (both incumbent and new entrant) to utilize the unused flights on a regular basis. The inability to use these slots on a regular and long-term basis (rather than on a supplemental and limited basis) restricts an air carrier's long-term planning at the Airport. It is important to emphasize that the proposed amendments would apply to all air carriers (incumbent and new entrant) and would simply require an increase in the minimum utilization of the flight slots to ensure maximum utilization of this limited resource.

It is important to recognize that the Airport's flight utilization objectives are the essence of the proposed amendments and are arguably the most direct and effective means for the City to maximize flight operations within the flight slot and noise budget constraints that currently exist. Because of the constrained operational environment that the Airport operates within, the Airport must necessarily determine how the flight slots can be most efficiently and fairly administered by the City. In addition to the standard legal obligation of the City that it not act in a manner that is "arbitrary or capricious" in its structuring of its regulations, the City also has obligations under its grant agreements with the FAA to administer the operation of the Airport on "fair and reasonable terms" and without "unjust discrimination" among airport users. The proposed amendments relating to flight utilization requirements address inherent and inevitable administrative questions that flow naturally from the very existence of a noise control and allocation resolution, which requires the allocation of scarce operating capacity among competing users. The Allocation Resolution inevitably, addresses issues of "fairness" and "reasonableness" in allocating those resources. The Allocation Resolution must address the question of which provisions are necessary to protect legitimate City interests as the proprietor and operator of the Airport. The Airport must consider which restrictions on the use of flight slots are necessary to avoid inadvertently allowing one user from unfairly taking advantage of the system to the detriment of other, existing or potential airport users. These are the questions the City must address in administering the Allocation Resolution, and they are the questions that are at the heart of the proposed amendments to the minimum utilization requirements.

With respect to the proposed new, minimum utilization percentage requirements, JetBlue also argues that the proposed annual 85 percent slot usage requirement "...is more stringent than the [80 percent slot usage requirement used by the] International Air Transport Association (IATA) ... at the three federally-slot controlled airports in the United States (JFK, LGA, and DCA)..." However, what JetBlue fails to disclose is that the 80 percent slot usage requirement is for any two-month period and that slots at these airports are subject to being withdrawn if not utilized at a rate of at least 80 percent over each two-month period. Therefore, the proposed amendments to the minimum use provisions would still be more lenient (i.e., not as strict as) than the three federally-slot controlled airports.

JetBlue also argues that even with the airline's service reductions, which went into effect September 2018, "less than half of the unused slots have been requested. In other words, there will likely be ample slots available in the near future, which provides further reason for the City to not pursue an unwise and possibly unlawful modification of the Resolution at this time..." This argument, however, is hollow and without merit because it fails to recognize that JetBlue has indicated to the Airport that despite its schedule changes, JetBlue will not be permanently returning any flight slots. Accordingly, any unused portions of slots will only provide "temporary" capacity for incumbent and new entrant air carriers to utilize. Unless the minimum utilization requirements are modified, JetBlue will not be required to return any flight slots even with the planned reduction in service. As a result, no returned permanent flight slots will be available for allocation to incumbent or new entrant air carriers at the Airport. This issue is further addressed below in the context of Southwest Airlines' comments, which indicate the difficulty in operating with only temporary capacity (i.e., unused portions of slots).

In reality, JetBlue's argument is a somewhat transparent attempt to advocate that the Airport should continue to restrain normal market forces by enforcing the existing minimum utilization provisions in a manner which, as a practical matter, will allow JetBlue to continue to avoid reducing its service at the Airport, despite its cutback in flights, so that other air carriers will not have the opportunity to expand service at the Airport by receiving an allocation of permanent flight slots "returned" by JetBlue to the Airport. In essence, JetBlue's argument is an attempt to solicit the City and Airport's assistance in using the Allocation Resolution to provide JetBlue with a continuing competitive advantage at the Airport, while disadvantaging one (or more) of JetBlue's competitors. The Airport does not make flight slot allocations for the purpose of facilitating or encouraging anti-competitive conduct where air carriers might deny their competitors access to operations capacity that they do not intend to use themselves.

JetBlue also argues that the proposed terms such as "any year" "calendar month" and "calendar quarter" be clarified and that "...such rigid time frames would not account for complexities inherent in the airline industry, especially when such a regime does not allow for slot transfer rights as allowed for by the IATA WSG to address commercial/seasonal realities. It is unnecessary for an underutilized small municipal airport to impose slot restrictions more stringent than the nation's, indeed the world's, busiest airports. There is no legal or policy basis to do so." In response to JetBlue's assertions, the final proposed amendments to the Allocation Resolution clarify that the terms used refer to a calendar month, calendar quarter and calendar year for purposes of calculating the minimum utilization requirements. Therefore, these proposed minimum utilization requirements allow for commercial/seasonal fluctuations.

Finally, JetBlue argues that "...the proposed changes might have a serious impact on JetBlue's ability to efficiently schedule aircraft and crewmembers, ...The specific nature of Long Beach's operating regime was approved by a Federal District Court and grandfathered by Congress through ANCA. Tampering with this system could have drastic consequences and be contrary to the intent of the community. The City needs to be especially careful not to discriminate against one airline, or type of airline business model, ...Any City action to unilaterally impose changes to the Ordinance or Allocation Resolution

that are more restrictive or facially discriminatory could have unintended consequences and be deemed presumptively invalid.” JetBlue’s argument is irrelevant to the recommended amendments. JetBlue does not have a “vested right,” or even a “vested interest,” in continued application by the City of each and every existing provision of the Noise Ordinance or Allocation Resolution. JetBlue has a reasonable expectation – as do all of the air carriers – that the City will apply the Noise Ordinance and Allocation Resolution in a fair and reasonable manner, and without “unjust discrimination.” However, no carrier has a reasonable expectation that the City will refrain from all modifications and policies unless the carrier finds the modification to the carrier’s competitive advantage or if the carrier finds that the modification would enhance operational opportunities for its competitors. So long as the City’s rules for the Airport are carrier-neutral in their structure and application, JetBlue does not have a legitimate basis for objecting to City Airport policy on competitive grounds.

Southwest Airlines Comments

In contrast to JetBlue, Southwest Airlines provides strong support for the recommended amendments and, in fact, indicates the proposed amendments to the minimum utilization requirements do not go far enough. “From Southwest Airlines’ perspective, good policy dictates that, to the extent [flight slots] are allocated to and, as a result, controlled by individual air carriers, there must be an effective mechanism to assure maximum usage of such capacity.” Southwest emphasizes that “[w]hile the current Resolution provides a process for the Calculation and Reservation of Unused Flights, ...the intricacies of the scheduling process render that process extremely unwieldy and simply not conducive to effective scheduling of aircraft and/or personnel. Further, it virtually forecloses our ability to consider new markets and the attendant commitment of appropriate marketing and other resources to such operations given their temporary nature. Without the ability to be reasonably sure of a substantial duration, such investment cannot be justified.”

Staff sees merit in this argument and it appears reasonable and fair that, in a situation where there are unused flights, an air carrier should be required to permanently return the flight slots rather than simply maintain a minimum flight schedule that essentially leaves capacity on the ground and unused. This issue goes to the very heart of JetBlue’s position relating to the existing lack of capacity demand at the Airport. In fact, if the minimum utilization provisions are amended to require greater utilization and use it or lose it provisions are put in place, the Airport anticipates that flight slots will necessarily be returned to the Airport for reallocation and that Southwest and/or other incumbent and new entrant air carriers will request and utilize all of these flight slots; particularly when they are not burdened with the requirements for utilization of “unused flights.”

Federal Aviation Administration Coordination Efforts

At appropriate points during the process, the Airport, in coordination with the City Attorney’s Office and outside counsel, has coordinated on this matter with representatives from the Western-Pacific Region and FAA legal at headquarters, to ensure the City recognizes any federal interest or concerns that might be related to the consideration of these important issues.

Prior to presenting the Airport's final recommendations to the City Council, the Airport requested a formal written opinion from the FAA Chief Counsel to provide the City with the necessary written assurances that the proposed amendments to the Allocation Resolution will not jeopardize the ANCA-grandfathered status of the Noise Ordinance and Allocation Resolution and that the proposed amendments are consistent with, and do not violate, any provision of existing federal law for which FAA has statutory or delegated enforcement or implementation responsibilities.

The FAA responded to the City's request in a letter dated August 15, 2018. In the letter, the FAA acknowledges the City's request for a legal opinion on the proposed amendments to the Allocation Resolution. In their response, however, they also indicate that FAA is not prepared to provide a "comprehensive legal opinion" on what FAA states is "...a broad range of facts and legal issues based on a draft resolution." The FAA's written response is similar to FAA's response in the context of other airport issues where FAA has been reluctant to step into the shoes of the airport proprietor and provide "comfort letters" relating to possible scenarios/actions in the face of concerns voiced by the community/air carriers. Subsequent discussions with FAA indicate that FAA does not believe the proposed amendments raise ANCA issues and that the FAA encourages the City, as the Airport proprietor, to make the necessary business decisions to encourage and promote competition at the Airport.

The City and Airport continue to recognize and are respectful of, the legitimate federal interest in aviation matters, and the cooperation, assistance, and guidance the City has received from the FAA, which are of critical importance to the City's success in continuing to operate the Airport within the constraints of the Noise Ordinance and Allocation Resolution. Notwithstanding the FAA's decision to not provide a formal written legal opinion, taking action to update Resolution C-28465, which includes among other things, requirements to utilize flight slots more fully and efficiently, is a way to ensure these flight slots are in fact used in a way to encourage better utilization and support a healthy and competitive business environment at the Airport.

This matter was reviewed by Assistant City Attorney Michael J. Mais and by Budget Analysis Officer Julissa José-Murray on November 2, 2018.

TIMING CONSIDERATIONS

City Council action is requested on November 20, 2018, to ensure that the substantial and important under-utilization issues that are reflected in upcoming flight schedules will not impact the ability of incumbent and new entrant air carriers to increase or initiate service at the Airport.

FISCAL IMPACT

There is no fiscal or local job impact associated with this recommendation.

HONORABLE MAYOR AND CITY COUNCIL

November 20, 2018

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SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JESS L. ROMO, A.A.E.
DIRECTOR, LONG BEACH AIRPORT

JR:RR:km

SICLLBA - Amendment to Flight Slot Resolution.rev4

Attachments

APPROVED:



PATRICK H. WEST
CITY MANAGER

Attachment A



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May 16, 2018

Mr. Robert C. Land
Senior Vice President, Government Affairs
JetBlue Airways Corporation
1212 New York Avenue NW Ste 1212
Washington, DC 20005-6170

Subject: Proposed Amendments to Resolution No. C-28465 (Flight Allocation Procedures) for Long Beach Municipal Airport

Dear Mr. Land:

In September 2017, the City of Long Beach (City) initiated a public process to consider possible amendments to the Airport Noise Compatibility Ordinance, Long Beach Municipal Code Chapter 16.43 (Noise Ordinance), and Resolution No. C-28465 (Allocation Resolution), to modify certain administrative penalty, slot utilization, and related administrative provisions of the Noise Ordinance and Allocation Resolution regarding airline operations and compliance with the noise and utilization related provisions at Long Beach Municipal Airport (Airport). In light of the recent increased demand for permanent flight slots at the Airport, and based on the continued and anticipated further underutilization of allocated flight slots at the Airport as compared to current load factors and industry trends in the region, the City has decided to move forward with the proposed Allocation Resolution amendments relating to flight slot utilization on an expedited basis separate from any proposed amendments to the Noise Ordinance.

These proposed Allocation Resolution amendments are being considered by the City in its capacity as the proprietor and certificated operator of the Airport, and under the authority of federal law, and laws of the State of California, which designate the City as the proper local entity to balance the needs of the Long Beach community for adequate commercial air transportation facilities, and the desire of the local community for environmentally responsible air transportation operations at the Airport. Because of the importance of these issues, I intend to address these possible amendments by continuing the public process that was initiated in September 2017 in a manner that will continue to ensure all interested parties have a full opportunity to provide input to the City as it considers the proposed

Attachment A

amendments to the Allocation Resolution provisions. To that end, I have attached a copy of the proposed amendments to the Allocation Resolution (in redline/strikeout format) as Attachment A to this letter.

This letter invites your comments on the proposed amendments to the Allocation Resolution, which the City will be considering during this process.

Your comments should be submitted in the form of a letter or email by the close of business on Wednesday, May 30, 2018, and should be addressed to:

Mr. Ron Reeves
Long Beach Airport
4100 E. Donald Douglas Drive, Floor 2
Long Beach, California 90808
ron.reeves@longbeach.gov

Once the City has received, reviewed, and considered your written comments on the proposed amendments (in addition to any previous comments provided on the proposed amendments), staff will prepare a report that provides final recommendations regarding the proposed amendments to the City Council for consideration and possible action. At appropriate points during the process, the Airport will continue to coordinate on this matter with the Federal Aviation Administration (FAA) to ensure the City recognizes any federal interests or concerns that might be related to our consideration of these important airline compliance and allocation issues.

Although the City cannot set specific dates for this process until we have reviewed the comments requested by this letter, we do intend to proceed as promptly as possible to address and resolve these issues and hope to bring this matter to conclusion by August 2018. The City values input from the industry and other interested parties on important issues such as the questions presented in this letter; we hope and anticipate that you will be able to provide us with the benefit of your ideas and thoughts on these important issues.

Background

The City has always been vigilant in assuring that the Airport operates within the defined parameters and in strict compliance with the provisions of the Airport's Noise Ordinance and Allocation Resolution. In addition, the City has always sought to regulate in a manner that protects its legitimate interests and concerns as the proprietor of the Airport but does not unnecessarily interfere with or affect competition between the air carriers serving the Airport, or the economic evolution of the airline industry. It is current City policy to provide the best possible air transportation services and opportunities to the air traveling public at the Airport

Attachment A

within the existing environmental and operational constraints at the Airport. The City and Airport have determined that the Allocation Resolution requirements relating to minimum use provisions conflict unnecessarily with these City and Airport objectives and policies. The proposed amendments to the Allocation Resolution are intended to allow the City and Airport to continue to meet these important policy objectives.

Airport Interests and Concerns

Two principle City policy objectives at issue with respect to the Allocation Resolution are as follows:

1. The Airport should not allow air carriers conducting operations at the Airport to operate in a manner that creates artificial advantages to any carriers operating at the Airport unrelated to the basic objective of the City providing air transportation facilities and services to the public at the Airport and might even encourage anti-competitive conduct at the Airport. Essentially, this is the "fairness" issue underlying implementation of the Allocation Resolution.

In addition to the basic public policy reality that "fairness" is always a desirable regulatory objective, the City has contractual obligations to the FAA to operate the Airport on "fair and reasonable" terms and without "unjust discrimination" as between similarly situated airport users. Any amendments to the provisions of the Allocation Resolution must continue to ensure compliance with these obligations.

2. Slot allocations are not, and must not be permitted to become, property rights or property interests of the commercial operators at the Airport. The slots (and all other capacity) at the Airport are not transferable by the air carriers and no change to the compliance provisions should alter this basic premise of commercial operations at the Airport in any respect. This is the "property rights" issue.

The Airport continues to believe these are important principles and objectives to the City and should remain the focus of any proposed amendments to the Allocation Resolution. If the Airport recommends to the City Council at the end of this process that any amendments to the Allocation Resolution be made to the allocation policies, it will only be because it has concluded that these interests can continue to be protected and implemented at a regulatory level within the specific structure of any policy modifications that might be recommended to the City.

At the same time, so long as the Airport can protect its interests in the "fairness" issue and "property rights" issue, the City has an interest in further ensuring compliance with the intent of the provisions of the Allocation Resolution. Within the

Attachment A

City-defined environmental and operational constraints that control operations at the Airport, it is the purpose and intent of the City to provide to the public the best possible air transportation services and opportunities while ensuring environmentally responsible air transportation operations to the local community.

Proposed Amendments

The proposed amendments to the Allocation Resolution are provided as Attachment A to this letter and are summarized below. Generally, the proposed amendments to the Allocation Resolution are intended to address the following issues. Each issue assumes the City will continue to be able to accomplish its basic policy interests and objectives, as discussed earlier in this letter.

1. Flight Slot Operations - Utilization Requirements

The current slot utilization requirements are provided in Section 2(I) of the Allocation Resolution (definition of "Operations"). "Operations means averaging at least four Flights per Slot per week over any 180-day period; provided however, failure to conduct at least 30 Flights per slot in any 60-day period shall constitute failure to continually Operate such Slot." Under the current Allocation Resolution provisions, an incumbent air carrier can maintain a flight slot at the Airport with a minimum utilization of 50 percent over any 60-day period and a minimum utilization of 57 percent over any 6-month period.

The Airport is becoming increasingly concerned that these minimum use provisions are creating artificial advantages to air carriers with allocated flight slots at the expense of potential new entrant air carriers and even at the expense of incumbent carriers that would like to increase operations at the Airport. This might also encourage anti-competitive conduct at the Airport. Consequently, the Airport is concerned about the "fairness" and "property rights" issues with the current "Operations" provision.

In order to address these important policy objectives and concerns, the Airport is proposing specific amendments to the Allocation Resolution that would prohibit air carriers from conducting operations in a manner that causes the carrier to operate less than the following percentages of its calendar month, quarter, and annual pro rata proportion of its allocated flights slots (calculated by the reference to the number of days in each relevant calendar quarter) unless it has received prior authorization from the Airport Director:

During any Calendar Month:	Minimum Percentage of 60 percent
During any Calendar Quarter:	Minimum Percentage of 70 percent
During any Year:	Minimum Percentage of 85 percent

Attachment A

Any air carrier that violates the minimum use provisions with respect to the use of its allocated flight slots may be subject to the following penalties:

- (a) If the violation is a failure to serve 60 percent of the air carrier's pro rata slot allocation during any month, the Airport Director may: (i) immediately disqualify the air carrier from utilizing the slot(s); or (ii) reduce the air carrier's remaining unused slot allocations for the remainder of the year, or for some other, longer period of time. The Airport Director shall base any recommendations made under this paragraph upon all relevant circumstances under which the carrier failed to meet the 60 percent requirement.
- (b) If the air carrier violates the minimum use provisions solely based on its allocation of supplemental flight slots, but the air carrier would not have violated the provisions if the percentage requirement were applied only to the air carrier's permanent flight slot allocations, then the air carrier shall be disqualified from receiving supplemental flight slots that may become available in the calendar year following the year during which the violation(s) occurred.
- (c) If the disqualification provisions of subparagraph (b) are applied to any air carrier on three separate occasions within a prescribed time-frame, the air carrier shall be disqualified from receiving any supplemental flight slot allocations that may become available in the two years immediately following the year during which the third violation of subparagraph (b) above occurred.
- (d) If the air carrier violates any of the minimum use percentage requirements, then: (i) for the two years immediately following the year during which the violation(s) occurred the air carrier's flight slot allocation shall be reduced to the flight slot allocation actually operated by the air carrier during the period when the violation occurred; and (ii) the air carrier shall be disqualified from receiving any supplemental allocations of flight slots for the calendar year following the year during which the violation(s) occurred.

2. Definition of Flight Slot and Ferry Operations

The Allocation Resolution currently defines "Flight Slot" as "the authority to conduct a single daily Flight, being one take off and one landing, at the Long Beach Airport pursuant to the terms of the Airport Noise Compatibility Ordinance ..." The Airport is concerned that this definition of flight slot may not provide the flexibility necessary for air carriers to fully utilize each of the slots allocated. Therefore, the Airport is proposing modifications to the definition of "Flight Slot" to allow a carrier to conduct

Attachment A

a flight over a period of up to two days; thus, providing the carrier with the ability to arrive at night on one day and depart from the Airport the following day.

In addition, the Airport is recommending modifications to the Allocation Resolution to clarify that operations by carriers regulated under the terms of the Noise Ordinance and Allocation Resolution that require the allocation of flight slots include all departures, except for operations that do not carry public passengers, and which also meet one (i) of the following criteria: (i) a departure without revenue passengers on board necessary to reposition an aircraft to resume normal service after unscheduled maintenance at the Airport; (ii) a departure without revenue passengers on board is necessary to reposition an aircraft for unscheduled maintenance; or (iii) a departure without revenue passengers on board is necessary to reposition an aircraft from the Airport to another airport in connection with a formal published schedule change.

Except as expressly provided above, all departures at the Airport will continue to be regulated departures and require a flight slot allocation including, without limitation, "regularly scheduled," "charter," "maintenance," and "ferry" flights.

3. Administrative Amendments

In addition to the proposed amendments provided above, there are a number of Allocation Resolution administrative amendments that the Airport is proposing which will facilitate the continued implementation of the Allocation Resolution, including the following:

- (i) Amend all references from Airport Manager to Airport Director.
- (ii) Amend all references from Airport Bureau to Airport.
- (iii) Amend the definition of "Incumbent" (see, Allocation Resolution, Section 2(G)) to clarify and reflect current allocation practices that define an air carrier as an incumbent once the carrier has received an allocation of at least two (2) permanent flight slots at the Airport. This proposed amendment is necessary to avoid the situation where a new entrant air carrier initiates service at the Airport with supplemental flight slots only and would not otherwise receive priority for an allocation of permanent flight slots.
- (iv) Amend the Allocation Resolution to delete reference to the requirement for slot bonds for the use of Unused Flights.
- (v) Amend the Allocation Resolution to delete reference to Stage II aircraft requirements consistent with the current operating rules that prohibit (after December 31, 2015) the operation in the contiguous United States of jet airplanes weighing 75,000 pounds or less that do not meet Stage 3 noise

Attachment A

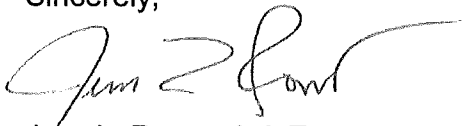
levels as defined in 14 CFR Part 36. This prohibition was adopted to decrease airplane noise in the United States.

- (vi) Amend the Allocation Resolution to, in addition to all other discretionary authority granted to the Airport Director, provide the Airport Director with the authority to require from each air carrier any information, reports, applications, or other related documents, in whatever form or format he may require, which he deems useful in the implementation or enforcement of the provisions of the Allocation Resolution, or any other policies, regulations, or procedures of the City in its management, regulation, and operation of the Airport. This proposed amendment will also facilitate working closely with the air carriers to provide flexibility in the form or format that information, reports, applications, or other related documents can be provided to the Airport to meet compliance requirements.
- (vii) Amend the Allocation Resolution to provide the Airport and City with the ability to send notifications (except for violation notifications) by email, where appropriate.

The principle purpose of this letter is to invite your comments on the specific proposed amendments to the Allocation Resolution that reflect these important allocation issues. Again, your comments must be received by the close of business on May 30, 2018, in order to be considered during this amendment process.

As indicated earlier, the City values input from the industry and public on important policy issues such as the issues presented in this letter, and I hope you will be able to provide us with the benefit of your ideas and thoughts on these important issues.

Sincerely,



Jess L. Romo, A.A.E.
Airport Director

JR:MM:LB:RR:km

Attachment: Proposed Amendments to Resolution No. C-28465 (Flight Allocation Procedures) for Long Beach Municipal Airport

cc: Michael J. Mais, Assistant City Attorney
Ron Reeves, Long Beach Airport
Lori Ballance, Gatzke Dillon & Ballance LLP

Barry S. Brown
Associate General Counsel
Operations & Environment

P. O. Box 36611
HDQ/4GC
Dallas, Texas 75235-1611

214/792-4263
214/792-4086 (Fax)

September 12, 2017

VIA ELECTRONIC and First Class US MAIL

Mr. Ron Reeves
Long Beach Airport
4100 E. Donald Douglas Drive, Second Floor
Long Beach, CA 90808
Ron.reeves@longbeach.gov

Re: Proposed Amendments to the Long Beach Municipal Code Chapter 16.43
(Airport Noise Compatibility) and Resolution N. C-28465 (Flight Allocation
Procedures) for Long Beach Municipal Airport ("LGB")

Mr. Reeves:

Southwest Airlines Co. ("Southwest Airlines" or "Southwest") appreciates the opportunity to respond to Director Romo's correspondence to David Harvey dated August 9, 2017 and respectfully submits these written comments for consideration with regard to the above-referenced "Amendments." Our response is organized in accordance with the numbered amendments enumerated in such correspondence.

1. Violation Enforcement – Administrative Penalties for Curfew and Noise Violations

Southwest Airlines commenced our friendly, reliable, and low-cost air travel service at LGB on June 5, 2016. In addition to our commitment to Safety and outstanding Customer Service in our operations, we consistently strive to be a good corporate citizen, attendant to which is abiding by all applicable rules, regulations and restrictions.

Even so, we acknowledge during our first eight (8) months of operations, there were three (3) occurrences where a violation was deemed to have occurred – the most recent of which was on February 9, 2017. For perspective, since our June 5, 2016 commencement of service, we have operated in excess of 4,900 operations

Connecting people to what's important in their lives.

(departures and arrivals). Three (3) violations equate to slightly in excess of 0.06 of one percent (1%) of our flights or one every 1,633.33 operations.

Moreover, as mentioned, no Southwest Airlines violation has occurred since February 9, 2017. At and since that time, we redoubled our efforts and communication with our Network Operations Control ("NOC") to stress the importance of abiding by the Curfew and Noise restrictions. There have been a substantial number of occasions where we have chosen to modify our System operations, including canceling an operation rather than commit a violation, as a result of improved communication between our People at LGB and the NOC. ***This coordination takes place and is implemented notwithstanding the fact that the cost of such modifications and/or cancellation far exceeds even the most severe of the increased monetary penalties proposed.***

When Southwest started service at LGB we did so with full recognition of the provisions of Long Beach Municipal Code Chapter 16.43 and Resolution N. C-28465. We believe we have demonstrated our commitment to adhering to the requirements and pledge to continue that commitment. The contemplated proposal to adjust the administrative penalties, as described in the August 9, 2017 correspondence, will neither increase nor decrease that commitment.

2. Flight Slot Operations – Utilization Requirements

Operations at LGB are constrained due to the limitations imposed pursuant to Long Beach Municipal Code Chapter 16.43 (Airport Noise Compatibility) and Resolution N. C-28465. From Southwest Airlines' perspective, good policy dictates that, to the extent such operations are allocated to and, as a result, controlled by individual air carriers, there must be an effective mechanism to assure maximum usage of such capacity. An increased utilization requirement at LGB would not only enhance the efficient use of these scarce assets but would also be consistent with FAA utilization policies at its own slot-controlled airports. Accordingly, Southwest Airlines supports the proposed increase in utilization requirements.

3. Definition of Flight Slot and Ferry Operations

Southwest Airlines has no current objections to the modifications to the definition of "Flight Slot," as well as the modifications appropriate to clarify which departures require – or do not require – the allocation of flight slots under consideration.

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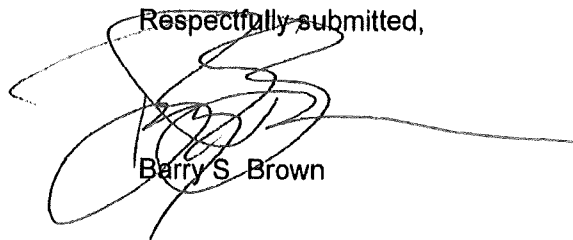
4. Administrative Amendments

Southwest Airlines has no objections to the various Administrative Amendments under consideration.

Southwest Airlines offers no opinion regarding whether the proposed amendments comply with the Airport Noise and Capacity Act of 1990, while noting that the Airport intends to coordinate on this matter with the Federal Aviation Administration (FAA). We request that information regarding such coordination, including copies of documentation provided by the Airport to the FAA and/or the FAA to the Airport, be contemporaneously provided to Southwest Airlines.

Thank you for your consideration of these comments. Should you have questions and/or require further information, please do not hesitate contacting me.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Barry S. Brown", written over a horizontal line. The signature is stylized and somewhat illegible.

Barry S. Brown

- XC. Michael Mais, Esq., City of Long Beach
- Andrew Watterson, SWA EVP & CRO
- Mark Shaw, Esq., SWA SVP, General Counsel
- Jason Van Eaton, SWA VP, Governmental Affairs
- Adam Decaire, Managing Director, Network Planning
- Bob Montgomery, SWA VP, Airport Affairs
- Steve Hubbell, SWA Sr. Manager, Airport Affairs
- Suki Ziegenhagen, Manager, Network Planning
- Jeffrey Novota, Sr. Attorney
- Ruben Zaragoza, Advisor, Governmental Affairs

Attachment B

VIA E-MAIL

May 30, 2018

Mr. Ron Reeves
Long Beach Airport
4100 E. Donald Douglas Drive
Second Floor
Long Beach, CA 90808
Ron.Reeves@longbeach.gov

Dear Mr. Reeves,

JetBlue Airways Corporation (JetBlue) hereby responds to your May 16, 2018 request for comments regarding proposed amendments to the Long Beach Municipal Airport Allocation Resolution.

As an initial matter, JetBlue makes reference to its comments regarding this matter that were submitted to you on September 12, 2017 (a copy of which is attached). In that submission, JetBlue offered numerous substantive suggestions for how the City should treat possible amendments to the Noise Compatibility Ordinance and Allocation Resolution. Regrettably, it appears that the City, having had almost eight months to review and consider JetBlue's comments, has chosen to disregard all of JetBlue's suggestions. It is further regrettable that the City continues to take steps that appear specifically designed to harm JetBlue, an airline and corporate citizen that places tremendous value on being a force for good in communities that it serves. JetBlue has operated hundreds of thousands of flights at Long Beach since beginning service there in August 2001, which has resulted in tremendous economic benefit to the City.

We respectfully urge the City to carefully consider our specific comments and incorporate changes that address our concerns before further advancing this process. Any decision otherwise could create legal and regulatory uncertainty for the City, as JetBlue is prepared to explain why the City's actions violate Federal Aviation Administration (FAA) and U.S. Department of Transportation provisions.

Specific JetBlue Concerns

JetBlue utilizes all of the slots it is currently allocated and remains in full compliance with the Allocation Resolution and Ordinance. As JetBlue pointed out in September 2017, the City broadly discusses "artificial advantages [for JetBlue]", policies that might "encourage anti-competitive conduct", and "fairness" but the City does not explain what this means or explain how its proposed

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changes would rectify the supposed problem.¹ We remain concerned that the City has drawn broad conclusions without any factual basis to defend such sweeping assertions. Even after JetBlue pointed out this lack of evidentiary record in September 2017, the City has not yet attempted to explain its rationale.

As previously noted by JetBlue, the proposed 85% slot usage requirement is more stringent than the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG), which is the global standard for efficient slot coordination as well as the federal standard in the United States. The FAA has for decades used the IATA WSG 80% threshold at the three federally-slot controlled airports in the United States (JFK, LGA and DCA), all three of which have significantly more demand for slots than LGB with its commercial vacancies.

It also appears that the City ignored JetBlue's suggestion that ambiguous terms be clarified, such as "any year", which could be interpreted to mean a full calendar year or a rolling 12-month period with uncertain start and end dates. Dividing slot usage requirements into the broad categories of "any Calendar Month", "any Calendar Quarter" and "any year" is similarly unwise, as such rigid time frames would not account for complexities inherent in the airline industry, especially when such a regime does not allow for slot transfer rights as allowed for by the IATA WSG to address commercial/seasonal realities. For example, it is routine for the FAA to waive slot usage requirements during certain trough periods, so as to not unfairly penalize certain carriers, and to allow carriers to trade slots with one another. Such policies enable carriers with different business models to cater to their own respective needs, which encourages maximum use of scarce resources, like airport slots, with no negative impact to the airport or surrounding community. It is unnecessary for an underutilized small municipal airport to impose slot restrictions more stringent than the nation's, indeed the world's, busiest airports. There is no legal or policy basis to do so.

In addition, as explained previously, the City's proposed changes might have a serious impact on JetBlue's ability to efficiently schedule aircraft and crewmembers, and create even further complications when aircraft are running late due to FAA-imposed air traffic control restrictions which, despite the position taken by the City, are specifically exempt from the Ordinance. The specific nature of Long Beach's operating regime was approved by a Federal District Court and grandfathered by Congress through ANCA. Tampering with this system could have drastic consequences and be contrary to the intent of the community. The City needs to be especially careful not to discriminate against one airline, or type of airline business model, particularly when the City is simultaneously challenging JetBlue's plain reading of the grandfathered language in the Ordinance regarding FAA-imposed air traffic control restrictions. As you are aware, JetBlue is currently appealing the City's narrow and improper interpretation of ATC-related exemptions. JetBlue and the City are parties to a stay agreement "until resolution of any JetBlue judicial challenge, or administrative challenge before the [FAA]." Any City action to unilaterally impose changes to the Ordinance or Allocation Resolution that are more restrictive or facially discriminatory could have unintended consequences and be deemed presumptively invalid.

¹ The City's interpretation ignores the reality of Long Beach's relative attractiveness to airlines versus other airports in the Los Angeles metropolitan area including SNA, BUR and LAX. In reality, scores of carriers have entered and then exited LGB over the years, or downgauged equipment to small regional aircraft. No carrier has provided more service to the Long Beach community than JetBlue. It is JetBlue's understanding that, even with JetBlue's upcoming planned Fall 2018 service reductions, less than half of the unused slots have been requested. In other words, there will likely be ample slots available in the near future, which provides further reason for the City to not pursue an unwise and possibly unlawful modification of the Resolution at this time when such modifications are based primarily on unfounded assertions of anti-competitive behavior and airport access concerns.

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Conclusion

Such unjustified and unnecessary changes as the ones yet again proposed appear to be nothing more than punitive and discriminatory to JetBlue. By continuing with this approach, the City is ensuring additional legal and regulatory challenges and possible collapse of the grandfathered Ordinance itself. Long Beach City leaders claim to desire an open, diverse city with a vibrant pro-business growth mentality. Yet their actions towards JetBlue repeatedly prove otherwise. Approving international flights at LGB would have reduced late day flying, which would have reduced the risk of curfew violations, and now these proposed changes to the Allocation Resolution and Ordinance threaten to unravel the community's long-standing Ordinance. It is difficult to conclude from the City's actions that its purported goals in fostering a welcoming business environment are being advanced and not actually being stunted. The City need only observe the situation in Dallas as an example of what could happen when a community attempts to artificially restrict air service.²

In numerous public forums organized by the City on this topic, a clear consensus view has emerged that the City should not take steps that jeopardize the fundamental status of the grandfathered Ordinance. JetBlue urges the City to heed this community concern before advancing farther in this process.

Sincerely,



Robert C. Land
Senior Vice President Government Affairs and
Associate General Counsel

Enclosure

² See "The Airline Battle at Dallas Love Field Creates a New Legal Mess", <https://www.fool.com/investing/general/2015/08/12/the-airline-battle-at-dallas-love-field-creates-a.aspx> and "Airlines Blast Dallas Proposal For Gate Use At Love Field", <https://www.law360.com/articles/1046126/airlines-blast-dallas-proposal-for-gate-use-at-love-field>.

"As a result, the city of Dallas has sued every airline that serves -- or has expressed interest in serving -- Love Field. It also sued the FAA and Department of Transportation. The city argues that a federal court should decide once and for all how the scarce capacity at Love Field should be allocated.

In response, Southwest Airlines filed for a temporary restraining order against Delta to kick the latter out of Love Field. Since Delta's contractual right to use Southwest's gates was scheduled to expire on July 6 -- the license agreement was later extended to give the courts a chance to decide the case -- Southwest argued that Delta had no right to "trespass" on its gates thereafter. Delta responded by threatening its own legal action.

In the most recent twist in this saga, the FAA sent a letter to the city of Dallas last week stating that it is investigating the city. The FAA claims that Dallas has breached its duty to allow Delta to continue operating at Love Field, and that as a consequence it could lose all of its FAA grants."

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September 12, 2017

VIA EMAIL

Mr. Ron Reeves
Long Beach Airport
4100 E. Donald Douglas Drive
Second Floor
Long Beach, CA 90808
ron.reeves@longbeach.gov

Dear Mr. Reeves:

JetBlue Airways Corporation (JetBlue) hereby responds to your August 9, 2017 request for comments regarding proposed amendments to the Long Beach Airport Noise Compatibility Ordinance and Allocation Resolution.

It should be noted that JetBlue places tremendous value on being a force for good and partnering with the communities that it serves. JetBlue proactively attempts to become an integral part of communities by supporting local initiatives and fostering community activities. Indeed, since launching service at Long Beach Airport (LGB) sixteen years ago, at a time when the U.S. airline industry was contracting following the events of September 11, JetBlue has contributed significantly to the Long Beach community and to the traveling public of the broader Los Angeles Region, including supporting the new terminal completed in 2012, and growing to offer as many as 35 daily flights with its low-fare, award-winning customer service. JetBlue has cumulatively operated hundreds of thousands of flights at Long Beach, the vast majority of which have been in full compliance with the existing Ordinance. These flights have delivered millions of dollars in economic benefit to the City.

It is against this backdrop that we were concerned and surprised to learn of the proposed changes to the Long Beach Noise Ordinance and Allocation Resolution in your August 9 letter which we received without any advance notice. It is regretful that you did not choose to consult with JetBlue regarding these proposed changes which appear intended to have a discriminatory effect specifically on JetBlue. Unlike many airports and communities that eagerly seek and then enthusiastically welcome and foster JetBlue's low-fare service, the City's actions seem designed to encourage JetBlue to terminate service, a bewildering prospect for an airport that contributes as much as it does to the local economy and which, to a large extent, does so as a result of JetBlue's dedicated service.

As such, we urge the City to proceed cautiously and to carefully consider our specific comments. Any decision otherwise could lead to a protracted dispute as we believe the City's actions will violate certain Federal Aviation Administration (FAA) provisions and create regulatory conflicts with both the FAA and U.S. Department of Transportation (DOT).

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In response to your request for comments and input on the specific proposed changes to the Noise Ordinance and Allocation Resolution, we respond as follows:

1. Violation Enforcement – Administrative Penalties for Curfew and Noise Violations

Air carriers have operated at LGB for decades with the current fine structure for violations in place. The proposed amendments to the Ordinance would have irreparable adverse impacts on both general aviation and other commercial airports, and conflict with FAA authority. The federal government maintains exclusive authority in ensuring the safe and efficient use of air space.¹ The proposed amendments to the Ordinance would disrupt aviation operations by requiring JetBlue to reschedule, reroute or cancel flights due to flight instructions given by the FAA air traffic control. This would affect federal air traffic and airspace management. Disturbance to the air traffic both in the Los Angeles area and nationally would impermissibly interfere with the exclusive control of the FAA.²

The City now proposes to increase the fine for a first-time noise violation by a staggering 25 times without having demonstrated any correlation between this increase and the number of violations, or the need for such a dramatic increase.³ Contrary to law, the proposed changes to penalty amounts for noise violations are unreasonably steep and appear to be arbitrarily but specifically crafted to harm JetBlue⁴, a carrier that operates at LGB and which has a majority of its fleet operate to and from cities that disproportionately have Federal Aviation Administration (FAA)-imposed air traffic control restrictions which result in delays over which JetBlue has no control (mostly at Northeast markets in New York City and Boston and in the San Francisco bay area) which can cause late operations at Long Beach.

The current language in the Ordinance already includes a specific exemption for “aircraft operating pursuant to explicit air traffic control direction.” JetBlue is currently appealing the Airport’s decision that “air traffic control delays at other airports do not qualify [as an exemption]” and that the exemption “does not apply to other nationwide airports or circumstances occurring throughout the day [that result in delays at LGB].”⁵ The City’s interpretation is contrary to the plain language of the Ordinance and ignores federal statutes that grant the FAA exclusive control over the entire and singular national airspace system and require

¹ See e.g., 49 U.S.C. § 40103 (“The United States Government has exclusive sovereignty of airspace of the United States... The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.”).

² See *U.S. v. Santa Monica*, 330 Fed. Appx. 124, 125 (9th Cir. 2009) (affirming injunction against city’s proposed ban on certain aircraft due to “the FAA’s role in ensuring aviation safety, and the potential disturbance to air traffic around the Los Angeles area”).

³ Over the past seven years, with nearly 150,000 operations at LGB, JetBlue’s rate of hard curfew violations has averaged between just .003 and .006 percent of its total number of operations. The miniscule rate of hard curfew violations confirms that the dramatic increase for noise violations is arbitrary and completely without justification.

⁴ See *Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton*, 841 F.3d 133, 152 (2d Cir. 2016) (regulation of noise and other environmental concerns at the local level must be “reasonable, nonarbitrary and non-discriminatory”).

⁵ See Letter from Jess L. Romo, A.A.E., to Robert C. Land, August 17, 2017.

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JetBlue to abide by FAA air traffic control direction. By taking this position, the City is unjustly discriminating and thus violating its economic nondiscrimination obligation under the FAA's Airport Sponsor grant agreement.⁶

We believe that the plain-language exemption in the current Ordinance should be applied fairly, impartially and as originally intended. If the City amends the Ordinance, the exemption for "explicit air traffic control direction" should include air traffic control delays at other airports or circumstances occurring nationwide that result in delays at LGB as initially written and approved by the Federal District Court and through ANCA. The Ordinance should also include specific procedures for air carriers to demonstrate that certain delays are a result of FAA explicit direction beyond the carrier's control.

The proposal to dramatically increase the fine schedule also raises potential issues under ANCA. The FAA has found that an increase in fines would violate ANCA if the underlying grandfathered restriction penalizes conduct beyond willful violations such as infractions caused by weather, air traffic control, or any other safety-based non-emergency circumstance. Specifically, in reviewing an increase in fines for San Diego's ANCA-grandfathered noise restriction, the FAA stated that "ANCA applies to any proposal by the District to further directly or indirectly affect or reduce scheduled operations that were unavoidably delayed in accordance with applicable Federal Aviation Regulations."⁷ More importantly, nowhere in its opinion did FAA state that relevant air traffic control delays were limited to delays caused or directed by the subject airport.

In addition to our concerns regarding the ATC exemption, we urge the City to clarify the meaning of "24-month period" for violations as it could be interpreted on a rolling 24-month basis or a bi-annual basis, which could make it difficult for air carriers to comply with the Ordinance and avoid violations.

The City should also clarify its proposal that the Airport have "sole and exclusive discretion" to declare that an air carrier with a certain number of violations would be in "material default under the air carrier's lease agreement with the City and will subject the carrier to termination or limitation of its operating privileges at the Airport." This proposal, as worded, is vague and ambiguous and likely to result in disparate treatment between airlines operating at LGB. JetBlue has operated at LGB since 2001 with a Commercial Use Permit. Should the City proceed with this amendment to the Ordinance, there must be clearly-defined standards by which the Airport would decide to declare an air carrier in "material default" of its Commercial Use Permit. The City should also include specific procedural protections when the Airport takes actions that would result in "termination or limitation" of an air carrier's operating privileges and clarify what such a "limitation" would or could specifically entail. We also request that the City clarify that any monetary penalties would not be due until after any and all appeals of purported violations are fully adjudicated.

⁶ See FAA Airport Sponsor Assurances, Assurance No. 22 (2014).

⁷ See Letter from Nicholas G. Garaufis, FAA Chief Counsel, to David Chapman, Port of San Diego (August 8, 2000).

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2. Flight Slot Operations – Utilization Requirements

There is a long list of air carriers that have entered and exited LGB or downgauged equipment to small regional aircraft over the years. When JetBlue arrived at LGB in August 2001, the airport had been vastly underutilized with dozens of unused slots despite regular outreach efforts by airport and elected officials. No carrier has historically provided more service to Long Beach than JetBlue. As such, it is very concerning that the City has apparently concluded that changes to the Allocation Resolution are necessary, in part, apparently as a result of JetBlue's growth and commitment to the airport and the community. We disagree with many of the City's factual premises, such as the cursory conclusion that the current allocation provisions create "artificial advantages" for certain carriers. JetBlue fully utilizes all of the slots it is currently allocated in full compliance with the Ordinance and other carriers have even acquired new slots in recent years.

Similarly, the City suggests that certain policies might "encourage anti-competitive conduct." However, the City fails to explain what this means or attempt to explain how the proposed changes would rectify the supposed problem. We are concerned that the City has again drawn broad conclusions without any factual basis whatsoever, and is proposing to use those flawed conclusions to justify large-scale changes to the Ordinance. We note that the City has not attempted to explain its rationale.

We also have specific concerns about some of the proposed changes. The proposed 85% slot usage threshold is both more stringent than International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG), which is the *global standard* for efficient slot coordination, and the federal standard here in the United States. At the three federally-slot controlled airports (JFK, LGA and DCA), all three of which have significantly more demand for slots than LGB, the FAA uses an 80% threshold and has for decades. It is simply unnecessary and not justified or explained why the City should adopt slot usage controls for its municipal airport that are more stringent than the FAA imposes in New York City and Washington, DC.

Further, the City's proposed changes list usage requirements during "any Calendar Month", "any Calendar Quarter" and "any Year." Dividing slot usage into these categories is ambiguous and not clear. For example, "any year" could be interpreted to mean a full calendar year or a rolling 12-month period with uncertain start and end dates. The term "prescribed time-frame" is also vague. We request that the City use a more specific definition of time periods so that air carriers have the ability to properly measure slot usage. The City's proposal also does not indicate which party will be responsible for tracking utilization, nor does it mention the current longstanding practice of JetBlue to submit future schedules to the City in advance for the purpose of maximizing slot usage for all carriers.

3. Definition of Flight Slot and Ferry Operations

The City notes that it is "proposing modifications to the definition of 'flight slot'" but does not indicate how it proposes to modify the definition. In order to properly comment on this proposal, we request that the City provide a specific proposal regarding how it proposes to change the definition of "flight slot". We would support a proposal that allows carriers to transfer slots,

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without any attached property rights, similar to policies in place at the three federally slot-controlled airports in the United States and common at other slot-restricted airports around the world under the internationally accepted common IATA WSG standards. Such a provision enables carriers with different business models (leisure versus business, hub-and-spoke versus point-to-point, passenger versus cargo, etc.) to transfer slots during their varying seasonal peaks, encouraging maximum use of scarce slot resources with no negative impact to the airport, no increase in flight activity noise or impact to the surrounding community.

4. Administrative Amendments

The City's proposal in Subsection (iii) to eliminate the distinction between a soft and hard curfew would impact JetBlue's ability to efficiently schedule aircraft and crewmember rotations, and create more complications when aircraft are running late due to FAA-imposed air traffic control restrictions. The City's proposal would result in more cancellations, which would in turn affect slot usage and ultimately create negative consequences for the entire community. Furthermore, it ignores ATC realities which depends upon slack in the system created by the two-tiered system of soft and hard curfews. The specific nature of these realities was approved by the Federal District Court and grandfathered by Congress through ANCA. Eliminating the two-tiered system in favor of a single hard curfew would have drastic consequences and be contrary to the Court's and Congressional intent.

Another major concern with the proposal is Subsection (ix), which would allow the Airport Director to "require from each air carrier any information, reports, applications, or other related documents, in whatever form or format he may require..." We think this proposal is overly broad, unduly burdensome and inappropriate for a local noise ordinance. It has potential for abuse and could result in competitive harm for air carriers that are required to provide commercially sensitive information that would otherwise not be released to a local airport.

Despite concerns regarding the two subsections above, JetBlue does support the City's proposal to amend the definition of "incumbent" as proposed in Subsection (iv) and to remove the reference to slot bonds as proposed in Subsection (vi). We also do not object to the proposal in Subsection (x) but request that the City alter it slightly to clarify that e-mail would be used in addition to USPS notifications, and that notifications would not be sent exclusively by e-mail.

Your consideration of our views is appreciated.

Sincerely,



Robert C. Land
Senior Vice President Government Affairs and
Associate General Counsel

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH, CALIFORNIA, AMENDING CITY COUNCIL RESOLUTION NO. C-28465 WITH RESPECT TO CERTAIN FLIGHT ALLOCATION PROCEDURES APPLICABLE TO THE LONG BEACH MUNICIPAL AIRPORT IN ACCORDANCE WITH THE AIRPORT NOISE COMPATIBILITY ORDINANCE SET FORTH AT CHAPTER 16.43 OF THE LONG BEACH MUNICIPAL CODE

WHEREAS, the purpose of this resolution is to make certain amendments to the provisions of City Council Resolution No. C-28465. Resolution No. C-27843, adopted by the City Council on May 15, 2001, established certain procedures and implementing provisions for Long Beach Municipal Code Chapter 16.43, which in turn governed, and continue to govern, noise and flight activity limits at Long Beach Municipal Airport (LGB). In an agreement entered into effective February 5, 2003, the City of Long Beach, American Airlines, Inc. (American), Alaska Airlines, Inc. (Alaska) and JetBlue Airways Corporation (JetBlue) settled certain disputes then existing among them regarding the City's allocation of twenty-seven (27) regular departures to JetBlue in May 2001. The circumstances of the dispute between the parties is detailed in Section 1 of the February 5, 2003 agreement. In addition, the parties to the February 5, 2003 agreement conditioned its effectiveness upon the receipt of a letter from the Chief Counsel of the Federal Aviation Administration addressing four (4) specified issues in Section 4.2 of their agreement. The letter from the Chief Counsel's office was received by the City and the other parties to the agreement on April 30, 2003 (the "FAA letter"). The FAA letter satisfied the requirements of Section 4.2 of the February 5, 2003 agreement, and that agreement has subsequently been implemented by the parties

1 according to its terms; and

2 WHEREAS, in its letter of April 30, 2003, the FAA expressed its view that
3 the provisions of Section 5(B) of City Council Resolution No. C-27843 raised issues
4 under relevant federal law and the City's obligations under certain federal grant
5 agreements between the City and FAA. Section 5(B) contained provisions which, under
6 certain conditions, would extend the time in which an Air Carrier receiving an allocation of
7 one or more slots must perfect that allocation by initiating commercial service with the
8 allocated slot from the six-month period required by City Council Resolution No. C-27843
9 Section 5(A) to a period of not more than twenty-four (24) months. FAA stated in its letter
10 of April 30, 2003:

11 "The FAA has informally advised the City that [FAA] do[es] not
12 find any proper justification for this change in the use-or-lose
13 period, and, therefore, that this action would very likely be
14 considered an unreasonable restriction on access to the airport
15 in violation of Federal law and policy."

16 The FAA continued to state that it, " ... expect[s] that the City will rescind or
17 revise as necessary section 5(B) of Resolution No. C-27843 (and Chapter 16.43 if
18 necessary) to limit the use-or loose period to a shorter period (such as the six-month
19 period previously in place or less than six months), ... "; and

20 WHEREAS, without intending to endorse or necessarily agree with FAA's
21 interpretation of the requirements of federal law and policy as it would affect Section 5(B)
22 of Resolution No. C-27843, the City Council did adopt Resolution No. C-28465 on
23 October 12, 2004, with the intent, desire and policy of acting cooperatively with the FAA
24 whenever possible in the implementation of federal aviation law and the City's obligations
25 to the FAA under its airport grant agreements. In adopting Resolution No. C-28465, it
26 was the determination of the City Council that it was in the best interests of the City and
27 its citizens, as well as the air traveling public, to take action modifying the provisions of
28 Resolution C-27843 as suggested by FAA. No modifications to Municipal Code Chapter

1 16.43 were required or adopted by the City Council as a result of the adoption of
2 Resolution No. C-28465; and

3 WHEREAS, the purpose of this resolution is to maintain the modifications to
4 Section 5 of City Council Resolution No. C-27843 as set forth in Resolution No. C-28465.
5 In addition, the City wishes to adopt certain modifications to sections of City Council
6 Resolution No. C-28465. The amendments to the sections adopted by this resolution are
7 intended to provide Flight Slot utilization requirements that minimize the risk of creating
8 artificial advantages to Carriers with allocated Flight Slot(s) at the expense of new entrant
9 and incumbent Carriers and provide greater certainty to Air Carriers requesting Flight
10 Slots at LGB in the future and to facilitate the City's administration of the resolution. The
11 Council specifically finds that these amendments are administrative in nature, and do not,
12 directly or indirectly, act to further reduce or limit operations at LGB beyond those limits
13 contained in Long Beach Municipal Code Chapter 16.43, and that the amendments would
14 have no effect on aircraft safety.

15 NOW, THEREFORE, the City Council of the City of Long Beach hereby
16 resolves as follows:

17 Section. 1. Resolution No. C-28465 is amended and restated as follows:

18
19 Sec. 2. Definitions. The terms used in this resolution shall be defined
20 as set forth in Chapter 16.43, except for the following terms which shall have
21 the following meanings:

22 A. "Conditional Allocation" means an allocation of scheduled
23 Flight Slot(s) on the terms set forth in this resolution to: (1) an Air Carrier or
24 Commuter Carrier that is federally certificated to provide the intended service;
25 or (2) a proposed Indirect Air Carrier or Indirect Commuter Carrier that has
26 submitted to the City a current letter of intent, in a form as pre-approved by the
27 City Manager, or designee, from a certificated Air Carrier or Commuter Carrier
28 indicating a willingness to provide the intended operations in conjunction with

1 the Indirect Air Carrier or Indirect Commuter Carrier with aircraft permitted by
2 Chapter 16.43.

3 B. "DOT" means the Department of Transportation of the United
4 States of America.

5 C. "New Entrant" means an Air Carrier or Commuter Carrier
6 having no current allocation of permanent Flight Slot(s) and seeking an
7 allocation of scheduled Flights to serve the Airport.

8 D. "FAA" means the Federal Aviation Administration of the
9 United States of America.

10 E. "Final Allocation" means an allocation of scheduled Flight
11 Slot(s) on the terms set forth in this resolution to: (1) an Air Carrier or
12 Commuter Carrier that is federally certificated to provide the intended service;
13 or (2) a proposed Indirect Air Carrier or Indirect Commuter Carrier that has
14 submitted to the City a current letter of intent from a certificated Air Carrier or
15 Commuter Carrier indicating a willingness to provide the intended service in
16 conjunction with the Indirect Air Carrier or Indirect Commuter Carrier; and
17 which has submitted to the Airport adequate security as approved as to form
18 by the City Attorney and as to sufficiency by the City Manager, or designee.

19 F. "Flight Slot" or "Slot" means the authority to conduct a single
20 Flight, being one take off and one landing, over a period of forty-eight (48)
21 hours at the Long Beach Airport pursuant to the terms of the Airport Noise
22 Compatibility Ordinance and any and all related statutes, ordinances, rules
23 and regulations applicable to such an operation.

24 Flight Slot(s) may be allocated on a partial basis (e.g., 5 days/week) to
25 accommodate cargo for hire operations (all-cargo operations), as determined
26 by the Airport Director in his discretion to be necessary, reasonable and
27 appropriate, and to provide the ability of the Airport Director to allocate Flight
28 Slot(s) to all-cargo Carriers as requested.

1 An allocation of Flight Slots is required for all Flights, except for Flights
2 which comply with all Noise Ordinance requirements and also meet one (1) of
3 the following criteria: (i) a Flight without revenue passengers on board
4 necessary to reposition an aircraft to resume normal service after unscheduled
5 maintenance at the Airport; (ii) a Flight without revenue passengers on board
6 necessary to reposition an aircraft for unscheduled maintenance; or (iii) a
7 Flight without revenue passengers on board necessary to reposition an aircraft
8 from the Airport to another airport in connection with a formal published
9 schedule change.

10 Except as expressly provided above, all departures at the Airport will
11 continue to be regulated departures and require a Flight Slot allocation
12 including, without limitation, "regularly scheduled," "charter," "maintenance"
13 and "ferry" Flights.

14 G. "Incumbent" means an Air Carrier or Commuter Carrier
15 conducting Operations and having an allocation of at least two (2) permanent
16 Flight Slots to Operate at the Airport at the time of a Flight Slot allocation.

17 H. "Indirect Air Carrier" or "Indirect Commuter Carrier" means an
18 entity that contracts with a certified Air Carrier or Commuter Carrier to operate
19 the intended service. Except where specifically indicated otherwise, references
20 in this resolution to "Air Carriers" and/or "Commuter Carriers" or "Carriers"
21 shall include Indirect Air Carriers, Indirect Commuter Carriers and all other
22 scheduled Air Carriers and scheduled Commuter Carriers.

23 I. "Operations" means operating not less than the following
24 percentages of any Air Carrier flight slot(s) (calculated by the reference to the
25 number of days in each relevant calendar quarter for each individual flight slot)
26 unless it has received prior authorization from the Airport Director:

27 During any Calendar Month: Minimum Percentage of 60%
28 During any Calendar Quarter: Minimum Percentage of 70%

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During any Calendar Year: Minimum Percentage of 85%

Any Air Carrier that violates the Operations provisions with respect to the minimum use of its allocated flight slot(s) may be subject to the following penalties:

1. If the violation is a failure to service 60% of the Carrier's pro rata slot allocation during any month, the Airport Director may: (i) immediately disqualify the Carrier from utilizing the slot(s); or (ii) reduce the Carrier's remaining unused slot allocations for the remainder of the year, or for some other longer period of time. The Airport Director shall base any recommendations made under this paragraph upon all relevant circumstances under which the Carrier failed to meet the 60% requirement.

2. If the disqualification provisions of subparagraph I.1 are applied to any Carrier on three separate occasions within a prescribed time-frame; the Carrier shall be disqualified from receiving any supplemental flight slot allocations for the two years next following the year during which the third violation of subparagraph I.1 above occurred.

3. If the Carrier violates any of the minimum use percentage requirements, then: (i) for the two years next following the calendar year during which the violation occurred the Carrier's flight slot allocation(s) shall be reduced to the flight slot allocation(s) actually operated by the Carrier during the period when the violation occurred; (ii) the Carrier shall be disqualified from receiving any supplemental allocations of flight slots for the calendar year following the year during which the violation occurred; and (iii) the Carrier shall be eligible for an allocation of flight slot(s) after two (2) years following the calendar year during which the violation occurred.

J. "Service" means having flights scheduled in the Official Airline Guide or other widely circulated, commercially published advertising

1 media to begin on a date certain, physical presence at the Airport and the
2 present capacity to accept reservations for such Flights, as determined in the
3 sole discretion of the Airport Director, or designee.

4 Sec. 3. Allocation Preference.

5 A. Available Flight Slots shall be allocated to Air Carriers and
6 Commuter Carriers as provided in the following schedule of preferences, and
7 as further provided and outlined in the allocation protocol adopted by the
8 Airport, as amended:

9 1. For Air Carriers:

10 a. Air Carriers fully certificated under FAR Part 121
11 performing all requirements necessary to receive a Final Allocation.

12 b. Indirect Air Carriers which have received all FAA and
13 DOT approvals to conduct the intended Service and Operations and
14 performing all requirements necessary to receive a Final Allocation.

15 c. Air Carriers performing all requirements necessary to
16 receive a Conditional Allocation.

17 2. For Commuter Carriers:

18 a. Commuter Carriers certificated under FAR Parts 121
19 or 135 performing all requirements necessary to receive a final allocation.

20 b. Indirect Commuter Carriers which have received any
21 and all FAA and DOT approvals to conduct the intended Service and
22 Operations and performing all requirements necessary to receive a Final
23 Allocation.

24 c. Commuter Carriers performing all requirements
25 necessary to receive a conditional allocation.

26 B. All demand for Flight Slots in a category of preference shall
27 have been satisfied before Flight Slots shall be allocated to a category having
28 a lesser preference.

1 Sec. 4. Flight Slot Allocation Process.

2 A. Interested Air Carriers and Commuter Carriers desiring to
3 receive an allocation of Flight Slots for operations at the Airport shall
4 submit to the Airport Director a written application, in a form prescribed by
5 the Airport Director, indicating that any such Carrier is presently ready,
6 willing and able to initiate commercial service at the Airport and that it
7 wishes to receive an allocation of Flight Slots as and to the extent
8 permitted by Long Beach Municipal Code Chapter 16.43 and all applicable
9 implementing resolutions of the City Council, including this Resolution. The
10 application shall state whether the applicant is a Direct or Indirect Air
11 Carrier or Direct or Indirect Commuter Carrier and the number of
12 scheduled Flight Slots that the applicant is requesting. The application
13 shall also indicate whether the applicant seeks a Final Allocation or a
14 Conditional Allocation of Flight Slots. Air Carriers and Indirect Air Carriers
15 may only apply a maximum of one time for an allocation of conditional flight
16 slots. The application shall further state that the applicant is prepared, as
17 a condition of being awarded any Flight Slot allocation, to provide the flight
18 allocation security per Flight Slot as required by the then current resolution
19 of the City Council setting rates, fees and charges at the Airport. Each
20 application shall identify the aircraft type(s) which would be used by the
21 applicant in the operation of the Flight Slot and, as required by the Airport
22 Director, provide evidence demonstrating that the aircraft could and would
23 operate at the Airport within the noise levels permitted by Chapter 16.43 of
24 the Long Beach Municipal Code. The effective date of the request shall
25 be date the written request is received by the Airport Director.

26 B. The Airport Director shall establish separate "Waiting
27 Lists" for Air Carriers and commuter carriers submitting requests under,
28 and in compliance with, subsection (A). The Air Carrier and commuter

1 Carrier Waiting List shall be prioritized in an order based upon the date on
2 which each Air Carrier or Commuter Carrier's subsection (A) request was
3 received by the Airport Director.

4 C. If, under the provisions of Chapter 16.43 and all other
5 relevant provisions of the City Municipal Code and implementing
6 resolutions of the City Council including this Resolution, an Air Carrier or
7 Commuter Carrier Flight Slot is or becomes available for allocation, and if
8 there is one (or more) pending request(s) for a Flight Slot Allocation
9 submitted to the Airport Director under subsection (A) of this section, the
10 Airport Director shall, within thirty (30) days, allocate such slot(s) to the
11 requesting Air Carrier(s) or Commuter Carrier(s) as follows:

12 1. If there is only one (1) Carrier on the relevant waiting list on
13 the date one or more Flight Slot(s) becomes available for allocation, the
14 Airport Director shall allocate the available Flight Slot(s) to that Carrier up
15 to the number of Flight Slots specifically requested by the Carrier in its
16 application under subsection (A) of this section.

17 2. If there is more than one Carrier on the relevant waiting list
18 on the date one or more Flight Slot(s) becomes available for allocation, the
19 Airport Director shall allocate the available Flight Slots sequentially to the
20 requesting Carriers in increments of one Flight Slot based upon their
21 priority order on the relevant waiting list; except that if a requesting carrier
22 eligible to receive a Flight Slot allocation under this subsection is a New
23 Entrant carrier not providing service to the Airport or only operating
24 supplemental Flight Slots at the time the allocation is made, in its first
25 sequential allocation of Flight Slots, it shall be awarded two (2) Flight Slots,
26 if available at that point in the allocation process. If only one (1) Flight Slot
27 is available for allocation at that point in the allocation process, the New
28

1 Entrant Carrier shall remain at the top of the waiting list until the Carrier is
2 offered one (1) additional Flight Slot for a total of two (2) Flight Slots.

3 Sec. 5. Perfecting a Final Flight Slot Allocation.

4 A. To perfect a Final Allocation of a Flight Slot, the Air Carrier
5 or Commuter Carrier shall (1) within ninety (90) days of the issuance of the
6 Final Allocation, commence Service for the Slot, and (2) within one
7 hundred and eighty (180) days of the issuance of the Final Allocation,
8 commence Operations of the Slot. Failure to commence Service within
9 ninety (90) days or failure to commence Operations within one hundred
10 and eighty (180) days from the date of a Final Allocation of a Flight Slot(s)
11 will result in the immediate cancellation of the Final Slot(s) and the
12 immediate forfeiture of that portion of the flight allocation security
13 applicable to any Flight Slot not perfected.

14 Sec. 6. Minimum Flight Performance of a Perfected Final Slot.

15 A. Once a Final Allocation is perfected, a Slot holder must
16 Continuously Operate a Flight Slot, or the Flight Slot shall be cancelled and
17 any applicable security forfeited. The Airport Director shall determine when,
18 pursuant to this resolution, a Flight Slot is not Continuously Operated and
19 shall provide written notice of such determination to the holder of such Slot.
20 The holder of the Slot shall utilize the procedure set forth at Long Beach
21 Municipal Code Section 16.43.110 to seek an administrative hearing and/or
22 all necessary appeals.

23 B. A Slot holder may be granted relief from these minimum
24 flight performance criteria only upon a satisfactory presentation of facts in
25 an administrative hearing or appeal that circumstances reasonably beyond
26 the control of the Slot holder have caused the Operations under the Slot to
27 fall below the minimum criteria.

28 Sec. 7. Converting a Conditional Allocation into a Final Allocation.

1 A. A Conditional Allocation of a Flight Slot is effective for a
2 period of ninety (90) days, after which it will automatically be canceled if it
3 has not been converted into a Final Allocation.

4 B. To convert a Conditional Allocation into a Final Allocation,
5 the Air Carrier or Commuter Carrier, or Indirect Air Carrier or Commuter
6 Carrier, shall submit to the Airport Director the flight allocation security per
7 Flight Slot as required in the then current rate and fee resolution of the City
8 Council.

9 Sec. 8. Forfeiture of Conditional Allocations if Not Converted to Final
10 Allocations when Final Allocations are Sought by Carriers Ready, Willing
11 and Able to Commence Service. If an Air Carrier or Commuter Carrier
12 makes application for a Final Allocation, but there are no unallocated Flight
13 Slots available, all outstanding Conditional Allocations shall be forfeited
14 unless the holders of such Conditional Allocations convert such Conditional
15 Allocations into Final Allocations prior to the day that the application for a
16 Final Allocation would be considered for allocation and/or lottery pursuant to
17 Section 4 of this resolution. Forfeited Conditional Allocations will
18 automatically be placed into a pool for allocation to Air Carriers or Commuter
19 Carriers that have demonstrated their ability to secure a Final Allocation by
20 submitting a complete application for a Final Allocation pursuant to this
21 resolution, accompanied by the required flight allocation security. Forfeited
22 Conditional Allocations which are not utilized to satisfy demand for Final
23 Allocations shall be reallocated pursuant to Section 4 of this resolution.

24 Sec. 9. Reservation of Unused Flights. In both the Air Carrier and
25 Commuter Carrier categories, there is hereby established an unused Flight
26 reservation system, so that Flights which are reasonably anticipated to be
27 unused may be made available to Commuter and Air Carrier operators up to
28 one hundred and eighty (180) days in advance of use. Such unused

1 Flights shall not be reserved beyond one hundred and eighty (180) days
2 from issuance.

3 A. Calculation of Unused Flights. All Flight Slot holders shall, on
4 a thirty (30) day basis, submit to the Airport Director a "flights-per-day-of-week"
5 schedule for the following one hundred and eighty (180) day period.
6 Based upon these submitted schedules, the Airport Director shall calculate the
7 number of reasonably anticipated Flight Slots to be used of the total number of
8 Flight Slots permitted per day pursuant to Long Beach Municipal Code
9 Chapter 16.43 for the next one hundred and eighty (180) day period. The
10 number and dates of such unused Flights shall be made available for
11 reservation pursuant to this resolution.

12 B. Reservation of Unused Flights.

13 1. Interested Air Carriers and Commuter Carriers shall submit a
14 written application in the form, manner and at such times as may be
15 prescribed by the Airport Director, indicating their interest in unused Flights.
16 The application shall state whether the applicant is a Direct or Indirect Air
17 Carrier or Direct or Indirect Commuter Carrier, the number of Flight Slots that
18 the applicant is interested in operating and the precise schedule of such Flight
19 Slots. Applications for unused Flight Slots shall be accompanied by the
20 appropriate flight allocation deposit as required by the then current rates and
21 fees resolution of the City Council. The security shall be refunded when the
22 Carrier has (1) begun Operations on a timely basis and (2) has completed the
23 Operations as reserved without interruption. Each application shall
24 demonstrate that the Flights would be operated by aircraft permitted by
25 Chapter 16.43 of the Long Beach Municipal Code.

26 2. Prior to any unused Flight Slot allocation, the Airport Director
27 shall determine whether the unused Flight Slots then available can
28 accommodate the requested number and times of such Flight Slots.

1 a. Provided the unused Flight Slots available for issuance
2 can accommodate the demand, the Airport Director shall issue unused Flight
3 Slots according to the preferences set forth in Section 3 of this resolution.

4 b. If demand for unused Flight Slots cannot be
5 accommodated, the Airport Director shall issue such Flight Slots first
6 according to the preference set forth in this Section 3 and then according to
7 lottery.

8 C. Eligibility. Air Carriers and Commuter Carriers shall be
9 eligible to reserve unused Flight Slots pursuant to this resolution. Certain
10 Charter Carriers shall be required to reserve unused Flights for Operations.
11 Charter Carriers which do not qualify, pursuant to FAA definitions, as private,
12 single entity, affinity group charters and who are not seeking Flight Slots, may
13 only operate if issued such Flights as set forth in this Resolution. Private,
14 single entity, affinity group charters shall continue to be pre- approved in
15 writing by the Airport Director and will continue to operate exclusively as
16 charter operators and shall be calculated against the charter noise budget as
17 defined at Chapter 16.43 of the Long Beach Municipal Code.

18 D. Maximum Flight Usage. In no event shall the Airport Director
19 issue an unused Flight to a Carrier so as to allow daily Operations in either the
20 Air Carrier or Commuter Carrier categories to exceed the daily Operations as
21 permitted under Chapter 16.43 of the Long Beach Municipal Code.

22 Sec. 10. Conditions and Exceptions.

23 A. All Flight Slots and unused Flights allocated hereunder shall
24 be Operated in conformance with Long Beach Municipal Code Section 16.43.

25 B. The failure to commence Service or Operations within the
26 periods specified in this resolution will be excused only upon proof
27 reasonably satisfactory to the Airport Director that such failure was the
28 result of strike, act of God, war, national emergency or that the Air Carrier

1 or Commuter Carrier has been granted relief in accordance with Section
2 6B of this Resolution.

3 Sec. 11. Security.

4 A. At the time of making an application for a Final or
5 Conditional Allocation or when converting a Conditional Allocation to a
6 Final Allocation, each Air Carrier or Commuter Carrier shall provide
7 adequate security, as approved as to sufficiency by the Airport Director, or
8 designee, and as to form by the City Attorney, for each Flight Slot in the
9 amount specified in the then current resolution of the City Council setting
10 rates, fees and charges at the Airport. Such security is intended to secure
11 Air Carriers' and Commuter Carriers' performance as required by this
12 resolution and to assure continuation of Operations of each Flight Slot for
13 at least six (6) months. Such security is in addition to bonds to indemnify
14 the City against a failure on the part of the Carrier to perform all obligations
15 of the Carrier to the City.

16 B. The flight allocation security applicable to a given Flight
17 Slot shall be refunded when an Air Carrier or Commuter Carrier: (1) has
18 begun Service and Operations of the Flight on a timely basis; and (2) has
19 continuously operated the Flight Slot for a period of six (6) months from
20 commencement of such Operations.

21 C. If Operations are not continuously operated by an Air
22 Carrier or Commuter Carrier through the six (6) month period following
23 commencement of Operations, the entire flight allocation security
24 applicable to the Flight Slot amount shall be payable to the City as
25 liquidated damages. Acceptance of the Flight Slot establishes the
26 understanding between the City and the Air Carrier or Commuter Carrier
27 that the security is required in lieu of a processing fee and that it would be
28 difficult for a judge or jury to ascertain the exact compensation necessary

1 to reimburse the City for the administrative costs of processing an
2 application for service of less than six months.

3 D. If Service is not commenced within ninety (90) days, or
4 Operations are not begun within one hundred and eighty (180) days from
5 the date of the Final Allocation, the flight allocation security applicable to
6 the Flight Slot amount shall be payable in whole to the City as liquidated
7 damages. Acceptance of the Flight Slot establishes the understanding
8 between the City and the Carrier that it would be difficult for a judge or jury
9 to ascertain the exact compensation necessary to reimburse the City for
10 losses as a result of processing and awarding flights not utilized and of the
11 lost opportunity for revenue from Carriers that would have utilized the
12 Flight Slots awarded.

13 E. Notwithstanding any other provision of this resolution to
14 the contrary, any holder of a Final Allocation of Flight Slot(s) may return
15 such Flight Slot(s) to the City of Long Beach and shall receive a release of
16 the applicable Flight allocation security provided both of the following
17 apply:

- 18 1. Another eligible Carrier has submitted a complete
19 application for at least as many Final Slots as are being returned; and
- 20 2. The Slot holder submits a written notice to the Airport
21 Director returning such Slot(s) effective immediately.

22 Sec. 12. Inconsistency or Conflict. To the extent any provision of
23 this resolution is inconsistent or in conflict with any written agreements
24 between the City and any Carrier or other person operating at LGB or
25 inconsistent, or in conflict with any ordinances, regulations, or expressed
26 public policies of equal dignity, the terms of this resolution shall have
27 precedence and shall be deemed to be controlling. No provision of this
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resolution however, is intended to supersede or modify the provisions of Long Beach Municipal Code Section 16.43.

Sec. 13. Authority. The Airport Director may modify or augment any form or information required to be filed under this resolution, or may require the filing of additional information, reports, applications, or other related documents, in whatever form or format the Airport Director may require (including by email, where appropriate) not otherwise referenced in this resolution if he determines that the action would be useful and would facilitate the implementation and enforcement of this resolution or any other City ordinances, rules, regulations, or policies regarding or regulating Carrier Operations at the Airport.

Section 2. Previous Resolution Superseded.

Resolution No. C-28465 is hereby rescinded and superseded by this resolution; provided, however, nothing in this resolution invalidates the lawful Conditional and Final Allocations of Air Carrier and Commuter Carrier Flight Slots pursuant to prior rules, regulations, resolutions and procedures of the City of Long Beach.

Section. 3. Effectiveness. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of _____, 20____, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

_____ City Clerk

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664