

RESOLUTION NO. C-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH, CALIFORNIA, AMENDING CITY COUNCIL RESOLUTION NO. C-27843 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-27843. Resolution No. C-27843 established certain procedures and implementing provisions for Long Beach Municipal Code Chapter 16.43, which in turn governs 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 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 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 according to its terms; and

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

10           "The FAA has informally advised the City that [FAA] do[es] not find any  
11 proper justification for this change in the use-or-lose period, and,  
12 therefore, that this action would very likely be considered an unreasonable  
13 restriction on access to the airport in violation of Federal law and policy."  
14 FAA continued to state that it, "... expect[s] that the City will rescind or revise as  
15 necessary section 5(B) of Resolution No. C-27843 (and Chapter 16.43 if necessary) to  
16 limit the use-or loose period to a shorter period (such as the six month period previously  
17 in place or less than six months), ..."; and

18           WHEREAS, without intending to endorse or necessarily agree with FAA's  
19 interpretation of the requirements of federal law and policy as it would affect Section  
20 5(B) of Resolution No. C-27843, it is the intent, desire and policy of the City to act  
21 cooperatively with FAA whenever possible in the implementation of federal aviation law  
22 and the City's obligations to the FAA under its airport grant agreements. In this  
23 instance, it is the determination of the City Council that it is in the best interests of the  
24 City and its citizens, as well as the air traveling public, to take action modifying the  
25 provisions of Section 5 of Resolution No. C-27843 as suggested by FAA. No  
26 modifications to Municipal Code Chapter 16.43 are required; and

27           WHEREAS, the purpose of this resolution to make appropriate  
28 modifications to Section 5 of City Council Resolution No. C-27843. In addition, the City

1 wishes to make certain modifications to Section 4 of City Council Resolution No.  
2 C-27843. That section addresses the administrative process for the allocation of slots  
3 permitted under Chapter 16.43. The amendments to the section adopted by this  
4 resolution are intended to provide greater certainty to air carriers requesting operating  
5 slots at LGB in the future and to facilitate the City's administration of the ordinance.  
6 The Council specifically finds that these amendments are administrative in nature, and  
7 do not, directly or indirectly, act to further reduce or limit operations at LGB beyond  
8 those limits contained in Long Beach Municipal Code Chapter 16.43, and that the  
9 amendments would have no effect on aircraft safety.

10 NOW, THEREFORE, the City Council of the City of Long Beach hereby  
11 resolves as follows:

12 Sec. 1. Resolution No. C-27843 is amended and restated as follows:

13  
14 Sec. 2. Definitions. The terms used in this resolution shall be defined as  
15 set forth in Chapter 16.43, except for the following terms which shall have the following  
16 meanings:

17 A. "Conditional Allocation" means an allocation of scheduled Flight  
18 Slot(s) on the terms set forth in this resolution to: (1) an Air Carrier or Commuter  
19 Carrier that is federally certificated to provide the intended service; or (2) a proposed  
20 Indirect Air Carrier or Indirect Commuter Carrier that has submitted to the City a current  
21 letter of intent, in a form as pre-approved by the City Manager, or designee, from a  
22 certificated Air Carrier or Commuter Carrier indicating a willingness to provide the  
23 intended operations in conjunction with the Indirect Air Carrier or Indirect Commuter  
24 Carrier with aircraft permitted by Chapter 16.43.

25 B. "DOT" means the Department of Transportation of the United  
26 States of America.

27 C. "Entrant" means an Air Carrier or Commuter Carrier having no  
28 current allocation and seeking an allocation of scheduled Flights to serve the Airport.

1 D. "FAA" means the Federal Aviation Administration of the United  
2 States of America.

3 E. "Final Allocation" means an allocation of scheduled Flight  
4 Slot(s) on the terms set forth in this resolution to: (1) an Air Carrier or Commuter  
5 Carrier that is federally certificated to provide the intended service; or (2) a proposed  
6 Indirect Air Carrier or Indirect Commuter Carrier that has submitted to the City a current  
7 letter of intent from a certificated Air Carrier or Commuter Carrier indicating a  
8 willingness to provide the intended service in conjunction with the Indirect Air Carrier or  
9 Indirect Commuter Carrier; and which has submitted to the Airport the required flight  
10 allocation bond(s) per Flight Slot, or other adequate security as approved as to form by  
11 the City Attorney and as to sufficiency by the City Manager, or designee.

12 F. "Flight Slot" or "Slot" means the authority to conduct a single  
13 daily Flight, being one take off and one landing, at the Long Beach Airport pursuant to  
14 the terms of the Airport Noise Compatibility Ordinance and any and all related statutes,  
15 ordinances, rules and regulations applicable to such an operation.

16 G. "Incumbent" means an Air Carrier or Commuter Carrier  
17 conducting Operations or having a Flight Slot to Operate at the Airport at the time of a  
18 Flight Slot allocation.

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

25 I. "Operations" means averaging at least four Flights per Slot per  
26 week over any 180-day period; provided, however, failure to conduct at least 30 Flights  
27 per Slot in any 60-day period shall constitute failure to Continuously Operate such Slot.

28 J. "Service" means having flights scheduled in the Official Airline

1 Guide or other widely circulated, commercially published advertising media to begin on  
2 a date certain, physical presence at the Airport and the present capacity to accept  
3 reservations for such Flights, as determined in the sole discretion of the City Manager,  
4 or designee.

5                   Sec. 3. Allocation Preference.

6                   A. Available Flight Slots shall be allocated to Air Carriers and  
7 Commuter Carriers as provided in the following schedule of preferences:

8                   1. For Air Carriers:

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

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

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

16                   2. For Commuter Carriers:

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

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

22                   c. Commuter Carriers performing all requirements  
23 necessary to receive a conditional allocation.

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

27                   Sec. 4. Flight Slot Allocation Process.

28                   A. Interested Air Carriers and Commuter Carriers desiring to

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

21 B. The Airport Manager shall establish separate "Waiting Lists"  
22 for air carriers and commuter carriers submitting requests under, and in compliance  
23 with, subsection (A). The air carrier and commuter carrier Waiting List shall be  
24 prioritized in an order based upon the date on which each air carrier or commuter  
25 carrier's subsection (A) request was received by the Airport Manager.

26 C. If, under the provisions of Chapter 16.43 and all other  
27 relevant provisions of the City Municipal Code and implementing resolutions of  
28 the City Council, including this Resolution, an Air Carrier or Commuter Carrier

1 Flight Slot is or becomes available for allocation, and if there is one (or more)  
2 pending request(s) for a Flight Slot Allocation submitted to the Airport Manager  
3 under subsection (A) of this section, the Airport Manager shall, within 30 days,  
4 allocate such slot(s) to the requesting Air Carrier(s) or Commuter Carrier(s) as  
5 follows:

6 1. If there is only one carrier on the relevant waiting list on the  
7 date one or more Flight Slot(s) becomes available for allocation, the Airport Manager  
8 shall allocate the available Flight Slot(s) to that carrier up to the number of Flight Slots  
9 specifically requested by the carrier in its application under subsection (A) of this  
10 section.

11 2. If there is more than one carrier on the relevant waiting list  
12 on the date one or more Flight Slot(s) becomes available for allocation, the Airport  
13 Manager shall allocate the available Flight Slots sequentially to the requesting carriers  
14 in increments of one Flight Slot based upon their priority order on the relevant waiting  
15 list; except that if a requesting carrier eligible to receive a Flight Slot allocation under  
16 this subsection is a new entrant carrier not providing service to the Airport at the time  
17 the allocation is made, in its first sequential allocation of Flight Slots, it shall be awarded  
18 two Flight Slots, if available at that point in the allocation process.

19 Sec. 5. Perfecting A Final Flight Slot Allocation.

20 A. To perfect a Final Allocation of a Flight Slot, the Air Carrier or  
21 Commuter Carrier shall (1) within 90 days of the issuance of the Final Allocation,  
22 commence Service for the Slot, and (2) within 180 days of the issuance of the Final  
23 Allocation, commence Operations of the Slot. Failure to commence Service within 90  
24 days or failure to commence Operations within 180 days from the date of a Final  
25 Allocation of a Flight Slot will result in the immediate cancellation of the Final Slot and  
26 the immediate forfeiture of that portion of the flight allocation security applicable to any  
27 Flight Slot not perfected.

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

2                                   A. Once a Final Allocation is perfected, a Slot holder must  
3 Continuously Operate a Flight Slot, or the Flight Slot shall be cancelled and any  
4 applicable security forfeited. The Airport Manager shall determine when, pursuant to  
5 this resolution, a Flight Slot is not Continuously Operated and shall provide written  
6 notice of such determination to the holder of such Slot. The holder of the Slot shall  
7 utilize the procedure set forth at Long Beach Municipal Code Section 16.43.110 to seek  
8 an administrative hearing and/or all necessary appeals.

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

13                                   Sec. 7. Converting a Conditional Allocation Into a Final Allocation.

14                                   A. A Conditional Allocation of a Flight Slot is effective for a period  
15 of 90 days, after which it will automatically be canceled if it has not been converted into  
16 a Final Allocation.

17                                   B. To convert a Conditional Allocation into a Final Allocation, the  
18 Air Carrier or Commuter Carrier, or Indirect Air Carrier or Commuter Carrier, shall  
19 submit to the Airport Manager the flight allocation security per Flight Slot as required in  
20 the then current rate and fee resolution of the City Council.

21                                   Sec. 8. Forfeiture of Conditional Allocations If Not Converted To A Final  
22 Allocations When Final Allocations Are Sought By Carriers Ready, Willing And Able To  
23 Commence Service. If an Air Carrier or Commuter Carrier makes application for a Final  
24 Allocation, but there are no unallocated Flight Slots available, all outstanding  
25 Conditional Allocations shall be forfeited unless the holders of such Conditional  
26 Allocations convert such Conditional Allocations into Final Allocations prior to the day  
27 that the application for a Final Allocation would be considered for allocation and/or  
28 lottery pursuant to Section 4 of this resolution. Forfeited Conditional Allocations will

1 automatically be placed into a pool for allocation to Air Carriers or Commuter Carriers  
2 that have demonstrated their ability to secure a Final Allocation by submitting a  
3 complete application for a Final Allocation pursuant to this resolution, accompanied by  
4 the required flight allocation security. Forfeited Conditional Allocations which are not  
5 utilized to satisfy demand for Final Allocations shall be reallocated pursuant to Section  
6 4 of this resolution.

7           Sec. 9. Reservation of Unused Flights. In both the Air Carrier and  
8 Commuter Carrier categories, there is hereby established an unused Flight reservation  
9 system, so that Flights which are reasonably anticipated to be unused may be made  
10 available to Commuter and Air Carrier operators up to 180 days in advance of use.  
11 Such unused Flights shall not be reserved beyond 180 days from issuance.

12           A. Calculation of Unused Flights. All Flight Slot holders shall, on a  
13 30-day basis, submit to the Airport Manager a "flights-per-day-of-week" schedule for the  
14 following 180-day period. Based upon these submitted schedules, the Airport Manager  
15 shall calculate the number of reasonably anticipated Flights to be used of the total  
16 number of Flights permitted per day pursuant to Long Beach Municipal Code Chapter  
17 16.43 for the next 180 day period. The number and dates of such unused Flights shall  
18 be made available for reservation pursuant to this resolution.

19           B. Reservation of Unused Flights.

20           1. Interested Air Carriers and Commuter Carriers shall submit a  
21 written application in the form, manner and at such times as may be prescribed by the  
22 Airport Manager, indicating their interest in unused Flights. The application shall state  
23 whether the applicant is a Direct or Indirect Air Carrier or Direct or Indirect Commuter  
24 Carrier, the number of Flights that the applicant is interested in operating and the  
25 precise schedule of such Flights. Applications for unused Flights shall be accompanied  
26 by the appropriate flight allocation deposit as required by the then current rates and  
27 fees resolution of the City Council. The security shall be refunded when the Carrier has  
28 (1) begun Operations on a timely basis and (2) has completed the Operations as

1 reserved without interruption. Each application shall demonstrate that the Flights would  
2 be operated by aircraft permitted by Chapter 16.43 of the Long Beach Municipal Code.

3 2. Prior to any unused Flight allocation the Airport Manager shall  
4 determine whether the unused Flights then available can accommodate the requested  
5 number and times of such Flights.

6 a. Provided the unused Flights available for issuance can  
7 accommodate the demand, the Airport Manager shall issue unused Flights according to  
8 the preferences set forth in Section 3 of this resolution.

9 b. If demand for unused Flights cannot be accommodated,  
10 the Airport Manager shall issue such Flights first according to the preference set forth in  
11 this Section 3 and then according to lottery.

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

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

25 Sec. 10. Conditions and Exceptions.

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

28 B. The failure to commence Service or Operations within the

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1 periods specified in this resolution will be excused only upon proof reasonably  
2 satisfactory to the Airport Manager that such failure was the result of strike, act of God,  
3 war, national emergency or that the Air Carrier or Commuter Carrier has been granted  
4 relief in accordance with Section 5B of this Resolution.

5                   Sec. 11. Commencement Bonds.

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

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

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

28                   D. If Service is not commenced within 90 days, or Operations are

1 not begun within 180 days from the date of the Final Allocation, the flight allocation  
2 security applicable to the Flight Slot amount shall be payable in whole to the City as  
3 liquidated damages. Acceptance of the Flight Slot establishes the understanding  
4 between the City and the Carrier that it would be difficult for a judge or jury to ascertain  
5 the exact compensation necessary to reimburse the City for losses as a result of  
6 processing and awarding flights not utilized and of the lost opportunity for revenue from  
7 Carriers that would have utilized the Flight Slots awarded.

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

12 1. Another eligible Carrier has submitted a complete application for  
13 at least as many Final Slots as are being returned; and

14 2. The Slot holder submits a written notice to the Airport Bureau  
15 returning such Slot(s) effective immediately.

16 Sec. 12. Previous Resolution Superseded. Resolution No. C-27843 is  
17 hereby rescinded and superseded by this resolution; provided, however, nothing in this  
18 resolution invalidates the lawful Conditional and Final Allocations of Air Carrier and  
19 Commuter Carrier Flight Slots pursuant to prior rules, regulations, resolutions and  
20 procedures of the City of Long Beach.

21 Sec. 13. Effectiveness. This resolution shall take effect immediately  
22 upon its adoption by the City Council, and the City Clerk shall certify to the vote  
23 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 \_\_\_\_\_, 2004, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_  
\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_  
\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
City Clerk