

LONG BEACH AIRPORT

**NOISE COMPATIBILITY ORDINANCE
ADDITIONAL FLIGHT SLOT BUDGET**

**ALLOCATION AND WITHDRAWAL PROTOCOL
AND
ADMINISTRATIVE REVIEW PROVISIONS**

1.0 AIRPORT NOISE COMPATIBILITY ORDINANCE - ADDITIONAL FLIGHT SLOT BUDGET

The Airport Noise Compatibility Ordinance (“Noise Ordinance”) for the City of Long Beach (“City”) establishes a Community Noise Equivalent Level (“CNEL”) noise budget for *Air Carrier* flights at Long Beach Airport (“Airport”) based on CNEL limits set in the baseline year of 1989-1990. The Noise Ordinance allows *Air Carriers* to operate a minimum of forty-one (41) flights per day.

Under the Noise Ordinance, the number of flights must be increased above the forty-one (41) flight limit if all flights in that category operate at or below the 1989-1990 baseline CNEL noise budget and there are interested Air Carriers who have requested additional slots. Therefore, pursuant to the City’s Municipal Code, Chapter 16.43, Subsection 16.43.060(E), the Airport must determine on an annual basis whether additional *Flight Slots* may be allocated based upon the cumulative noise generated by *Air Carrier* operations during the prior twelve (12) month period.

Additional flights above the forty-one (41) flight limit can be allocated only to the extent the Airport Manager determines that initiation of service utilizing those flights will not lead the *Air Carriers*, as a group, to exceed the noise levels established pursuant to Subsection 16.43.050(C). Any additional flights allocated above the forty-one (41) flight limit will be allocated by lottery if the flights are sought by more than one (1) user and will be allocated for a limited period of one (1) year. In the event the Airport Manager determines that the allocation of additional flights has resulted in *Air Carrier* cumulative noise in excess of the *Air Carrier* noise budget, and that overall aircraft noise exceeds the level allowed by Subsection 16.43.050(A), the Airport Manager will revoke the *Flight Slots* allocated in order to achieve compliance with the *Air Carrier* noise budget.

Based on an analysis and review of noise data for October 1, 2014, through September 30, 2015, the City has determined that the Airport is currently operating below the noise budgets for *Air Carriers* at the Airport and that up to an additional nine (9) *Flight Slots* beyond the forty-one (41) limit may be available for allocation for a period of one (1) year. This determination is based on the analysis and information provided in the technical report prepared by Landrum & Brown (November 12, 2015) and peer reviewed by HMMH (November 19, 2015). Copies of these reports are provided as Attachments A and B, respectively, to this Allocation and Withdrawal Protocol.

2.0 ALLOCATION PROTOCOL FOR ADDITIONAL FLIGHT SLOTS

This document is intended to provide an outline of the conditions and procedures for the allocation of *Flight Slots* that are available under the additional flight slot budget for the period from _____, 2016, through _____, 201__, consistent with the provisions of Chapter 16.43 of the City of Long Beach Municipal Code and all implementing resolutions of the City including, but not limited to, City Council Resolution No. C-28465.

2.1 AIRPORT DIRECTOR RECOMMENDATIONS

Prior to the allocation of any additional *Flight Slots* beyond the minimum forty-one (41) Air Carrier slots , the Airport Manager will:

- 2.1.1** Make a recommendation regarding the number of additional *Flight Slots* to be allocated for use during the upcoming twelve (12) month period (or supplemental allocation period);
- 2.1.2** Notify each interested stakeholder and incumbent and potential new entrant *Air Carrier* of his recommendations; and
- 2.1.3** Invite each *Air Carrier* to submit written requests for the *Flight Slot* allocations by a date certain specified in the Airport Manager's written notice.

2.2 FLIGHT SLOT ALLOCATION REQUESTS

Any *Air Carrier* interested in receiving an allocation of *Flight Slots* based on the additional slot budget at the Airport must submit to the Airport Manager a written application indicating that any such *Air Carrier* is presently ready, willing, and able to initiate commercial service at the Airport and that it wishes to receive an allocation of *Flight Slots* as, and to the extent, permitted by Long Beach Municipal Code Chapter 16.43 and all applicable implementing resolutions of the City Council, including Resolution No. C-28465.

The written application for additional *Flight Slots* shall include the following information:

- 2.2.1** Whether the applicant is a *Direct* or *Indirect Air Carrier*;
- 2.2.2** The number of scheduled *Flight Slots* that the applicant is requesting;
- 2.2.3** Whether the applicant is prepared, as a condition of being awarded any *Flight Slot* allocation, to provide the flight allocation security per *Flight Slot* required by the current resolution of the City Council setting rates, fees, and charges at the Airport.
- 2.2.4** The aircraft type(s) and the anticipated gross take-off weights which would be used by the applicant in the operation of the *Flight Slot* and, as required by the Airport Manager, provide evidence demonstrating that the aircraft could and would operate at the Airport within the noise levels permitted by Chapter 16.43 of the Long Beach Municipal Code.

- 2.2.5** The effective date of the request shall be the date the written request is received by the Airport Manager, except that any requests received on or before the date specified in the Airport Manager's notice shall be deemed to be received effective on that date.

2.3 ESTABLISHMENT OF WAITING LIST

The Airport Manager will establish a waiting list for *Air Carriers* submitting requests under, and in compliance with, Subsection 2.2, above, and based on the effective date the request was received. Any requests received prior to the close of the application period for new *Flight Slots* will be deemed to have been received on the same effective date and will be provided equal allocation priority on the waiting list.

2.4 FLIGHT SLOT ALLOCATION PRIORITIES

Flight Slots authorized for distribution by the Airport based on the defined additional *Flight Slots* budget must be allocated within thirty (30) days of the close of the *Flight Slot* allocation request period, as defined by the Airport Manager under Section 2.1, above, and in accordance with the following priorities and procedures:

- 2.4.1** Allocation of *Flight Slots* shall be allocated on a first come, first served basis for *Air Carriers* which have met the requirements specified above, with a preference provided to those *Air Carriers* requesting *Flight Slots* for a period of twelve (12) months.
- 2.4.2** Allocations for *Flight Slots* which are sought by more than one (1) user will be allocated sequentially to the requesting *Air Carriers* in increments of one (1) *Flight Slot* based on their priority order on the relevant waiting list; except that if a requesting *Air Carrier* is a new entrant *Air Carrier* not providing service to the Airport at the time the allocation is made, in its first sequential allocation of *Flight Slots*, it will be awarded two (2) *Flight Slots*, if available at that point in the allocation process.
- 2.4.3** In the event that the allocation provisions provided above result in two (2) or more requesting *Air Carriers* having an equal interest in one (1) or more available *Flight Slot(s)* and if meeting all such allocation requests would result in an allocation of more than the available number of *Flight Slots*, then the Airport Manager will apply the following tie-breaking procedures:
- i. The remaining *Flight Slots* will be allocated to the *Air Carrier(s)* with the lowest number of allocated *Flight Slots* before use of the tie-breaking procedures and which received fewer *Flight Slots* than they originally requested. If further allocation is necessary, then

- ii. The Airport Manager will conduct a lottery which affords each of the affected *Air Carriers* an equal chance to be selected for the allocation. The Airport Manager will give at least seventy-two (72) hours verbal notice to the local station manager or other local official of each affected airline of the time and place where the lottery will be held and allow such representative, if they so desire, to be present at the time of the lottery.

2.4.4 To the extent that the Airport Manager has authorized additional *Flight Slots* for use during the supplemental allocation period, and the additional *Flight Slots* are not fully allocated under this Section, the Airport Manager may make additional allocations of the previously authorized but unallocated *Flight Slots* to requesting *Air Carriers* on a first-come/first-served basis during the supplemental allocation period.

2.5 CONDITIONS ON FLIGHT SLOT ALLOCATIONS

2.5.1 AIRPORT MANAGER CONDITIONS

All *Flight Slot* allocations made under this allocation protocol will be made on, and subject to, the conditions provided in Chapter 16.43 of the City of Long Beach Municipal Code and all implementing resolutions of the City including, but not limited to, City Council Resolution No. C-28465 and will become effective only upon receipt by the Airport Manager of an executed lease or addendum to an existing lease of each *Air Carrier* receiving any allocation which: (i) incorporates the required conditions including, but not limited to, the one (1) year term of the allocation; and (ii) which is in a form acceptable to the Airport Manager and to the City Attorney.

2.5.2 FLIGHT SLOT LIMITS

No *Air Carrier* or *Commuter Carrier* may receive an allocation of additional *Flight Slots* which is greater than the amount of *Flight Slots* determined to be available in the additional slot budget for the upcoming twelve (12) month period.

2.5.3 NO CAPACITY CARRYFORWARDS

No allocation made under this allocation protocol may be carried forward to a subsequent twelve (12) month period, and all additional *Flight Slots* shall expire completely, and without further action of the City and/or Airport, at the close of business on the last day of the period for which the allocations were made.

3.0 PROTOCOL FOR WITHDRAWAL OF FLIGHT SLOTS ALLOCATED WITHIN THE ADDITIONAL FLIGHT ALLOCATION BUDGET

In the event the Airport Manager determines that implementation of the *Flight Slots* allocated above the forty-one (41) limit has resulted in *Air Carrier* cumulative noise in excess of the *Air Carrier* budget and that the overall aircraft noise exceeds the level allowed by Subsection

16.43.050(A), the Airport Manager will revoke such of the *Flight Slot* awards as the Airport Manager determines must be revoked in order to achieve compliance with the *Air Carrier* noise budget. The process for withdrawal of *Flight Slots* awarded under the additional *Flight Slot* budget shall be consistent with the provisions of Subsection 16.43.060(E)(5), and is provided in below.

3.1 WITHDRAWAL PRIORITY

3.1.1 Following completion of the *Flight Slot* allocation process, the Airport Manager will immediately classify the *Flight Slots* awarded sequentially based upon the highest noise levels per flight during the prior twelve (12) months.

3.1.2 In the event that equal priorities exist, the Airport Manager will conduct a separate withdrawal lottery, as outlined in Subsection 16.43.060 for certain *Flight Slots* allocated in the additional flight allocation budget. This lottery will assign withdrawal priorities separately to each additional *Flight Slot* allocated for the supplemental allocation period.

3.1.3 Each *Air Carrier* will be provided with a summary of the withdrawal priority lottery results. Any disputes or protests will immediately be resolved by staff. Any failure to immediately express such a protest will be deemed by the Airport to be a waiver of the protest by the *Air Carrier*.

4.0 ADMINISTRATIVE REVIEW

Any person may request an administrative review of the decisions of the Airport Manager regarding *Air Carrier* slot allocations pursuant to the provisions of Section 16.43.110 of the Noise Ordinance, and as further specified below.

4.1 CITY POLICY

It is the basic purpose of these rules to provide a reasonable, fair, constitutionally appropriate, and expeditious means by which any person or entity contesting decisions of the Airport Manager can obtain review of the decision by administrative means.

4.2 REQUEST FOR AIRPORT MANAGER REVIEW

Not later than fifteen (15) days after public notification in a local newspaper with general circulation in the area affected by the Airport Manager's decision or the mailing of the notice of decision to be reviewed, or within ten (10) days following actual receipt of notice delivered other than by mail, any person or entity may request and receive an administrative hearing before the Airport Manager or his designee.

No person shall submit any request for review for the sole purpose of causing a delay in the implementation of any decision of the Airport Manager, or which is otherwise submitted, in whole or in significant part, in "bad faith."

4.3 REQUIRED CONTENTS OF REQUEST FOR REVIEW

4.3.1 STATEMENT OF DISPUTED ISSUES

Any request for review by a person or entity must contain a “Statement of Disputed Issues” including:

- (a) Each factual issue relevant to the contested decision;
- (b) Each legal issue relevant to the contested decision;
- (c) A summary of the basic contentions of the party or entity seeking review as to why the decision should not be made or should be modified; and
- (d) A concise statement of the relief sought by the person or entity requesting review.

4.3.2 DOCUMENTARY EVIDENCE

The request for review must also contain all documents which the person or entity seeking review believes to be relevant to the factual or legal issues raised by its “Statement of Disputed Issues.” Each document should be separately numbered, beginning with document number 1, and proceeding in numerical sequence to the last document.

4.3.3 PERSONAL TESTIMONY

The request for review must also contain any and all personal testimony by persons which the person or entity requesting review believes relevant to the issues raised by its request for review. Any personal testimony should be prepared in narrative format and identify the specific issues as to which the testimony is being offered.

4.4 AIRPORT MANAGER REVIEW AND DECISION

Upon his receipt of any request for review, the Airport Manager must promptly take the following actions:

- (a) Provide written notice of when the hearing will be conducted, which must be between fourteen (14) and twenty-one (21) days after the request for hearing is received;
- (b) Conduct an informal administrative hearing at the time, place, and date certain, and as specified in the written notice. The rules of evidence, discovery, and formal trial procedures are not applicable to the informal administrative hearing;
- (c) Consider all relevant and persuasive evidence provided and/or submitted during the informal administrative hearing;
- (d) Prepare a record of the proceeding, including a copy of all written materials received and a summary of the oral testimony presented, following the hearing; and
- (e) Provide a written post-hearing decision within ten (10) days following the informal administrative hearing.

The Airport Manager's written post-hearing decision will be final unless appealed to the City Manager consistent with the requirements of Section 16.43.110 of the Noise Ordinance, and as provided below.

4.5 APPEAL OF AIRPORT MANAGER DECISION

Any final decision of the Airport Manager may be appealed to the City Manager by providing notice within fifteen (15) days following the mailing of a notice of final decision by the Airport Manager.

4.5.1 CITY MANAGER CONSIDERATION OF APPEAL AND DECISION

Upon his receipt of any request for appeal, the City Manager must provide any person or entity requesting an appeal at least fifteen (15) days written notice served by U.S. mail specifying the time and place of the appeal hearing, and inviting such person(s) or entity to present any additional argument relevant to the appeal.

- (a) The appeal hearing may be held before a hearing officer designated by the City Manager provided that the designated hearing officer is not from the same department as the Airport Manager and is at least a Bureau Manager.
- (b) The City Manager may, in the alternative, appoint an administrative hearing board consisting of not less than three (3) members of the City's administrative staff, each of whom must meet the same criteria as an administrative Hearing Officer, as described above.

- (c) The appeal must be decided based upon the submissions of the Airport Manager, his summary of the evidence presented, and the arguments presented to the City Manager or his designee.
- (d) The City Manager or his designee is not required to accept additional evidence.
- (e) A written notice of decision must be issued by the City Manager within fifteen (15) days following the hearing on appeal.

4.6 APPEAL OF CITY MANAGER DECISION

Any written notice of decision of the City Manager will be final unless appealed to the City Council within fifteen (15) days after the mailing of the notice of final decision by the City Manager.

Any appeal of a final decision of the City Manager to the City Council must be conducted as provided in Chapter 2.93 of the City's Municipal Code.

4.7 EFFECT OF PENDENCY OF REVIEW OR APPEAL PROCEEDINGS ON AIRPORT MANAGER DECISION

The pendency of any proceeding pursuant to Section 16.43.110 of the Noise Ordinance, and as provided above, shall not stay, suspend, or modify automatically any decision of the Airport Manager unless the Airport Manager, City Manager or City Council stays the effectiveness of the decision under review.