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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Long Beach Small Aircraft Noise Reduction Group, Plaintiff, vs. CITY OF LONG BEACH, a public entity; LONG BEACH AIRPORT; a public entity; and DOES 1 THROUGH 25, inclusive. Defendants.	Case No. 25LBCP00240 **PETITIONER LONG BEACH SMALL AIRCRAFT NOISE REDUCTION OPPOSITION TO RESPONDENT'S DEMURRER TO PETITIONER'S VERIFIED PETITION FOR WRIT OF MANDAMUS** Date: September 18, 2025 Time: 8:30 AM Dept.: S26 **RESERVATION ID**: **008351123633** Complaint Filed: 05/30/2025 Trial Date: None Set

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I. INTRODUCTION

Petitioner Long Beach Small Aircraft Noise Reduction Group ("Petitioner") submits this Opposition to the City of Long Beach's ("Respondent" or "City") Demurrer to the Verified Petition for Writ of Mandamus. The City's Demurrer rests on a narrow and flawed interpretation of its own Noise Ordinance—Chapter 16.43 of the Long Beach Municipal Code (the "Noise Ordinance"). The City disregards both the plain language and the legislative intent behind the ordinance.

The City claims that Petitioners seek to "expand" the scope of the Noise Ordinance, but that is wrong. Petitioners only ask the Court to compel the City to enforce its existing provisions as written and historically interpreted. Long Beach Municipal Code § 16,43.030(A) states that no training operations "shall" be conducted during curfew hours, and LBMC § 16.43.090(C) mandates that the Airport Manager "shall" issue written violation notices where operations occur contrary to the ordinance. This mandatory language creates a ministerial duty to enforce. By excluding taxi-back operations, which are indistinguishable from touch-and-go maneuvers, the City creates an absurd loophole that guts the ordinance. In doing so, the City has forgotten its core purpose: protecting residents from repetitive, noisy training flights.

Petitioner alleges in their Writ of Mandamus with specificity that the City has failed to enforce Chapter 16.43.030.A, resulting in thousands of training operations occurring during prohibited hours, causing significant harm to residents and violating the public health protections embedded in the ordinance. These allegations are not speculative or policy-driven, rather, they are supported by data, Federal Aviation Administration ("FAA") records, and the City's own publications and enforcement history. Mandamus is appropriate where a public entity fails to perform a ministerial duty imposed by law. The City's refusal to enforce its Noise Ordinance against clearly qualifying training operations constitutes an abuse of discretion and a failure to proceed in the manner required by law.

Accordingly, the Court should deny the City's Demurrer.

II. STATEMENT OF FACTS

On or about May 30, 2025, Petitioner Long Beach Small Aircraft Noise Reduction Group filed and served a Verified Petition for Writ of Mandamus (the "Petition") against Respondent City of Long Beach. The Petition seeks to compel the City to enforce Chapter 16.43.030.A of the Long Beach

Municipal Code—commonly known as the Airport Noise Compatibility Ordinance, as it applies to general aviation ("GA") training operations at Long Beach Airport ("LGB").

The Petition alleges that the City has failed to enforce material provisions of the Noise Ordinance, specifically Chapter 16.43.030.A, which prohibits certain training operations including "Touch and Go", "Stop and Go", "Practice Low Approach", and "Practice Missed Approach" during designated curfew hours. Petitioner contends that the City has improperly excluded "taxi back" operations from the definition of "training operations," despite their functional equivalence to prohibited maneuvers and their disruptive impact on surrounding residential communities. Between January 1, 2024, and June 30, 2024, Petitioner documented over five thousand and six-hundred ("5,600") training operations occurring during prohibited hours, including weekends and holidays, in violation of the Noise Ordinance. These operations were primarily conducted by for-profit flight schools and have resulted in significant noise disturbances, environmental degradation, and adverse health impacts on residents.

Petitioner has repeatedly raised these violations with the City through correspondence and administrative complaints. Despite possessing a Noise and Operations Monitoring System ("ANOMS") capable of identifying individual operations, to Petitioner's knowledge, the City has declined to take enforcement action or issue fines. Instead, the City has adopted a narrow interpretation of the ordinance that excludes "taxi back" operations from its scope, contrary to the ordinance's plain language, legislative history, and prior administrative guidance.

On July 18, 2025, the City filed a Demurrer to the Petition, asserting that it has no ministerial duty to enforce the ordinance in the manner requested and that "taxi back" operations fall outside the scope of Chapter 16.43.030.A. For the foregoing reasons, the City's interpretation is legally flawed, and the Petition is appropriate and sufficiently compels enforcement of the ordinance as written.

III. LEGAL STANDARD

In ruling on a demurrer, all facts alleged in the complaint are deemed admitted, and the Court "give[s] the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) No other extrinsic evidence can be considered (i.e., no "speaking demurrers"). (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.3d 868, 881.) The Court must accept as true all facts that may be inferred from those expressly alleged. (*Miklosy v. Regents of Univ. of Cal.*

(2008) 44 Cal.4th 876, 883.) "A demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Assurance Co. of Am. v. Haven* (1995) 32 Cal.App.4th 78, 82.) Thus, in considering the merits of a demurrer, "the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

The standard for ruling on a demurrer is a liberal construction of the allegations in the complaint. [Code of Civil Procedure ("CCP") § 452.] The Court "must accept as true not only those facts alleged in the complaint but also facts that may be implied or inferred from those expressly alleged." (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.)

Ultimately, a court must determine if, upon all facts alleged, Respondent is entitled to *any relief* whatsoever based upon the facts alleged. (*See Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 573 (noting, "if, upon a consideration of all the facts stated, it appears that the plaintiff is entitled to *any relief* at the hands of the court against the defendants, the complaint will be held good…although the plaintiff may demand relief to which he is not entitled under the facts alleged") (emphasis added).)

IV. ARGUMENT

A. The Court Must Deny the Demurrer Because the City Failed to Meet and Confer in Good Faith

Before filing a demurrer, California law imposes a mandatory obligation on the moving party to meet and confer in good faith to determine whether the issues raised in the demurrer can be resolved informally. (See CCP § 430.41(a).) This requirement is not a mere procedural formality—it is a substantive prerequisite designed to promote judicial economy and avoid unnecessary motion practice.

Here, Respondent City of Long Beach utterly failed to comply with this obligation. There is no evidence, written or otherwise, that the City made a good faith attempt to meet and confer with Petitioner prior to filing its demurrer. On or about July 17, 2025, counsel for Petitioner, Steven M. Taber ("Taber") spoke on the phone with W. ERIC PILSK ("Pilsk"), counsel for Respondent City of Long Beach ("Respondent"). See Declaration of Steven M. Taber ("Taber Decl.)" ¶ 3. During Taber's call with Pilsk, Pilsk did not discuss Respondent's basis for a demurrer or identify legal deficiencies in Petitioner's Writ of Mandamus. Id. Pilsk informed Taber that he intended to file a demurrer to the Petition. Taber Decl.

at ¶ 4. No further meet and confer efforts were made by Respondent. Taber Decl. at ¶ 5.

The declaration submitted by the City in support of the Demurrer merely states that counsel "informed" Petitioner's counsel of the intent to file, and that the parties "agreed that conferring would not avoid the need to file the demurrer." This conclusory statement falls far short of the statutory requirement. It does not describe any effort to discuss the legal issues, explore amendment possibilities, or engage in meaningful dialogue. It was not a meet and confer, rather, it was a unilateral notice.

California courts have made clear that failure to comply with the meet and confer requirement is grounds to deny a demurrer outright. The statute is explicit and states that "the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (CCP § 430.41(a)(1).) CCP § 430.41 states that as part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. The City's failure to do so in good faith is prejudicial. Petitioner was deprived of the opportunity to address the City's specific concerns informally, potentially avoiding the need for motion practice and conserving judicial resources. The Court should not reward this disregard for statutory procedure. The demurrer must be denied on this basis alone.

B. The Court Must Overrule the City's Demurrer Because the City Fails to State Proper Grounds for Its Demurrer

Respondent fails to state proper grounds for its demurrer. Respondent's argument that Petitioner has failed to state facts sufficient to constitute a cause of action against Respondent fails as a matter of law. When ruling on a demurrer, the Court is restricted to the four corners of the pleading and cannot consider evidence in the case. (*See Miller & Lux, Inc. v. San Joaquin Light & Power Corp*. (Dist.Ct.App. 1932) 120 Cal.App. 589, 601; *see also Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 346 ("Because a demurrer raises only questions of law [] trial courts ordinarily do not consider evidence in connection with a demurrer. But a court may consider matters subject to judicial notice when ruling on

a demurrer…").) While a court may take judicial notice of certain documents, a "court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence, and the opposing party is bound by what that evidence appears to show." (*Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 115.) "A demurrer is simply not the appropriate procedure for determining the truth of disputed facts." (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879.) The complaint must be "liberally construed, with a view to substantial justice between the parties." (CCP § 452; see *Stevens v. Sup.Ct.* (API Ins. Services, Inc.) (1999) 75 Cal.4th 594, 601; see also *Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.4th 1228, 1238 (where allegations are subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant".)

Here, the Petition clearly alleges sufficient facts to state a cause of action for writ of mandamus under CCP § 1085. Petitioner alleges that the City has a ministerial duty to enforce Chapter 16.43.030.A of the Long Beach Municipal Code, and that it has failed to do so by excluding "taxi back" operations from enforcement despite their inclusion within the ordinance's definition of "training operations." The Petition further alleges that this failure has resulted in thousands of violations, environmental harm, and adverse health impacts on residents. These are facts which must be accepted as true at this stage. Respondent's Demurrer improperly attempts to reframe the Petition as a policy dispute and invites the Court to adopt its interpretation of the ordinance over Petitioner's. This is not the proper function of a demurrer. Whether the City's interpretation constitutes an abuse of discretion or a failure to proceed in the manner required by law is a question of fact and law that must be resolved on the merits, not dismissed at the pleading stage.

Moreover, Respondent's reliance on its own interpretation of the ordinance is not supported by judicially noticeable facts. The plain language of Chapter 16.43.030.A prohibits specified training operations during curfew hours, and the definition of "training operation" includes "Touch and Go, Stop and Go, Practice Low Approach, and Practice Missed Approach, ***or any of them***." Petitioner alleges that "taxi back" operations are included with these prohibited maneuvers and have historically been treated as such by the City. These allegations are sufficient to state a claim for mandamus relief.

Based on this alone, Respondent's demurrer should be overruled in its entirety.

D. Petitioner Has Properly Identified a Ministerial Duty to Enforce the Noise Ordinance

Respondent's assertion that Petitioner fails to identify the City's ministerial obligations is unfounded. First and foremost, Respondent's suggestion that the Airport Noise and Capacity Act of 1990 ("ANCA") somehow negates its duty to enforce Chapter 16.43 of the Long Beach Municipal Code is legally incorrect and misleading. ANCA, codified at 49 U.S.C. § 47521 et seq., and implemented through 14 CFR Part 161, restricts the ability of airport proprietors to impose new noise-based operational restrictions on aircraft without FAA approval. It does not prohibit the enforcement of existing, ***grandfathered*** ordinances—such as Chapter 16.43—that were in effect prior to ANCA's enactment on November 5, 1990. Under CCP § 1085, a writ of mandate is available to compel a public entity to perform a duty that is ministerial in nature. The Petition clearly alleges that the City of Long Beach has a present, clear, and nondiscretionary duty to enforce its own municipal ordinance—Chapter 16.43 of the Long Beach Municipal Code—which regulates the timing and location of general aviation training operations. (See Petition ¶¶ 3, 12, 50–52.)

Moreover, Petitioner has standing to seek this relief under the doctrine of "citizen standing" or "public interest standing," which permits any member of the public to seek mandamus to enforce a public duty. (See CCP § 1086.) Petitioner is a nonprofit public benefit corporation composed of residents directly impacted by the City's failure to enforce the ordinance. The Petition alleges specific violations of the ordinance, including thousands of training operations occurring during prohibited hours, and the City's refusal to act despite having the tools and authority to do so. (See Petition ¶¶ 26–28, 43–45.) Respondent's demurrer improperly invites the Court to resolve factual disputes and interpret the ordinance in its favor—tasks that are inappropriate at the pleading stage. The Court must accept the Petition's factual allegations as true and construe them liberally in favor of Petitioner. (See *Mireskandari v. Gallagher* (2020) 59 Cal.5th 346, 352; *Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879.) Petitioner has more than adequately alleged a ministerial duty, a violation of that duty, and a lack of any other adequate remedy. Accordingly, the demurrer must be overruled.

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E. The Plain Language of the Noise Ordinance Does Create a Ministerial Duty to Enforce Prohibited Training Operations—Including Taxi Backs

Respondent's argument that the Noise Ordinance does not impose a ministerial duty to enforce a prohibition against taxi-back operations is both legally flawed and factually unsupported. The City's own ordinance, Chapter 16.43 of the Long Beach Municipal Code, expressly defines "training operations" to include "Touch and Go, Stop and Go, Practice Low Approach, and Practice Missed Approach, ***or any of them***." (Chapter 16.43.010(P).) The phrase "or any of them" is inclusive and expansive, not restrictive. It plainly contemplates that any operation functionally equivalent to those listed—such as taxi-back circuits that mimic touch-and-go patterns—falls within the scope of the ordinance. Moreover, Chapter 16.43.030(A) mandates that these training operations "shall not be conducted" during specified curfew hours. This is not discretionary language. It is a clear prohibition, and the City has no authority to selectively enforce it based on its own interpretation of what constitutes a training operation. The ordinance does not grant the City discretion to redefine or narrow its scope. As California courts have held, a ministerial duty exists where a public entity is required to act in a prescribed manner under legal authority without regard to its own judgment. (See *AIDS Healthcare Foundation v. L.A. County Dept. of Public Health* (2011) 197 Cal.4th 693, 700.)

Petitioner has alleged that "taxi-back" operations are functionally indistinguishable from touch-and-go maneuvers and are used by flight schools to circumvent curfew restrictions. (Petition ¶¶ 32–35.) The City's refusal to enforce the ordinance against these operations is not a matter of discretion, it is a failure to perform a mandatory duty imposed by law. The Petition further alleges that the City has historically interpreted the ordinance to apply to all training operations, including taxi backs, as evidenced by its own Community Guide to Aircraft Noise and enforcement history. (Petition ¶¶ 45–46.)

At the pleading stage, these allegations must be accepted as true. The City's attempt to reframe the ordinance's plain language as ambiguous or discretionary is a factual dispute that cannot be resolved on demurrer. Petitioner has properly stated a cause of action for writ of mandate under CCP § 1085, and the demurrer must be overruled.

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F. The City Can Be Compelled to Enforce Its Ordinance According to Its Plain Terms, Not Avoid Accountability Through Selective Interpretation

Respondent argues that it cannot be compelled to adopt Petitioner's interpretation of "flight operation," suggesting that enforcement decisions are discretionary and not subject to judicial review. This argument mischaracterizes both the nature of the relief sought and the legal standard governing writs of mandate. Petitioner does not ask the Court to impose a novel interpretation of the ordinance. Rather, Petitioner seeks enforcement of the ordinance according to its plain language, which defines "training operations" to include "Touch and Go, Stop and Go, Practice Low Approach, and Practice Missed Approach, or any of them." (Chapter 16.43.010(P).) The phrase "or any of them" is inclusive and expansive, and Petitioner has alleged that "taxi back" operations are functionally indistinguishable from touch-and-go maneuvers. (Petition ¶¶ 32–35.) These allegations are supported by FAA radar data, flight school syllabi, and the City's own historical enforcement practices. (Petition ¶¶ 33, 35, 46.)

The City's refusal to enforce the ordinance against these operations is not a matter of discretion—it is a failure to perform a ministerial duty. A ministerial duty exists where a public entity is required to act in a prescribed manner under legal authority without regard to its own judgment. (See *AIDS Healthcare Foundation v. L.A. County Dept. of Public Health* (2011) 197 Cal.4th 693, 700.) The ordinance uses mandatory language: "No [training operations] shall be conducted" during curfew hours. (Chapter 16.43.03.A.) This is a clear prohibition.

The City invokes deference to its "longstanding interpretation." But deference applies only if consistent with statutory text and purpose. . Courts routinely reject agency interpretations that are "clearly erroneous or inconsistent with the plain language" of the law. (See *Motion Picture Studio Teachers v. Millan* (1996) 51 Cal.App.4th 1190, 1195.) Longstanding error is not entitled to deference. Here, the City's interpretation excludes operations that mimic prohibited maneuvers in form and function, undermining the ordinance's purpose and rendering its enforcement arbitrary. Petitioner has properly alleged that the City's refusal to enforce the ordinance constitutes an abuse of discretion and a failure to proceed in the manner required by law. (Petition ¶¶ 48, 53–54.) Mandamus is appropriate to compel the City to enforce its own law—not to adopt Petitioner's interpretation, but to honor the ordinance's plain meaning. A municipality cannot avoid mandamus by refusing to enforce its ordinance.

The demurrer must be overruled.

G. Respondent's Request for Judicial Notice Should be Denied

The court may take notice of the *existence* of findings of fact made in the other action but may *not* accept them as *true* on issues in dispute in the present case. That is, the other court's findings are *not* indisputably true. Otherwise, the judge in the other case would be made "infallible" on all matters, usurping the doctrines of res judicata and collateral estoppel (which are limited to final *judgments*). (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565; see also *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749.) The proper interpretation of documents is *not* subject to judicial notice if those matters are reasonably disputable: "Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 113.)

Respondent requests judicial notice of two items: 1) Chapter 16.43 of the Long Beach Municipal Code (the Airport Noise Compatibility Ordinance); and 2) Section 1.04.070 of the Long Beach Municipal Code (regarding title and section headings). Petitioner does not dispute the existence of these ordinances. However, Respondent improperly seeks to use judicial notice as a vehicle to assert its interpretation of Chapter 16.43—specifically, that "taxi back" operations are not included within the definition of "training operations." This is not a proper use of judicial notice. Accepting Respondent's interpretation of the ordinance would improperly elevate the City's reading to indisputable truth, effectively rendering the City's position infallible.

Petitioner does not oppose judicial notice of the existence of Chapter 16.43 or Section 1.04.070. However, the Court should expressly limit its notice to the existence of these ordinances and decline to adopt Respondent's interpretation or characterization of their meaning. Doing otherwise would improperly convert the demurrer into a factual adjudication, which is not permitted at this stage.

H. If the Court Grants Respondent's Demurrer, Petitioner should be Allowed Leave to Amend the Petition

Should the Court sustain Respondent's demurrer in whole or in part, Petitioner respectfully requests leave to amend the Verified Petition. Generally, it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment.

(*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 34.) In the instant case, Petitioner has alleged a clear and enforceable ministerial duty under CCP § 1085, supported by statutory language, administrative history, and factual allegations demonstrating the City's failure to enforce its own ordinance. If the Court finds any aspect of the pleading deficient, Petitioner can and will amend to clarify or expand upon the factual basis for the City's nondiscretionary obligations, the functional equivalence of taxi-back operations, and the public interest standing that supports mandamus relief.

Accordingly, Petitioner respectfully requests that any ruling sustaining the demurrer be accompanied by leave to amend.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court deny Respondent City of Long Beach's demurrer to the Verified Petition for Writ of Mandamus. Alternatively, should the Court find there to be grounds to sustain the demurrer, Petitioner respectfully requests the Court allow Petitioner leave to amend its Complaint, as needed.

Dated: September 5, 2025

LEECH TISHMAN NELSON HARDIMAN, INC.

By: Steven M. Taber

Steven M. Taber
Attorneys for Plaintiff, Long Beach Small Aircraft Noise Reduction Group

PROOF OF SERVICE

Long Beach Small Aircraft Noise Reduction Group vs. City Of Long Beach
Los Angeles County Superior Court Case No. 25LBCP00240

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 1100 Glendon Avenue, 14th Floor, Los Angeles, California 90024.

On September 5, 2025, I served the following document(s) described as **PETITIONER LONG BEACH SMALL AIRCRAFT NOISE REDUCTION OPPOSITION TO RESPONDENT'S DEMURRER TO PETITIONER'S VERIFIED PETITION FOR WRIT OF MANDAMUS** on the interested parties in this action as follows:

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☒ **BY ELECTRONIC MAIL OR TRANSMISSION:** Based on a court order, expressed consent under CRC 2.251(b), or an agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the person at the email addresses listed above or through the court's electronic filing service provider. I did not receive within a reasonable time after the transmission of any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 5, 2025 at Los Angeles, California.

/s/ Matthew Mocciaro
Matthew Mocciaro