November 6, 2024

**Via Electronic Mail**

Ms. Dawn McIntosh
City Attorney
City of Long Beach, California
411 West Ocean Boulevard, Ninth Floor
Long Beach, CA 90802
dawn.mcintosh@longbeach.gov
cityattorney@longbeach.gov

**RE: Restricting Training Flight Operations During Curfew Hours at Long Beach Airport**

Dear Ms. McIntosh:

The Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the National Air Transportation Association (NATA), the National Business Aviation Association (NBAA) and Vertical Aviation International (VAI) (collectively, "the Associations") submit this response to a letter dated October 22, 2024, that was addressed to your attention, as captioned above.

Our national associations represent pilots and aircraft owners, experimental aircraft builders, fixed base operators, charter service providers, individuals and businesses who use their aircraft in support of their business or are otherwise involved in the business aviation sector, as well as companies and individuals with a focus on vertical aviation. Collectively, we are strongly interested in the continued accessibility and viability of airports.

In the October 22nd letter, the Long Beach Small Aircraft Noise Reduction Group (SANeR) urges the City to prohibit certain general aviation operations at Long Beach Airport (LGB or Airport) – specifically, to prohibit "taxi back" and certain other operations that are conducted at times during which a local ordinance nominally prohibits training operations at LGB (*see* Mun. Code § 16.43.030(A)).

As a preliminary matter, the City is correct that the operations at issue are not within the scope of local ordinance and therefore are not prohibited. Since the current ordinances for the Airport were codified in 1995, the City consistently has understood "taxi back" operations to not be regulated. Indeed, the term is not defined by the Federal Aviation Administration (FAA), the ordinances, or by SANeR, so it is not exactly clear what operations are subject to SANeR's demands. Although § 16.43.030(A) has the title "Training Operations," it then proceeds to list

the specific types of operations that are subject to restrictions – which do not include "taxi back" operations. Nor does the definition of "training operations" included in § 16.43.010(P) expand the meaning of the phrase or the scope of § 16.43.030(A). That definition states that the phrase includes "any of" the operations specifically listed therein, but does not expand the meaning beyond them – and as for § 16.43.030(A), the listed types of operations explicitly do not include taxi back operations.

Moreover, the SANeR letter fails to acknowledge the actual context of § 16.43.030(A). The operational restrictions now in effect at LGB are allowed only to the extent that the process of their implementation pre-dates the enactment of the Airport Noise and Capacity Act of 1990 ("ANCA"), as later codified after the settlement of a lawsuit in 1995. *See* 49 U.S.C. § 47524(d)(5). The FAA has advised that on that basis, they are grandfathered under the statute, which otherwise generally prohibits local noise and other access restrictions at airports. But any effort to impose new restrictions at the Airport – including by a new interpretation of an existing ordinance – would require vetting by the FAA, including compliance with the detailed review requirements of 14 C.F.R. Part 161. If the City were to adopt new restrictions absent compliance with ANCA, not only would the new restrictions be subject to challenge, but all of the grandfathered restrictions at LGB potentially would be at risk.

Additionally, the City routinely has accepted Airport Improvement Program (AIP) grants from the FAA, including $18.6 million in FY2023 alone. These grants are accompanied by a set of "assurances" which impose obligations that operate independently from ANCA. *See, e.g.*, Friends of the East Hampton Airport v. Town of East Hampton, New York, 841 F.3d 133 (2d Cir. 2016). Those obligations effectively prohibit an airport from discriminating among different types of operations and/or imposing generally-applicable operating restrictions, such as curfews or restrictions on training activities. *See, e.g.*, AOPA v. Pompano Beach, Florida, FAA Docket No. 16-04-01, Final Agency Decision (December 15, 2005). Accordingly, not only do SANeR's demands for new restrictions conflict with the City's grant-based obligations, but the existing ordinance also may be incompatible with those assurances – and if this matter were to be raised with the agency, the outcome likely would be the suspension of the City's eligibility for further AIP funding (which is essential for airport capital and safety projects) as well as other enforcement action by the FAA. *See, e.g.,* the April 30, 2003 letter from James W. Whitlow, FAA Deputy Chief Counsel, to Chris Kruze, Manager of the Long Beach Airport, reserving the right to review 14 C.F.R. Part 16 complaints regarding LGB.

The Associations further note that § 16.43.030(A) purports to prohibit a "Practice Low Approach, or VFR Practice Missed Approach" at designated times. Because those operations occur entirely in airspace – *e.g.,* without the aircraft ever touching the ground – the City has no jurisdiction to regulate them; airspace is entirely subject to regulation by the FAA. Accordingly, not only are SANeR's demands for new restrictions preempted by federal law, but at least certain elements of the existing ordinance also likely would be invalidated if challenged – a scenario more likely to occur if the City were to accede to SANeR's demands. We bring to your attention a recent letter to Torrance, California, in response to a similarly impermissible effort to regulate operations in airspace near TOA; on December 16, 2022, FAA's Acting Assistant Chief Counsel for Regulations advised Torrance's counsel that "enforcement of the ordinance is not a legally valid way to accomplish the City's goals."

Finally, SANeR's closing demand is that the City direct its staff, in conjunction with the Airport's Air Traffic Control Tower (ATCT), to prohibit "taxi back" operations, or any other operations deemed to be "training" (even if not identified as such in § 16.43.030(A)) during the applicable hours. *See* the June 30, 2021 Letter from FAA Acting Regional Administrator Marie Kennington-Gardner to East Hampton, New York, regarding the Town's requests that the ATCT at East Hampton Airport (HTO) prohibit certain operations. As you are no doubt aware, the City has no jurisdiction over the operations of the FAA ATCT at the Airport, and any attempt to dictate its procedures likewise would be preempted by federal law and a basis for litigation against the City. *See also* Blue Sky Entertainment, Inc. v. Town of Gardiner, 711 F.Supp. 678, 692 (N.D.N.Y. 1989) ("[i]n fact, federal law in the area of aviation is so pervasive that it preempts a municipal ordinance which attempts to govern the flight paths of aircraft using an airport which has no control tower, is not served by a certified carrier and has no regularly scheduled flights").

Our national organizations look forward to engaging with the City to identify and support a solution that would balance the benefits of flight training and community concerns, beyond what is already being done. The members of our associations value the ability to operate at LGB and are sympathetic to the challenges identified by members of the Long Beach community. We also emphasize that the City should understand that the propositions advanced by SANeR rely on misunderstandings of both fact and law. Not only can its proposal not be implemented, but any effort to do so likely would result in challenges to and a rollback of the existing grandfathered restrictions at LGB. The Associations respectfully submit that there are better, more cooperative options to be considered than those now on your desk.

Thank you for your consideration of our input.

Sincerely,

**Jared Yoshiki**, Vice President, Airport and State Advocacy, Aircraft Owners and Pilots Association (AOPA), jared.yoshiki@aopa.org

**Rob Hackman,** Vice President, Government Affairs, Experimental Aircraft Association (EAA), rhackman@eaa.org

**Karen Huggard**, Vice President, Government Affairs, National Air Transportation Association (NATA), khuggard@nata.aero

**Alex Gertsen**, Senior Director, Airport Advocacy and Vertical Infrastructure, National Business Aviation Association (NBAA), agertsen@nbaa.org

**Katia Veraza**, Manager, Government Affairs and Regional Relations, Vertical Aviation International (VAI), katiav@verticalavi.org

CC: Steven M. Taber, Counsel for SANeR, staber@leechtishman.com
Lisa Dunn, President, SANeR, lbsanergroup@gmail.com
Rex Richardson, Mayor, City of Long Beach, mayor@longbeach.gov
Cynthia Guidry, Director, Long Beach Airport, cynthia.guidry@longbeach.gov