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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LONG BEACH SMALL AIRCRAFT NOISE REDUCTION GROUP,

Plaintiff,

v.

CITY OF LONG BEACH

Defendant.

Case No.: 25LBCP00240

NOTICE OF MOTION AND DEMURRER TO PLAINTIFF'S VERIFIED PETITION FOR WRIT OF MANDAMUS; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF W. ERIC PILSK

Date: August 28, 2025
Time: 8:30 AM
Dept.: S26

Action Filed: June 20, 2025

RESERVATION ID: **008351123633**

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NOTICE OF MOTION

TO PLAINTIFF AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 28, 2025 at 8:30 a.m. in Department S26 of the Superior Court of the County of Los Angeles, located at 275 Magnolia Avenue, Long Beach, CA, 90802, defendant City of Long Beach will bring on for hearing its demurrer to Petitioner's Verified Petition for Writ of Mandamus ("Petition").

DEMURRER

The City of Long Beach ("the City") demurs to the Petition because Petitioner fails to allege facts sufficient to state a cause of action for a Writ of Mandamus since the City does not have a mandatory, ministerial duty to enforce Chapter 16.43 of the Long Beach Municipal Code in the manner demanded by Petitioner. Code Civ. Proc. § 430.10(e).

Dated: July 18, 2025

Respectfully submitted,

KAPLAN KIRSCH LLP

By: _____

William D. Marsh (SBN: 200082)
W. Eric Pilsk, (Pro Hac Vice Pending)
Peter Kirsch (Pro Hac Vice Pending)
Caroline Jaschke (Pro Hac Vice Pending)

Attorney for Defendant
City of Long Beach

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Petitioner seeks to expand the scope of the City's decades-old Airport Noise Compatibility Ordinance[1] to impose new restrictions on certain pilot training activities at the Long Beach Airport ("Airport"). Since 1995, the Noise Ordinance has imposed time-of-day restrictions on "training operations," which is specifically defined to mean only four specific types of operations—Touch and Go, Stop and Go, Practice Low Approach, and VFR Practice Missed Approach—each of which is itself a precisely defined term.

Apparently frustrated by increased pilot training activity at the Airport, Petitioner asserts that the term "training operations" includes *all* pilot training activities, including so-called "taxi backs." Petn. ¶¶ 51–54. Based on that interpretation, Petitioner seeks a Writ of Mandamus to compel the City to enforce the restriction on specified "training operations" against taxi backs and other pilot training activities ***not*** covered by the express terms of the Noise Ordinance.

California law is clear, however, that mandamus will not lie to enforce a municipal ordinance in a manner not required by its express terms. And even where an ordinance is ambiguous, mandamus will only lie if the municipality's construction of its ordinance is "clearly erroneous" and an "abuse of discretion." Moreover, California courts will not second-guess a municipality's reasonable determination that certain activities do not violate a local ordinance.

Those principles require dismissal of the Petition here. The express and unambiguous terms of the Noise Ordinance apply ***only*** to the four listed operations and do not apply to taxi backs or other pilot training activities. Accordingly, the City has no duty to apply the Noise Ordinance as Petitioner demands. And even if even there were some ambiguity in the language of the Noise Ordinance (which there is not) the City's construction of the Noise Ordinance to not apply to taxi backs or other pilot training

[1] Airport Noise Compatibility Ordinance, Chapter 16.43 of the Long Beach Municipal Code ("Noise Ordinance"). See Exhibit 1 to the Request for Judicial Notice.

activities is not "clearly erroneous" or otherwise subject to being overruled in a mandamus proceeding. Similarly, the City's assessment that taxi backs and other pilot training activities are not a violation of the Noise Ordinance is the kind of discretionary enforcement decision that cannot be overruled in a mandamus action.

At bottom, Petitioner seeks to *expand* the scope of the Noise Ordinance to cover flight activities it believes to be harmful or disruptive. To do so, it has invented a new interpretation of the Noise Ordinance and seeks to invoke the Court's mandamus powers to compel the City to enact a new policy that Petitioner advocates. Even assuming Petitioner's concerns with noise were valid, Petitioner cannot use the mandamus process to impose its policy preferences on the City. Because Petitioner does not and cannot identify an existing mandatory, ministerial duty for the City to apply the Noise Ordinance to taxi backs and other pilot training activities beyond the four specific training operations identified in the Noise Ordinance, Petitioner fails to state a cause of action that can support a right to mandamus. Nor, given the plain language of the Noise Ordinance, can Petitioner amend its Petition to correct this deficiency. Therefore, the Demurrer should be sustained without leave to amend.

II. FACTUAL ALLEGATIONS

The City will not summarize the allegations of the Petition, most of which are legal in nature. However, because the Petition does not fully quote the relevant provisions of the Noise Ordinance upon which it depends, the City will quote them here.

City of Long Beach Code Section 16.43.030(A) provides in relevant part as follows:

> 16.43.030 Prohibited activities.
> A. Training Operations. No Touch and Go, Stop and Go, Practice Low Approach, or VFR Practice Missed Approach shall be conducted at the Airport except between seven a.m. and seven p.m. on weekdays and between eight a.m. and three p.m. on Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day; provided, however, that if any such holiday falls on Saturday or Sunday and, as a result, a holiday is observed on the preceding Friday or succeeding Monday, then

> such Friday or Monday, as the case may be, shall be considered to be a holiday for purposes of this Section.

Petn. ¶ 23. The term "Training operation means Touch and Go, Stop and Go, Practice Low Approach, and Practice Missed Approach Operation, or any of them." Petn. ¶ 23. Although not quoted in the Petition, the four training operations listed in section 16.43.030(A) and section 16.43.010(P) are defined as follows:

> "Practice Low Approach" and "Practice Missed Approach" means an action by an aircraft consisting of an approach to or over the Airport for a landing where the pilot intentionally does not make contact with the runway. Noise Ordinance § 16.43.010(L).
>
> "Stop and Go" means an action by an aircraft consisting of a landing followed by a complete stop on the runway and a takeoff from that point. Noise Ordinance § 16.43.010(N).
>
> "Touch and Go" means an action by an aircraft consisting of a landing and departure on a runway without stopping or exiting the runway. Noise Ordinance § 16.43.010(O).

The term "taxi back" is not defined or addressed in the Noise Ordinance and not defined in the Petition.[2]

III. ARGUMENT

A. Standard of Review.

A demurrer tests the legal sufficiency of a complaint, *City of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 471, 473, and may be used to "test the legal sufficiency of a petition for writ of mandate." *Santa Paula Animal Rescue Ctr., Inc. v. Cty. of L.A.* (2023) 95 Cal.App.5th 630, 638. Courts "treat the demurrer as admitting all properly pleaded facts and those that are judicially noticeable, but [courts] do not assume the truth of contentions, deductions or conclusions of fact or law." *Mojtahedi v. Vargas* (2014) 228 Cal.App.4th 974, 977. Although a trial court should not sustain a demurrer "unless the [petition] liberally construed fails to state a cause of action on any theory …

[2] The City understands the term "taxi back" to refer to an aircraft making a landing on the runway, exiting the runway, entering a taxiway, and taxiing back to hold short of the runway in order to conduct a separate departure. The landing and departure are separate operations requiring individual air traffic control clearances.

[d]oubt in the [petition] may be resolved against plaintiff and facts not alleged are presumed not to exist." *Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578. A petition is deficient as a matter of law if it fails to state facts sufficient to constitute a cause of action against a defendant, and a demurrer to the petition should be sustained. Code Civ. Proc. § 430.10(e); *McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 78. Further, a trial court may properly sustain the demurrer without leave to amend if there is no reasonable possibility that an amendment could cure the defect. *See Childhelp, Inc. v. City of L.A.* (2023) 91 Cal.App.5th 224, 235.

B. Plaintiff Fails to State a Cause of Action for Writ of Mandate.

"A writ of mandate may be issued by any court … to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station …." Code Civ. Proc. § 1085(a). Therefore, in order to obtain writ relief, Plaintiff must establish that the City had a ministerial duty to perform and that the petitioner "had a clear and beneficial right to performance." *Snowball W. Invs. L.P. v. City of L.A.* (2023) 96 Cal.App.5th 1054, 1072 (quoting *AIDS Healthcare Found. v. L.A. Cty. Dep't of Pub. Health* (2011) 197 Cal.App.4th 693, 370). "[A]bsent a clear duty imposed by law … mandamus is not a proper vehicle for resolution of the asserted grievance." *Shamsian v. Dep't of Conservation* (2006) 136 Cal.App.4th 621, 640.

Because the Noise Ordinance does not contain a ministerial duty to apply Section 16.43.030(A) to pilot training activities other than the four named training operations, Petitioner fails to state a cause of action for a writ of mandamus and the City's demurrer should be sustained. *See Siskiyou Hosp., Inc. v. Cty. of Siskiyou* (2025) 109 Cal.App.5th 14, 41–42 (affirming the trial court's decision to sustain the demurrer without leave to amend because none of the statutes or regulations identified in the complaint included a ministerial duty for the County to act in the manner sought by petitioners).

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1. The Plain Language of the Noise Ordinance Does Not Create a Ministerial Duty to Enforce a Prohibition Against Taxi Backs.

A ministerial duty is one that "a public officer [or entity] is required to perform in a prescribed manner in obedience to the mandate of legal authority without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." *AIDS Healthcare Found.*, *supra*, 197 Cal.App.4th at 700. Whether an ordinance imposes a ministerial duty for which mandamus will lie is a question of statutory interpretation. *Id*. at 701. Courts review "ordinances under the same rules of construction that [they] review statutes." *Riddick v. City of Malibu* (2024) 99 Cal.App.5th 956, 967 (citing *Carson Harbor Vill., Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290).

When interpreting a statute or ordinance, courts are guided by the legislature's intent and so "turn first to the [ordinance's] language, since the words the [governing body] chose are the best indicators of its intent." *Shamsian, supra,* 136 Cal.App.4th at p. 631 (quoting *Freedom Newspapers, Inc. v. Orange Cty. Emps. Ret. Sys.* (1993) 6 Cal.4th 821, 826); *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 268 ("Interpretation of an ordinance presents a question of law that we review de novo.") (quoting *Woodland Park Mgmt., LLC v. City of E. Palo Alto Rent Stabilization Bd.* (2010) 181 Cal.App.4th 915, 919). When the language of an ordinance "is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the [governing body]." *Ibid*. (quoting *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798). "If the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts. … '[t]erms defined by the statute in which they are found will be presumed to have been used in the sense of the definition.'" *Make UC a Good Neighbor v. Regents of Univ. of Cal.* (2024) 16 Cal.5th 43, 57 n.14 (quoting *Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1191).

Where the plain language of a statute or ordinance does not require the defendant

to take the requested action, a ministerial duty does not exist and therefore a writ of mandate is unavailable. Cities and public officials have no discretion to interpret the language of a statute, ordinance, or resolution "contrary to its express terms." *Terminal Plaza Corp. v. City* (1986) 186 Cal.App.3d 814, 833, 834.

In *Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 442–43, the court refused to compel the County to adopt the program requested by the plaintiffs because such a program was not required by the plain language of the statute and therefore, as a matter of law, there was no possibility that the relief sought could be properly awarded after trial. Similarly, in *Blankenship v. Michalski* (1957) 155 Cal.App.2d 672, 676–78, the court held that the trial court properly denied the petition for writ of mandate since the language of the zoning ordinance did not clearly prohibit a pharmacy from operating on the premises of a clinic located in a particular zoning region. And in *Siskiyou, supra,* 109 Cal.App.5th at 43 the court determined demurrer to be appropriate as the petitioner had not directed the court "to any specific statutory language imposing a mandatory or ministerial duty in explicit and forceful language." *See also County of Los Angeles v. Superior Court* (2024) 107 Cal.App.5th 160, 166 (writ of mandate reversing trial court's denial of a demurrer because trial court erred in reading the statute as imposing a mandatory duty); *County of San Bernadino v. Superior Court* (2022) 77 Cal.App.5th 1100, 1110–11 (same).

Applying those principles here, it is clear that the Noise Ordinance does not impose a ministerial duty to limit all pilot training activities, including "taxi backs," to the restricted hours. On its face, the Noise Ordinance only applies to four specific, and precisely defined, operations—Touch and Go, Stop and Go, Practice Low Approach, and VFR Practice Missed Approach. Section 16.43.030(A)'s operative language addresses only Touch and Go, Stop and Go, Practice Low Approach, and VFR Practice Missed Approach operations, each of which is expressly defined in a manner that cannot apply to taxi backs or other pilot training activities. The term "training operations" is defined as meaning *only* those four operations. The court is bound to apply the term "training

operation" as defined, not according to Petitioner's alternative interpretation. *Make UC a Good Neighbor*, *supra*, 16 Cal.5th at 57 n.14. Further, nothing in the definitions of those terms, or the language of Section 16.43.030(A), so much as suggests that *other* pilot training activities, such as taxi backs, are covered by Section 16.43.030(A), let alone state in "explicit and forceful language" a duty to enforce against those activities. *Siskiyou, supra*, 109 Cal.App.5th at p. 43, 44. And applying the term "training operations" to all pilot training activities would have the prohibited effect of rendering the defined terms Touch and Go, Stop and Go, Practice Low Approach, and VFR Practice Missed Approach superfluous. *O.W.L. Found. v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 590 ("a statute is to be interpreted to avoid rendering terms meaningless or superfluous").

Moreover, because the term "training operation" appears only in the heading of Section 16.43.030(A) it does not impart any substantive meaning. Long Beach Code § 1.04.070 states: "Title, chapter and section headings. The title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof." *Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal.4th 1086, 1096 n.2 ("a provision's title 'is never allowed to enlarge or control the language in the body of the [provision]'") (citations omitted). And even if the heading "training operations" could be read to apply broadly, it does so only to generally describe the subject of the section, but the listed activities specifically limit the kinds of "training operations" that are subject to the day-and-time restrictions.

Finally, the definitions of the listed training operations make clear that they do not include taxi backs and similar activities. As Petitioners concede, airports treat "taxi back" operations differently than touch-and-go operations. Petn. ¶ 30 (describing different treatment by Torrance Airport). A taxi back necessarily requires that an aircraft exit the runway in order to depart again. But none of the four identified operations include the use of a taxiway. Touch and Go and Stop and Go operations use only the runway. Noise

Ordinance § 16.43.010(N)–(O). Practice Low Approach and VFR Practice Missed Approach do not even touch the runway, much less a taxiway. Noise Ordinance § 16.43.010(L). The term "flight operations" is expressly limited to those four operations and does not include taxi backs or other pilot training activities.

Unable to point to any substantive term of the Noise Ordinance that might support their attempt to broaden the meaning of "training operation" beyond the four specified operations, Petitioners grasp at linguistic straws to argue that the phrase "or any of them" in the definition of "training operation" somehow expands the term beyond the four listed operations. Petn. ¶ 45. That borders on the absurd. The Noise Ordinance defines "training operation" precisely to describe only four specific aircraft operations. The phrase "or any of them" clearly refers back to those four specific operations and only those four operations. Noise Ordinance § 16.43.010(P). The term "them," is "used, usually as the object of a verb or preposition, to refer to people, things, animals, situations, or ideas that *have already been mentioned*." *Them*, Cambridge Dictionary.[3] The use of "them" thus *limits* the definition to those operations already listed; it does not *expand* the definition of training operations as Petitioner contends. Plainly, "training operation" means any one of those four activities.[4] Petitioner's construction is contrary to the plain meaning of the express terms of the Noise Ordinance and therefore does not establish a ministerial duty enforceable by mandamus.

Highlighting how Petitioner's position conflicts with the plain language of the Noise Ordinance, one would have to rewrite section 16.43.010(P) to replace "or any of *them*" with "or any *other* training operation" to make the Noise Ordinance mean what Petitioner wants. Alternatively, one would have to rewrite the definition of "training operation" or section 16.43.030(A) to add language broad enough to cover all pilot

[3] https://dictionary.cambridge.org/us/dictionary/english/them (last visited July 7, 2025) (emphasis added).

[4] None of the four covered operations can be combined with any of the others to cover taxi backs. A taxi back requires an aircraft to leave the runway, enter the taxiway, taxi back to the departure end of the runway, and take off again. A stop and go or touch and go operation never leaves the runway to enter the taxiway and the missed approach and low approach operations never touch the runway at all. Noise Ordinance § 16.43.010(L), (N), & (P).

training activities *and* delete the defined training operations in the current Noise Ordinance. Further, one would need to add additional defined terms to section 16.43.010, such as "taxi back" and any other pilot training activities that would supposedly be covered by the new definition of "training operation," or, again, delete the current definitions as redundant. Plainly, Petitioner's case rests on an interpretation of the Noise Ordinance that is utterly unsupported by its plain language.

By its plain terms, the Noise Ordinance contains no clear duty to enforce a prohibition on taxi backs during certain hours and consequently, mandamus is not available. *Corley v. Dep't of Motor Vehicles* (1990) 222 Cal.App.3d 72, 78 ("A writ of mandamus will not lie to compel the performance of an act where no duty exists."). Because it is clear from the face of the Petition and the plain language of the Noise Ordinance that there is not a clear duty to enforce a prohibition on taxi backs or other non-enumerated pilot training activities during certain hours the court should grant the demurrer and dismiss the Petition.

2. The City Cannot Be Compelled to Adopt Petitioner's Interpretation of "Flight Operation."

In addition to being foreclosed by the plain language of the Noise Ordinance, the Petition fails to state a claim for mandamus because the City cannot be compelled by mandamus to enforce the Noise Ordinance based on Petitioner's alternative interpretation of the Noise Ordinance. *See Blankenship, supra,* 155 Cal.App.2d at p. 675 (holding that if the city attorney, "in good faith, determines that no violation has occurred, [the city attorney] should not be compelled to institute abatement proceedings").

In *Blankenship*, the court reasoned that "[c]ertainly, someone, in the first instance, must determine whether a proposed use will violate the ordinance." *Blankenship, supra,* 155 Cal.App.2d at p. 675. That determination requires both an analysis of the facts and an interpretation of the ordinance, a responsibility which in that case was best placed on the city attorney. *Ibid.* And in making that determination, the *Blankenship* court acknowledged, the city attorney "necessarily must have some discretion," *ibid,* and the

city attorney "should not be compelled to institute abatement proceedings at the whim or caprice of every taxpayer who disagrees with him" if the city attorney "in good faith, determine[ed] that no violation has occurred." *Ibid*. Given that discretion, the determination of whether or not a violation occurred "should not be controlled by mandamus." *Id*. at 676; *see also State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2016) 248 Cal.App.4th 349, 370 (mandamus is not available to compel an officer to exercise their discretion in a particular manner or to reach a particular result).

Here, section 16.43.090 of the Noise Ordinance charges the Airport Manager with enforcement responsibility and the duty to provide owners and operators of aircraft with written notice that a violation has occurred. Therefore, it is the duty of the Airport Manager to examine the facts and interpret the Noise Ordinance to determine whether there has been a violation. The Airport Manager's interpretation may not be second guessed based on alternative readings by any individual who has their own reading of the Noise Ordinance. As the Petition concedes, the City has determined that Section 16.43.030(A) applies only to the specific operations listed in that section, and not to taxi backs or other pilot training activities. Petn. ¶ 34. The City's discretionary assessment that non-listed operations do not violate the Noise Ordinance may not be overruled in a mandamus action. *Michael Leslie Prods., Inc. v. City of L.A.* (2012) 207 Cal.App.4th 1011, 1026 (affirming the demurrer because "[t]here is no legal basis for a writ of mandate" to compel a City to exercise its discretion in a particular manner).

To be sure, mandamus may be appropriate where the alleged violation of an ordinance is so "clear and obvious" that refusal to enforce would be a clear abuse of discretion. *Blankenship, supra*, 155 Cal.App.2d at p. 675–76; *see also Common Cause, supra,* 49 Cal.3d at p. 442 ("[m]andamus will not lie to control an exercise of discretion but it may issue to compel an official to exercise their discretion "under a proper interpretation of the applicable law"). An abuse of discretion must be based on a violation of a "clear" duty where the ordinance is "not amenable to the strained interpretation urged by [the City]" or public official. *Terminal, supra,* 186 Cal.App.3d at pp. 833, 839.

Conversely, however, cities and public officials have no discretion to interpret the language of a statute, ordinance, or resolution "contrary to its express terms." *Id*. at 834.

Here, the City's application of the Noise Ordinance, even assuming some ambiguity (which does not exist), was not an "abuse of discretion" and is not a "strained interpretation" of section 16.43.030(A). As shown above, the City applies and enforces section 16.43.030(A) based on a direct and straightforward application of its plain terms. Petitioner does not and cannot allege any facts that could support such an allegation. Even if the language "or any of them," Noise Ordinance § 16.43.010(P), creates some ambiguity regarding the covered training operations, the City's construction of the Noise Ordinance is well within the rule in *Blankenship* because it is at worst "reasonably debatable whether a violation ha[d] occurred." *Blankenship, supra*, 155 Cal.App.2d at p. 676. Accordingly, the Airport Manager's "determination [] that no violation had occurred was well within their discretion, and should not be controlled by mandamus." *Id. See also Riggs v. City of Oxnard* (1984) 154 Cal.App.3d 526, 530 ("[I]t is not the function of the court to challenge the municipality's policy and wisdom. 'The function of the courts is to determine whether or not the municipal bodies acted within the limits of their power and discretion.'") (quoting *Wheeler v. Gregg* (1949) 90 Cal.App.2d 348, 361).

That result is reinforced by applying traditional rules of deference applicable to a city's interpretations of its own ordinances. A city's interpretation of its Municipal Code is entitled to respect unless that interpretation is clearly erroneous. *Horwitz v. City of Los Angeles* (2004) 124 Cal.App.4th 1344, 1354; *see also Motion Picture Studio Teachers & Welfare Workers v. Millan* (1996) 51 Cal.App.4th 1190, 1195 (citations omitted) ("an agency's interpretation of its own regulation is entitled to considerable judicial deference … the agency's construction generally controls unless it is clearly erroneous or inconsistent with the plain language of the resolution").

When determining "[t]he level of deference [to] accord to a [City's] interpretation" the court considers, *inter* alia, whether the City has consistently followed

its interpretation and for how long. *Tower Lane, supra*, 224 Cal.App.4th at p. 276; *see also Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 13 (citation omitted) (an interpretation is more likely to be correct where there is evidence that the agency "has consistently maintained the interpretation in question, especially if [it] is long-standing").

Since the Noise Ordinance was adopted, the City has not enforced section 16.43.030(A) against taxi backs, and Petitioner does not assert otherwise. This long-standing and consistent position warrants deference. *Cf. Tower Lane, supra*, 224 Cal.App.4th at p. 276 ("Because the City cannot point to a consistent and long-standing interpretation, its current interpretation is entitled to no deference"). The consistency in the City's interpretation of its Noise Ordinance is further supported by the fact that the Noise Ordinance is grandfathered under federal law and so the City lawfully *could not* change its position without violating the Airport Noise and Capacity Act, 49 U.S.C. § 47524. 14 C.F.R. § 161.3(b) (requiring FAA review of amendments to pre-existing noise rules that "reduces or limits aircraft operations"). In any event, Petitioner cannot use the mandamus process to compel the City to interpret the Noise Ordinance in a specific way, even if it were not barred by federal law. *See Blankenship*, 155 Cal.App.2d 672, 675–76 (absent an abuse of discretion, mandamus cannot be used to compel a particular interpretation). *See also, City of Palo Alto v. Pub. Emp't Relations Bd.* (2016) 5 Cal.App.5th 1271, 1315 (a writ of mandate cannot be used to compel legislative acts) (citing *Bowles v. Antonetti* (1966) 241 Cal.App.2d 283, 286–87).

Nor can Petitioner point to any credible evidence to contradict this interpretation. Petitioner asserts that the City itself has interpreted section 16.43.030(A) to apply to more than just the four listed training operations, citing the City's Community Guide to Aircraft Noise and the Long Beach Airport Association's ("LBAA") "History of LGB's Noise Compatibility Ordinance." Petn. ¶ 46. But even a glance at those documents show that they do not support the weight Petitioner places on them. *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94 (evidentiary facts found in recitals of exhibits attached to a complaint

can be considered on demurrer). First, those documents are non-regulatory informational pamphlets about the general provisions of the Noise Ordinance; they do not purport to provide binding legal interpretations of the Noise Ordinance and do not form the basis of any actual enforcement action. Second, neither document interprets "training operations" to include taxi backs or other non-enumerated pilot training activities.

The Community Guide to Aircraft Noise mentions training or "training operations" on only two occasions and states that the Airport "established limitations on hours of training," Petn., Ex. 2 at 4, and that the Airport regulates training operations, *id*. at 7. Those statements simply summarize section 16.43.030(A) and nowhere state, or even suggest, that "training operations" means anything more than how the term "training operation" is defined in section 16.43.010(P) or used in section 16.43.030(A). Similarly, the LBAA document mentions training operations once simply to note that the Noise Ordinance places limitations on hours for training operations. Petn., Ex. 3 at 2. Again, a fair summary that does not remotely expand the definition of "training operation" beyond the definition in section 16.43.010(P). Furthermore, LBAA is a nonprofit organization that is not operated by the City or the Airport and independently publishes its own materials; its positions should not be imputed to the City. Petitioner's position is therefore a vast overread of these two documents.

Finally, the allegations of the Petition underscore that Petitioner's case rests on its personal policy arguments to expand the scope of the Noise Ordinance to cover taxi backs and other non-listed training flights rather than on any mandatory obligation to enforce section 16.43.030(A) against those operations. First, Petitioner alleges that changes at other airports have led to an increase in flight training activity at the Airport. Petn. ¶¶ 29–31. Even if that were true, any increase in operations, and any resulting community annoyance, does not change the meaning of the Noise Ordinance as adopted in 1995 or reveal a mandatory duty to apply the Noise Ordinance as Petitioner demands.

Second, and similarly, Petitioner makes allegations about alleged health impacts of aircraft noise, citing recent studies. Petn. ¶¶ 36–41, 47. Again, those assertions do not

change the meaning of the Noise Ordinance or show any mandatory duty to apply section 16.43.030(A) beyond the four listed operations.

For the foregoing reasons, this court should find the Noise Ordinance contains no ministerial duty to enforce a prohibition on taxi backs during certain days and times and should deny the requested mandamus.

C. Leave To Amend Should Not Be Permitted.

Given the pleading defects, and Petitioner's admissions, "there is no reasonable probability or reasonable possibility that the plaintiff can amend his complaint to state a cause of action." *Kilgore v. Younger* (1982) 30 Cal.3d 770, 783. There is no possibility of cure here. No matter what Petitioner re-pleads, it cannot overcome the fact that the Noise Ordinance simply does not contain the ministerial duty that Petitioner seeks to compel. Without a ministerial duty, the writ of mandate will not lie. *State Comp., supra*, 248 Cal.App.4th at p. 370; Code Civ. Proc. § 1085.

IV. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court sustain its demurrer to Plaintiff's Petition without leave to amend.

Dated: July 18, 2025

Respectfully submitted,

KAPLAN KIRSCH LLP

By: _____

William D. Marsh (SBN: 200082)
W. Eric Pilsk (*Pro Hac Vice* Pending)
Peter Kirsch (*Pro Hac Vice* Pending)
Caroline Jaschke (*Pro Hac Vice* Pending)

Attorney for Defendant
City of Long Beach

DECLARATION OR W. ERIC PILSK

I, W. Eric Pilsk, declare as follows:

1. I am attorney at the law firm Kaplan Kirsch LLP and one of the attorneys responsible for representing the Defendants in the above-captioned case. I have filed a motion to be admitted in this case *pro hac* vice. I make this declaration in support of Defendants' Demurrer to the Verified Petition for Writ of Mandamus filed by the Long Beach Small Aircraft Noise Reduction Group. I have personal knowledge of the following matters and, if called as a witness, would competently testify thereto.

2. On July 17, 2025, I spoke with Steven Taber, counsel to Petitioner, to inform him that I intended to file a demurrer to the Petition. We agreed that conferring would not avoid the need to file the demurrer.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct. Executed in Washington, D.C. on July 18, 2025.

Dated: July 18, 2025

Respectfully submitted,

KAPLAN KIRSCH LLP

By: _____

W. Eric Pilsk (*Pro Hac Vice* Pending)
William D. Marsh (SBN: 200082)
Peter Kirsch (*Pro Hac Vice* Pending)
Caroline Jaschke (*Pro Hac Vice* Pending)
Attorney for Defendant
City of Long Beach

PROOF OF SERVICE

I am a citizen of the United States of America and over the age of eighteen (18); I am employed in the County of San Francisco, California; and, I am not a party to this action. My business address is One Sansome Street, Suite 2250, San Francisco, California 94104. On July 18, 2025, in the above-captioned matter, I served a true and correct copy of the following:

NOTICE OF MOTION AND DEMURRER TO PLAINTIFF'S VERIFIED PETITION FOR WRIT OF MANDAMUS; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF W. ERIC PILSK

on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as set forth below:

Steven M. Taber
Mariam El Hasan
Leech Tishman Nelson Hardiman, Inc.
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024
staber@leeshtishman.com
Attorneys for Plaintiff
Long Beach Small Aircraft Noise Reduction Group

☒ (**BY ELECTRONIC MAIL**) I caused the document(s) to be sent from e-mail address (kkahey@kaplankirsch.com) to the person(s) at the e-mail address(es) listed above.

☒ (**BY ELECTRONIC SERVICE**) I caused an electronic version of the documents to be submitted via the State Bar of California's Admissions Applicant Portal as instructed by the California Bar Admissions website. I caused the document(s) to be sent to the Office of Admissions as listed on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed July 18, 2025 in Oakland, California.

Kristine Kahey

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Make a Reservation

LONG BEACH SMALL AIRCRAFT NOISE REDUCTION GROUP vs CITY OF LONG BEACH

Case Number: 25LBCP00240 Case Type: Civil Unlimited Category: Writ - Administrative Mandamus
Date Filed: 2025-05-30 Location: Governor George Deukmejian Courthouse - Department S26

Reservation

Case Name:
LONG BEACH SMALL AIRCRAFT NOISE REDUCTION GROUP vs CITY OF LONG BEACH

Case Number:
25LBCP00240

Type:
Demurrer - without Motion to Strike

Status:
RESERVED

Filing Party:
City of Long Beach (Respondent)

Location:
Governor George Deukmejian Courthouse - Department S26

Date/Time:
08/28/2025 8:30 AM

Number of Motions:
1

Reservation ID:
008351123633

Confirmation Code:
CR-WRYXJHG8UXWPOKRUD

Fees

Description	Fee	Qty	Amount
Demurrer - without Motion to Strike	0.00	1	0.00
TOTAL			**$0.00**

Payment

Amount:
$0.00

Type:
NOFEE

Account Number:
n/a

Authorization:
n/a

Payment Date:
n/a

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