

389-R: Landing and Fuel Flowage Fees; Fuel Transportation Vehicles

ENACTED MAY 14, 1997

AN ORDINANCE REGARDING LANDING AND FUEL FLOWAGE FEES AND REGULATING OPERATION OF FUEL TRANSPORTATION VEHICLES ON AIRPORTS.

BE IT ENACTED BY THE PORT OF PORTLAND:

Section 1. Findings and Purpose

1.1 Findings

The Port of Portland finds that:

1.1.1 The Port owns and operates a system of airports which includes Portland International Airport, Portland-Hillsboro Airport, Portland-Mulino Airport, and Portland-Troutdale Airport, which are used for the taking off, landing, operation and storage of aircraft, and the conduct of businesses supporting aviation activities; and

1.1.2 The Airports promote a strong economic base for the community, assist and encourage world trade opportunities, and are of vital importance to the health, safety, and welfare of the State of Oregon; and

1.1.3 It is essential that the Airports remain financially self-sufficient to perform their transportation role in the community and to provide the community with cost effective aviation facilities; and

1.1.4 The revenues received from users of the Airports are vital to the economic well-being of the Airports; and

1.1.5 The Port will incur substantial expenditure for capital investment, operation, maintenance, and development of the facilities at the Airports to meet the future demand for airport services to accommodate the air transport of persons and cargo; and

1.1.6 Portland-Hillsboro Airport, Portland-Mulino Airport, and Portland-Troutdale Airport have sustained net losses throughout their respective periods of operation by the Port, and have never produced revenues sufficient to offset the Port's operating and capital costs for aeronautical assets in use at such airports; and

1.1.7 Fuel flowage fees imposed on the delivery of fuel at the Airports currently paid by certain aviation tenants have not been sufficient to offset the Port's costs of providing airfield assets and services at the Airports; and

1.1.8 As a recipient of financial assistance from the United States Government for development of the Airports, the Port is required, pursuant to 49 USC § 47107, to maintain a schedule of charges for use of facilities and services at the Airports that will make the Airports as self-sustaining as possible under the circumstances existing at the Airport, including volume of traffic and economy of collection; and

1.1.9 Pursuant to 49 USC §~47107, the Port is required to make the Airports available for public use on reasonable conditions and without unjust discrimination; and

1.1.10 The Federal Aviation Administration (FAA) has directed airports to ensure that rates, fees, rentals, landing fees, and other service charges imposed on aeronautical users of the Airports for aeronautical uses are fair and reasonable and, unless otherwise agreed to by the affected aeronautical users, do not exceed the costs of providing airfield assets and services currently in aeronautical use at the Airports; and

1.1.11 The FAA has further directed that airport fees should be established using a consistent methodology for comparable aeronautical users, that fees imposed on a group of aeronautical users should not exceed the costs allocated to that user group, that reasonable distinctions may be made among aeronautical users, and that differing charges may be imposed on categories of aeronautical users based on those distinctions; and

1.1.12 ORS 778.025(5) authorizes the Port to operate and maintain airports and collect charges for the use of such facilities, and ORS 836.210 further authorizes the Port to provide by regulation for charges, fees, and tolls for the use of the Airports and civil penalties for the violations of such regulations; and

1.1.13 In order to raise revenue for purposes of making the Airports as self-sustaining as possible under the circumstances existing at the Airport and maintaining, operating, and developing the Airports for the convenience of aviation users and the traveling public, and to preserve existing revenues, protect the public, preserve order, provide for the public health, safety and welfare, enhance the welfare of the Port, and govern use of Airport property, it is necessary to adopt and implement the fees specified in this Ordinance to be paid by persons utilizing the Airports for aviation purposes; and

1.1.14 Because Commercial Aircraft Operators derive revenues from using the Airports for commercial purposes, it is fair and reasonable that Commercial Aircraft Operators contribute to a greater degree than non-revenue generating users toward the maintenance, operation, and continued development of the Airports and making the Airports self sustaining, and that such greater contribution by Commercial Aircraft Operators does not unjustly discriminate against this group of Airport users; and

1.1.15 Because large Aircraft make greater demands on runways, taxiways, and other Primary Airport facilities, which demands require greater maintenance, operating, and capital expenditures by the Port to permit such continued use of the Primary Airports by such large Aircraft, a landing fee imposed on operators of such large Aircraft does not unjustly discriminate against this group of Airport users; and

1.1.16 It is customary for airports that charge landing fees to base the fees on landed weight of Aircraft, and to exclude from the landing fee requirement Aircraft below a minimum landed weight; and

1.1.17 The operation of fuel transportation vehicles on the Airports without appropriate environmental and safety precautions poses a threat to the health, economic vitality, and safety of persons living in the community, the State of Oregon, and other citizens utilizing the Airports, and exposes the Port to potential liability for environmental clean up and remediation; and

1.1.18 In order to protect the public, to provide for public safety, and to preserve the good order of the Port, it is necessary to enact and provide for implementation of standards, controls, and procedures for operation of fuel transportation vehicles on the Airports.

1.2 Purpose

The purpose of this Ordinance is to enact landing and fuel flowage fees and to establish environmental and safety requirements for Fuel Transportation Vehicles consistent with the above findings, and this Ordinance shall be liberally construed to effectuate this purpose.

Section 2. Definitions

As used in this Ordinance:

2.1 "Airports" and "Airport"

"Airports" shall mean, collectively, those certain airports located in Multnomah County, Oregon, known as Portland International Airport and Portland-Troutdale Airport; in Washington County, Oregon, known as Portland-Hillsboro Airport; and in Clackamas County, Oregon, known as Portland-Mulino Airport, including all facilities and roads located at or on such airports. "Airport" shall mean any one of the Airports.

2.2 "Aircraft"

"Aircraft" shall mean every contrivance invented, used, or designed to navigate, or fly in, the air.

2.3 "Commercial Aircraft Operator"

"Commercial Aircraft Operator" shall mean any Person engaged in the carriage in air commerce of Persons or property for compensation or hire including but not limited to any Person whose operations are governed by Parts 121 or 135 of the Code of Federal Regulations, Title 14, Chapter I, Subchapter G, promulgated by the United States Federal Aviation Administration, Department of Transportation, as in effect on the effective date of this Ordinance, and as amended, supplemented, and replaced from time to time.

2.4 "Excluded Commercial Aircraft Operator"

"Excluded Commercial Aircraft Operator" shall mean a Person described in Section 3.2.1 of this Ordinance.

2.5 "Executive Director"

"Executive Director" shall mean the Port's Executive Director or his designee.

2.6 "Fee"

"Fee" shall mean the Landing Fee and Fuel Flowage Fee authorized by this Ordinance.

2.7 "Fuel"

"Fuel" shall mean any gasoline and any other inflammable or combustible gas or liquid usable as fuel for the operation of Aircraft.

2.8 "Fuel Flowage Fee"

"Fuel Flowage Fee" shall mean the Fuel Flowage Fee authorized in Section 4.1 of this Ordinance.

2.9 "Fuel Operator"

"Fuel Operator" shall mean any Person who operates any system or device used to store or dispense Fuel at the Airports, including but not limited to a Fuel storage tank, Fuel Transportation Vehicle, or similar system or device.

2.10 "Fuel Transportation Vehicle"

"Fuel Transportation Vehicle" shall mean any form of transportation that is used in and capable of transporting Fuel on Airport roads, parking areas, ramp areas, taxiways, runways, or elsewhere on the Airport.

2.11 "Government Aircraft"

"Government Aircraft" shall mean any Aircraft owned or operated by the United States government or any of its agencies.

2.12 "Landed Weight"

"Landed Weight" shall mean the maximum permissible gross weight which an Aircraft may lawfully have at the time of landing at any airport in the United States as set forth in Federal Aviation Administration specifications for such Aircraft.

2.13 "Landing Fee"

"Landing Fee" shall mean the Landing Fee authorized in Section 3.1 of this Ordinance.

2.14 "Large Aircraft"

"Large Aircraft" shall mean any Aircraft having a Landed Weight that exceeds 10,000 pounds.

2.15 "Large Aircraft Operator"

"Large Aircraft Operator" shall mean a Person operating any Large Aircraft.

2.16 "Mobile Storage Tank Use Agreement"

"Mobile Storage Tank Use Agreement" shall mean an agreement in force between the Port and a Person which expressly authorizes the Person to operate a Fuel Transportation Vehicle on an Airport in accordance with prescribed terms and conditions.

2.17 "Permit"

"Permit" shall mean the Permit required pursuant to Section 5.1.

2.18 "Permittee"

"Permittee" shall mean any Person required by this Ordinance to have a Permit for operation of a Fuel Transportation Vehicle on an Airport.

2.19 "Person"

"Person" shall mean an individual, sole proprietorship, association, corporation, partnership, limited liability company, joint venture, or any other business arrangement or organization.

2.20 "The Port of Portland" or "Port"

"The Port of Portland" or "Port" shall mean the Port District created by the Oregon Legislature by laws codified in Oregon Revised Statutes, Chapter 778, as amended.

2.21 "Primary Airports" and "Primary Airport"

"Primary Airports" shall mean all Airports except Portland-Mulino Airport. "Primary Airport" shall mean any one of the Primary Airports.

Section 3. Landing Fees

3.1 Fees Required

Except as provided in Section 3.2, every Commercial Aircraft Operator and every Large Aircraft Operator shall pay a fee ("Landing Fee") on each landing of an Aircraft at any Primary Airport. The Executive Director shall establish Landing Fee rates for each Airport assessed per 1,000 pounds of Landed Weight; provided that such rates shall be fair and reasonable for the affected Persons and shall not exceed the Port's costs of providing airfield assets and services currently in aeronautical use at the Primary Airports. The Executive Director may adjust Landing Fee rates from time to time consistent with this section.

3.2 Exceptions

No Landing Fee shall be imposed pursuant to Section 3.1 on the following landings:

3.2.1 Excluded Commercial Aircraft Operator. A landing by a Commercial Aircraft Operator who is required to pay a fee to the Port for such landing pursuant to the terms of an agreement between the Port and the Commercial Aircraft Operator (an "Excluded Commercial Aircraft Operator").

3.2.2 Emergency or Precautionary Landings. A landing of an Aircraft which departs from a Primary Airport for another destination and is forced to return and land at the same Primary Airport because of meteorological conditions, mechanical or operating causes, or for any similar emergency or precautionary reason.

3.2.3 Government Aircraft. A landing by a Government Aircraft, unless the Landing Fee is permitted by applicable United States law and is imposed pursuant to a written agreement between the Port and the United States government or an agency thereof.

3.2.4 Test Flights. A landing by any Aircraft engaged in a non-revenue producing test flight approved by the Executive Director that is necessary to meet operational, safety, or Federal Aviation Administration requirements.

3.2.5 Helicopter Landings on Leased Areas. A landing by a Commercial Aircraft Operator or Large Aircraft Operator of a helicopter on an area leased by the Commercial Aircraft Operator or Large Aircraft Operator from the Port pursuant to a lease which permits the landing of helicopters on such area.

3.3 Collection

Landing Fees shall be collected by the Port in accordance with procedures established by the Executive Director. Unless the Executive Director has established other payment procedures, or credit arrangements satisfactory to the Executive Director have been made in advance, every Commercial Aircraft Operator and Large Aircraft Operator shall pay all unpaid Landing Fees before the next takeoff of an Aircraft owned, operated or controlled by the Commercial Aircraft Operator or Large Aircraft Operator. A delinquency charge in an amount established by the Executive Director shall be imposed on all Landing Fees not paid when due. All Commercial Aircraft Operators and Large Aircraft Operators at the Primary Airports shall promptly provide the Port reports on forms provided by the Port containing information necessary to calculate the Landing Fee.

Section 4. Fuel Flowage Fees

4.1 Fees Required

Every Fuel Operator shall pay a fuel flowage fee ("Fuel Flowage Fee") on all Fuel transported onto the Airports; provided that no Fuel Flowage Fee shall be imposed on Fuel which is sold to an Excluded Commercial Aircraft Operator. The Fuel Flowage Fee shall be assessed at the time Fuel is transported onto an Airport by a Fuel Operator, and a credit or other appropriate adjustment shall be given to the Fuel Operator with respect to Fuel which is subsequently sold to an Excluded Commercial Aircraft Operator. The Fuel Flowage Fee shall be an amount payable on each gallon or similar measuring unit established by the Executive Director for each category of Fuel, and may be adjusted by the Executive Director from time to time.

4.2 Collection

Fuel Flowage Fees shall be collected by the Port in accordance with procedures established by the Executive Director. Unless the Executive Director has established other payment procedures, or credit arrangements satisfactory to the Executive Director have been made in advance, all Fuel Flowage Fees shall be paid by a Fuel Operator no later than 20 days after the end of the calendar month in which Fuel is transported onto an Airport. A delinquency charge in an amount established by the Executive Director shall be imposed on all Fuel Flowage Fees not paid when due. All Fuel Operators shall promptly provide the Port reports containing information specified by the Port which is necessary to calculate the Fuel Flowage Fee.

Section 5. Use of Airports by Fuel Transportation Vehicles

5.1 Permit Required

No Person shall operate a Fuel Transportation Vehicle on any portion of an Airport except pursuant to a valid permit ("Permit") issued by the Port or pursuant to a Mobile Storage Tank Use Agreement expressly allowing such operation. The Permit shall contain, at a minimum, the terms and conditions contained in this Ordinance, and such other terms and conditions as the Executive Director deems necessary or appropriate. Use of the Airports or any of the Airport facilities by an operator of a Fuel Transportation Vehicle shall be deemed acceptance of the terms and conditions of the Permit.

5.2 Permit Terms

At a minimum, all Permittees shall be required by the terms of the Permit to:

5.2.1 Insurance. Provide the Port written certificates of insurance evidencing insurance coverage of types and in amounts established by the Executive Director.

5.2.2 Indemnity. Indemnify the Port and its commissioners and employees against any claim of any type whatsoever arising out of the presence of the Permittee or the Permittee's Fuel Transportation Vehicle at the Airport.

5.2.3 Fuel Transportation Vehicle Identification. Provide the Port the make, model, color, license number, identification number, and motor vehicle registration number of all Fuel Transportation Vehicles to be operated on the Airports.

5.2.4 Business Permits. Provide the Port written proof, upon request by the Port, of all business and motor vehicle permits required by local, state, and federal regulations.

5.2.5 Other Standards. Comply with all environmental and safety laws applicable to operation of Fuel Transportation Vehicles at the Airports, and such other standards as the Executive Director deems necessary or appropriate to protect the environment, the Port, and the public health, safety, and welfare from the potential harmful effects of spills and releases from Fuel Transportation Vehicles.

Section 6. Penalties

6.1 Civil Sanctions

In the event any Person violates any term or condition of this Ordinance, the Port may exercise any rights or remedies allowed by law or equity, including without limitation, imposition of a civil penalty pursuant to ORS 836.210 of not more than \$500 per violation, and, in the case of a violation of any term or condition of any Permit granted pursuant to this Ordinance, after reasonable notice and hearing, suspension or termination of the rights granted pursuant to the Permit. In the event that any Permit is so suspended or terminated, any covenant or condition (including, but not limited to, indemnification covenants), set forth in the Permit, the full performance of which is not specifically required prior to the suspension or termination of the Permit, and any covenant or condition which by its terms is to survive, shall survive the suspension or termination of the Permit and shall remain fully enforceable thereafter.

6.2 Criminal Sanctions

Any Person violating this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250 per violation.

Section 7. Severability

In the event any phrase, clause, sentence, paragraph, or paragraphs of this Ordinance is declared invalid for any reason, the remainder of the Ordinance shall not be thereby invalidated, but shall remain in full force and effect, all parts being declared separable and independent of all others.

Section 8. Effective Date

The effective date of this Ordinance shall be July 1, 1997.