

ORDINANCE NO. 412-R
OF THE PORT OF PORTLAND

OFF-AIRPORT RENTAL CARS AND PARKING LOT BUSINESSES

AN ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 349 ESTABLISHING A PRIVILEGE FEE FOR OFF-AIRPORT RENTAL CAR AND PARKING LOT BUSINESSES UTILIZING PORTLAND INTERNATIONAL AIRPORT.

BE IT ENACTED BY THE PORT OF PORTLAND:

SECTION 1 FINDINGS AND PURPOSE

1.1 The Port of Portland, the Port, is a port district of the State of Oregon, finds as follows:

1.1.1 The Port owns and controls a system of airports including that certain airport and air navigation facility located in Multnomah County, State of Oregon, being generally shown on **Exhibit A**, attached hereto and known as the Portland International Airport (the "Airport"), including the ingress and egress road named Airport Way; and

1.1.2 The aviation facilities it owns and operates at the Airport promote a strong economic base for the community, assist and encourage world trade opportunities, and are of vital importance to the welfare of the State of Oregon; and

1.1.3 The deregulation of the airline industry, the restructuring of airline ownerships, and fluctuating market changes in the field of commercial aviation create continuing financial challenges on the Port in operating the Airport; and

1.1.4 The Port will require substantial capital investment of landside and airside development to meet the future demand for air travel at the Airport; and

1.1.5 The unregulated use of the Airport poses a threat to the peace, health, economic vitality, and safety of persons living in the community, the state of Oregon, and other citizens utilizing the Airport; and

1.1.6 The revenues received from commercial users of Airport facilities are vital to the economic well-being of the Port; and

1.1.7 Commercial users of the Airport receive substantial economic benefit from their use of the Airport; and

1.1.8 That it is essential that the Port remain financially healthy to perform its economic role in the community and to provide the community with cost-effective aviation facilities at the Airport; and

1.1.9 That, in order to raise revenue for purposes of providing facilities for the traveling public, including customers of Off-Airport car rental and Parking Lot Businesses as hereinafter defined, pay for Airport equipment; protect the public; preserve order; provide for the public health, safety and welfare; enhance the welfare of the Port; and govern use of the Airport property; it is necessary to adopt and implement a privilege fee for Off-Airport Car Rental Businesses and Parking Lot Operators who are granted the privilege of accessing Airport customers and thereby utilizing Port facilities; and

1.1.10 On-Airport Rental Car Businesses that may also choose to operate off-Airport parking lot operations are subject to the regulations, fees and charges imposed by this Ordinance; and

1.1.11 In establishing and implementing this privilege fee, the Port finds that Off-Airport Rental Car Businesses and Parking Lot Operators constitute specific classes of business operations at the Airport; and

1.1.12 The Port finds that the privilege fee adopted herein is reasonable and uniform for the privileges or services affected; and

1.1.13 The Port has heretofore publicly advertised for rental car concession leases for full and limited service on-Airport concessions by persons or corporations wishing to operate either full service or limited service rental car concessions on-Airport, which agreements are on file at the administrative offices of the Port and pursuant to which leases were awarded and entered into with various rental car concessionaires on-Airport; and

1.1.14 The aforementioned rental car concession leases have reasonable requirements, charges, and fees for the privilege of operating rental car concessions at the Airport, based on the property and improvements used, the expenses of Airport operation, the cost of Airport facilities, including Airport debt retirement; and

1.1.15 Off-Airport Rental Car Businesses and Parking Lot Operators not having leases with the Port that allow operating on the Airport may, nevertheless, desire the privilege of accessing Airport customers and supplying services at the Airport; and

1.1.16 There has been a change in the nature of the rental car concessions on-Airport since the adoption of Port Ordinance No. 349 pursuant to the construction of the Airport's parking garage and the development of leases for both limited and full service rental car concessions on-Airport; and

1.1.17 That, in order to protect the public, to provide for public safety, to preserve the good order and peace of the Port, and to raise revenue for purposes of maintaining and expanding Airport facilities, it is necessary to enact and provide for implementation of reasonable standards, controls, rules, regulations, and procedures for Off-Airport Rental Car Businesses and Parking Lot Operators.

1.2 The purpose of this Amended and Restated Ordinance is to enact regulations consistent with the above findings and this Ordinance and the regulations published pursuant thereto shall be liberally construed to effectuate the purposes expressed herein.

SECTION 2 DEFINITIONS

As used in this Ordinance:

2.1 "Airport" shall mean the area of Portland International Airport with the boundaries as shown and outlined on **Exhibit A** attached hereto and incorporated herein by this reference.

2.2 "Airport Customer" shall mean any person who arrives at, or departs from, the Airport, and: (1) who is transported to or from an Off-Airport Rental Car Business or Parking Lot Operator's location via a Ground Transportation Vehicle for the purpose of entering into a car rental or parking lot space agreement.

2.3 "Director" shall mean the Director of Aviation of the Port. "Executive Director" shall mean the Executive Director of the Port.

2.4 "Gross Revenues," for the purpose of determining the Privilege Fee under this Ordinance, shall mean, unless specifically excluded herein:

"Gross Revenues" shall be determined by the total of charges on the face of the customer's receipt, less any charges excluded in the definition of Gross Revenues, and shall mean, unless specifically excluded herein all amounts paid or payable to or considerations of determinable value received by Permittee, after any discounts are deducted at the time of rental or provision of service, for: (a) all charges, including, but not limited to, time and mileage charges and separately stated fees for rental of vehicles and other related or incidental services or merchandise, and any other items or services, made at or from the Airport, regardless of where the vehicles or services are delivered to or returned; (b) all amounts charged to the customer for insurance offered by Permittee incidental to the rental of such vehicles, including but not limited to personal accident insurance; (c) all charges attributable to any vehicle originally rented at the Airport which is exchanged at any other location; (d) all proceeds from the long-term lease of vehicles from any location on the Airport; (e) all amounts charged to Permittee's customers and which are separately stated on the rental agreement as an optional charge for waiver by Permittee of its right to recover from customer for damage to or loss of the vehicle rented; (f) all amounts charged to Permittee's customers at the commencement or the conclusion of the rental transaction for the cost of furnishing and/ or replacing fuel provided by Permittee; and (g) all amounts charged by Permittee and described as a pass-through to its customers of Percentage Fees. The following shall be excluded from Gross Revenues: (i) any federal, state, county or city sales or other taxes or surcharges separately stated to and collected from customers of Permittee and paid in full by

Permittee to the taxing authority; (ii) any amounts received as insurance proceeds or otherwise for damage to vehicles or other property of Permittee, or for loss, conversion or abandonment of such vehicles; (iii) revenue from the wholesale transfer of salvage vehicles; (iv) all non-revenue rentals to employees of Permittee; and (v) fees paid to other governmental agencies, excluding the Port, relating to transactions at the Airport. The retroactive adjustment by Permittee of Gross Revenues designated as volume discounts, corporate discounts or any other designation of any nature, or for any purpose, is prohibited.

2.5 "Ground Transportation Vehicle" shall mean any form of transportation traveling on streets, roads, or highways that is owned by, leased by, used by or at the request of, or procured by or at the request of, an Off-Airport Rental Car Business or Parking Lot Operator, their agents, employees, officers, contractors, or subcontractors for the purpose of transporting Airport Customers, whether said transportation is for hire or provided without charge.

2.6 "On-Airport Rental Car Business" shall mean any person, association, corporation, partnership, joint venture, or any other business arrangement or organization which has entered into Rental Car Concession Lease and Operating Agreement, a Rental Car Kiosk Lease, or such other lease or operating agreement with the Port on the Airport, the primary purpose of which is to conduct rental car transactions from or through the leased property on the Airport.

2.7 "Off-Airport Rental Car Business" shall mean such business which is conducted with an Airport Customer through or from a facility which is not leased from the Port on the Airport, such business shall be subject to the Privilege Fee on Gross Receipts as provided in this Ordinance.

2.8 "Parking Lot Operator" shall mean a person, association, corporation, partnership, joint venture, or any other business arrangement or organization, also referred to in this Ordinance as "Permittee," which utilizes the Airport by accessing Airport Customers for the purpose of picking up or delivering Airport Customers and transporting Airport Customers to the Airport from parking lot facilities or from the Airport to parking lot facilities where said parking lot facilities are at locations other than on the Airport.

2.9 "Permittee" shall mean, and be synonymous with, Off-Airport Rental Car Business and Parking Lot Operator.

2.10 "Privilege Fee" shall mean the fee as described in this Ordinance and imposed on Off-Airport Rental Car Businesses and Parking Lot Operators for the privilege granted to said businesses and operators of accessing Airport Customers.

2.11 "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.

SECTION 3 PRIVILEGE FEE

3.1 Any Permittee, as defined by this Ordinance, must obtain a permit from the Director, hereinafter the "Ordinance No. 412-R Permit", the acceptance of such permit will indicate agreement to the following minimum terms and conditions:

3.1.1 Privilege Fee on Gross Revenues: Permittee shall pay to the Port during the applicable term of the Ordinance No. 412-R Permit such percentage of Gross Revenues as the Executive Director from time to time may set, hereinafter the "Privilege Fee", provided that any change of percentage rate shall not take effect before ninety days after the date of written notice sent to all the then current Ordinance No. 412-R Permit holders, said notice being mailed to the last known address on file with the Port for said Ordinance No. 412-R Permit holders; and further provided that said percentage rate, as it relates to Off-Airport Rental Car Businesses, shall not exceed the percentage rate charged to the rental car businesses holding an executed and valid lease for property located at the Airport. Said Gross Revenues payment shall be due and payable on or before the twentieth day of each month for the preceding month's Gross Revenues.

3.2 A Permittee shall provide the Port with:

3.2.1 Written proof of commercial general liability insurance, including automobile liability covering owned, hired, and non-owned vehicles in the amount of at least TWO MILLION DOLLARS (\$2,000,000), or such other amount as may be required pursuant to the Ordinance No. 412-R Permit on not less than sixty (60) days advance notice, combined single limit, for each occurrence for bodily injury, death, or property damage occurring by reason of Permittee's operations on the Airport. The policy or policies providing said coverage shall include premises, operations, independent contractors, personal injury (deleting any exclusion relating to employees), products, and contractual liability including, but not limited to, the liability assumed by Permittee under the hold harmless provisions of the Ordinance No. 412-R Permit.

3.2.2 The make, model, color, identification number, and motor vehicle registration number of all vehicles to be operated on Airport property.

3.2.3 The names and job titles of local management personnel, as well as, all business employees engaged in the operation of vehicles to be operated on Airport property.

3.2.4 Written proof of all business and motor vehicle permits required by local, state, and federal regulations.

3.2.5 Written proof to the Port of all Gross Revenues at the time payment is due on a form approved by the Director and accompanied by a statement certified by an officer of the company attesting to the accuracy of payments due the Port.

3.2.6 Authority for the Port to audit all business records and accounts during business hours upon demand and to make said records and accounts available in Portland, Oregon, or surrounding vicinity. Should any examination, inspection, and audit of the books and records by the Port disclose an underpayment by the Permittee in excess of two percent (2%) of the consideration due, the Permittee shall promptly pay the Port the amount of such underpayment and shall reimburse the Port for all costs incurred in the conduct of such examination, inspection, and audit. In the event that the Port deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination,

inspection, and audit, then said Permittee shall reimburse the Port for reasonable attorney's fees and litigation expenses as part of the aforementioned costs incurred.

3.2.7 Indemnification from any and all claims whatsoever and written proof of insurance for such contractual liability.

3.2.8 Agreement to pay interest and delinquency charges at the rate of eighteen percent (18%) per annum on any amount not paid when due, which charge shall apply to amounts determined to be due as a result of an audit pursuant to Section 3.2.6 herein if such amount is not paid within fifteen days after written notice from the Port that such amount is due.

3.3 The Director is authorized to issue and publish additional rules and regulations to implement this Ordinance and to include additional terms and conditions in the Ordinance No. 412-R Permit form as deemed necessary by the Director.

SECTION 4 VIOLATIONS

4.1 Civil Sanctions: In the event a Permittee violates any term or condition of this Ordinance or of the Ordinance No. 412-R Permit granted pursuant to this Ordinance, the Port may, after reasonable notice and hearing, suspend or terminate the rights granted pursuant to said Ordinance No. 412-R Permit. Where the Permittee is required to provide reports or pay money to the Port, each calendar day that Permittee is delinquent in providing such reports or paying such money shall be deemed a separate violation hereof.

SECTION 5 SAVINGS CLAUSE

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

ADOPTED THIS 10th day of March, 2004, being the date of its second reading before the Board of Commissioners of the Port of Portland.