

# **359: Passenger Facility Charge at PDX [As Amended by Ord. 383-R and Ord. 402-R]**

(Enacted October 9, 1991, as amended pursuant to Ordinance No. 383-R which was enacted May 2, 1996 and Ordinance No. 402-R which was enacted February 14, 2001)

## **AN ORDINANCE ESTABLISHING A PASSENGER FACILITY CHARGE AT PORTLAND INTERNATIONAL AIRPORT.**

BE IT ENACTED BY THE PORT OF PORTLAND

### **Section I. Definitions**

As used in this Ordinance:

1.1 The "Act" shall collectively mean the Aviation Safety and Capacity Act of 1990 (Pub. L. 101-508, Title IX, Subtitle B, November 5, 1990) and the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (49 USCA § 40101, Pub. L. 106-181, April 5, 2000). **[This paragraph amended pursuant to Section 1 of Ordinance 402-R]**

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

1.3 "Air Taxi/Commercial Operator" shall mean the carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. "Air Taxi/Commercial Operator" shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the Airport, ferry or training flights, aerial photography or survey charters, and fire fighting charters.

1.4 "Charge Effective Date" shall mean the date on which the Passenger Facility Charge is effective as provided in Section 3.1 of this Ordinance.

1.5 "Enplaned Passenger" means a domestic, territorial or international revenue passenger enplaned at the Airport in a scheduled or nonscheduled aircraft in interstate, intrastate, or foreign commerce, provided that Enplaned Passenger shall not include a passenger enplaning to a destination receiving essential air service compensation as provided by the Act and regulations promulgated under said Act.

1.6 "Executive Director" shall mean the Executive Director of the Port of Portland.

1.7 "FAA" shall mean the Federal Aviation Administration, Department of Transportation, United States of America.

1.8 "Passenger Facility Charge" shall mean the charge imposed on Enplaned Passengers pursuant to Section 3.1 of this Ordinance.

1.9 "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 1.6 of Ordinance No. 359 is deleted in its entirety, and the subsequent subsections of Section 1 are renumbered accordingly pursuant to Section II of Ordinance 402-R]**

### **Section II. Findings and Purpose**

2.1 The Port of Portland finds that:

2.1.1 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 the attached Exhibit A and known as Portland International Airport ("Airport"); and

2.1.2 The Airport promotes a strong economic base for the community, assists and encourages world trade opportunities, and is of vital importance to the health, safety, and welfare of the State of Oregon; and

2.1.3 The Airport is a commercial service airport as that phrase is defined in 14 Code of Federal Regulations Part 158, as adopted by FAA, being a public airport enplaning 2,500 or more scheduled air passengers per year; and

2.1.4 The deregulation of the airline industry, the restructuring of airline ownerships, and fluctuating market changes in the field of commercial aviation have placed financial challenges on Airport facilities and operations; and

2.1.5 The Passenger Airline Operating and Lease Agreement between the Port and certificated air carriers imposes financial responsibility on the Port for certain specified Airport facilities and operations; and

2.1.6 The Port will require substantial expenditure for capital development of Airport facilities to meet the future projected demand for passenger air travel; and

2.1.7 The Port has adopted a Master Plan which anticipates substantial capital improvements and development costs over the next twenty years; and

2.1.8 The Port anticipates that revenue from all of the Airport's other funding sources, including grants, revenue bonds, and bond coverage, will not be sufficient to pay for all of the anticipated capital improvements; and

2.1.9 The Congress of the United States authorized the adoption of a Passenger Facility Charge program by local airports pursuant to the Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101-508, Title IX Subtitle B, November 5, 1990) and later acted to allow airports to charge a higher Passenger Facility Charge by enacting the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, as more particularly described in Section 1.1; and

2.1.10 It is in the Port's best economic interest, and in the interest of airline passengers and the airline industry, that the Port continue and increase the Passenger Facility Charge first authorized by the Commission by adoption of Ordinance No. 359, as amended by Ordinance No. 383-R, in order to maintain and to expand, as necessary, the transportation facilities of the Airport, all in accordance with the increased authority authorized by the Act; and

**[Sections 2.1.4 through 2.1.10 of Ordinance No. 359 are amended pursuant to Section III of Ordinance 402-R]**

2.1.11 In establishing and implementing the Passenger Facility Charge program, the passengers using the Airport should contribute to a greater degree toward the development of Airport Facilities used by passengers and continued development thereof; and

2.1.12 The fees implemented by this Ordinance are reasonable for the use of the Airport and Port aviation facilities by the general public; and

2.1.13 Air Taxi/Commercial Operators comprise less than 1 percent of the total annual enplaned passengers at the Airport and collection of this Passenger Facility Charge would constitute a disproportionate financial burden on these carriers and the Port.

2.2 The purpose of this Ordinance is to continue a Passenger Facility Charge program consistent with the above findings and this Ordinance and the regulations published pursuant thereto shall be liberally construed to effectuate the purposes expressed. **[Section 2.2 of Ordinance No. 359 is amended pursuant to Section IV of Ordinance 402-R]**

### **Section III. Passenger Facility Charge**

3.1 Commencing no earlier than the first day of the second month after the approval by FAA of the Port's Passenger Facility Charge program authorized by this Ordinance, or on such date thereafter as the Passenger Facility Charge can be collected as determined by the Executive Director ("Charge Effective Date"), there shall be imposed upon each Enplaned Passenger at Portland International Airport a Passenger Facility Charge of \$3.00 ("Passenger Facility Charge"), provided that no Passenger Facility Charge shall be imposed upon Air Taxi/Commercial Operators.

3.2 Commencing no earlier than October 1, 2001, or on such date thereafter as the FAA authorizes collection of the increased Passenger Facility Charge, the Passenger Facility Charge imposed upon each Enplaned Passenger at Portland International Airport shall be increased to \$4.50, or the maximum Passenger Facility Charge authorized by the FAA, if less, provided that no Passenger Facility Charge shall be imposed upon Air Taxi/Commercial Operators.

3.3 The Passenger Facility Charge authorized by this Ordinance shall expire on the date determined pursuant to regulations adopted by FAA, unless otherwise terminated earlier by the Port Commission. **[Section 3.2 is added and the existing Section 3.2 of Ordinance No. 359 is renumbered to 3.3 pursuant to Section V of Ordinance 402-R]**

### **Section IV. Eligible Projects**

4.1 The Passenger Facility Charge collected pursuant to this program shall be expended for projects authorized in accordance with Port policies and determined by FAA to be eligible under the Act and rules and regulations adopted by FAA pursuant to the Act. **[This paragraph amended pursuant to Section 1 of Ordinance 383-R and amended pursuant to Section VI of Ordinance 402-R]**

### **Section V. Compliance with FAA Requirements**

5.1 The Passenger Facility Charge authorized by this Ordinance shall be collected and disbursed pursuant to the Act and to rules and regulations adopted by FAA, pursuant to the Act.

5.2 The Passenger Facility Charge shall be collected on behalf of the Port by the airline on which the passenger is ticketed, but shall be deemed to be held in trust, at all times, for the sole benefit of the Port and shall not be considered, or become, in any respect, an asset of the collecting airline. **[Section 5.1 of Ordinance No. 359 is amended and Section 5.2 is added pursuant to Section VII of Ordinance 402-R]**

### **Section VI. Violations**

6.1 **Civil Sanctions:** In the event any airline violates any term or condition of this Ordinance, the Port may exercise any rights or remedies allowed by law or equity.

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 VII. Effective Date**

The effective date of this Ordinance shall be October 1, 1991.

**Section VIII. Savings Clause**

In the event any phrase, clause, sentence, paragraph, or paragraphs of this Ordinance is declared invalid for any reason, the remainder of this Ordinance shall not be invalidated, but shall remain in full force and effect, all parts of this Ordinance being declared separable and independent of all others. In the event that a judgment is entered, and all appeals exhausted, which judgment finds, concludes or declares this Ordinance is unconstitutional or is otherwise invalid, the Passenger Facility Charge authorized by this Ordinance shall be suspended and terminated as of the date of unconstitutionality.

ADOPTED THIS 9th day of October, 1991, being the date of its second reading before the Board of Commissioners of the Port of Portland.