

COMMITTEE ON AVIATION.

REPEAL OF O'HARE RATES AND OPERATION ORDINANCE, AMENDMENT OF SECTIONS 2-20-020 AND 10-36-190 OF MUNICIPAL CODE AND EXECUTION OF NEW LEASE AND LICENSE AGREEMENTS WITH VARIOUS CARRIERS AT CHICAGO O'HARE INTERNATIONAL AIRPORT.

[O2018-1124]

The Committee on Aviation submitted the following report:

CHICAGO, March 28, 2018.

To the President and Members of the City Council:

Your Committee on Aviation, for which a meeting was held on March 15, 2018, in City Council Chambers, second floor at City Hall to consider an ordinance authorizing the execution of new Airline Use and Lease Agreements and associated agreements with various carriers at Chicago O'Hare International Airport, repeal of O'Hare Rates and Operations Ordinance and amendment of Sections 2-20-020 and 10-36-190 of Municipal Code, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This ordinance was passed by a viva voce vote of the members of the committee, with one dissenting vote, Alderman Austin (34).

Respectfully submitted,

(Signed) MICHAEL R. ZALEWSKI,
Chairman.

On motion of Alderman Zalewski, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

Yeas -- Aldermen Moreno, Hopkins, Dowell, King, Hairston, Sawyer, Mitchell, Harris, Sadlowski Garza, Thompson, Cárdenas, Quinn, Burke, Lopez, Foulkes, D. Moore, Curtis, O'Shea, Cochran, Brookins, Muñoz, Zalewski, Scott, Solis, Burnett, Ervin, Taliaferro, Reboyras, Santiago, Waguespack, Mell, Austin, Ramirez-Rosa, Villegas, Mitts, Sposato, Laurino, O'Connor, Napolitano, Reilly, Smith, Tunney, Arena, Cappleman, Pawar, Osterman, J. Moore, Silverstein -- 48.

Nays -- None.

Alderman Sawyer moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City of Chicago ("City") is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, The City owns and operates an airport commonly known as Chicago O'Hare International Airport ("O'Hare"), and possesses the power and authority to lease premises and facilities and to grant other rights and privileges with respect thereto; and

WHEREAS, The City heretofore entered into the Amended and Restated Airport Use Agreement and Terminal Facilities Leases and the International Terminal Use Agreement and Facilities Leases at O'Hare with certain air carriers ("Existing Use Agreements"); and

WHEREAS, The Existing Use Agreements will expire on May 11, 2018, so it is necessary and desirable for the City to enter into a new form of Chicago O'Hare International Airport Airline Use and Lease Agreement (the "New Airline Use and Lease Agreement") with Alaska Airlines, Inc. ("Alaska"); All Nippon Airways Co., Ltd. ("ANA"); American Airlines, Inc. ("American"); Delta Air Lines, Inc. ("Delta"); Deutsche Lufthansa AG ("Lufthansa"); Federal Express Corporation ("FedEx"); JetBlue Airways Corporation ("JetBlue"); Nippon Cargo Airlines Co., Ltd. ("Nippon"); Spirit Airlines, Inc. ("Spirit"); United Airlines, Inc. ("United"); and other commercial air carriers from time to time during the term of the New Airline Use and Lease Agreement, in substantially the form attached hereto as Exhibit 1; and

WHEREAS, The premises to be leased, respectively, to Alaska, ANA, American, Delta, Lufthansa, FedEx, JetBlue, Nippon, Spirit, and United, beginning on the effective date of the New Airline Use and Lease Agreement, May 12, 2018, will be described in an exhibit to each air carrier's New Airline Use and Lease Agreement, the forms of which are attached hereto, collectively, as Exhibit 2 ("Premises Notices"); and

WHEREAS, It is also necessary and desirable for the City to enter into Affiliate Operating Agreements with certain air carriers, each operating at O'Hare as an Affiliate of an air carrier who is a signatory to the New Airline Use and Lease Agreement, as defined in and with the rates and charges as set forth in the New Airline Use and Lease Agreement, in substantially the form attached hereto as Exhibit 3 ("Affiliate Operating Agreements"); and

WHEREAS, It is also necessary and desirable for the City to enter into Non-Signatory Airline Operating Agreements with air carriers who operate at O'Hare that are neither

signatories to the New Airline Use and Lease Agreement nor Affiliates to signatories of the New Airline Use and Lease Agreement, with the rates and charges as set forth in the New Airline Use and Lease Agreement, in substantially the form attached hereto as Exhibit 4 (“Non-Signatory Airline Operating Agreements”); and

WHEREAS, In an ordinance adopted by the City Council of the City of Chicago (“City Council”) on August 4, 1993 (“1993 Ordinance”), the Mayor or his proxy was authorized to execute license agreements for the short-term use of space at O’Hare with certain entities operating at O’Hare; and

WHEREAS, So that the rates and charges for short-term use of office, storage, or similar space by air carriers or aeronautical service providers at O’Hare shall be consistent with the rates and charges in the New Airline Use and Agreement, it is necessary and desirable for the City to update the 1993 Ordinance and replace its Exhibit 1 with the form of Short-Term Facilities Use Agreement attached to this ordinance as Exhibit 5 (“Short-Term Facilities Use Agreement”) with regards to such air carriers or aeronautical service providers who operate at O’Hare and may require office, storage, or similar operational space from time to time during the term of the New Airline Use Agreement; and

WHEREAS, The City adopted an ordinance on December 13, 2017, that would have governed air carrier use of the airfield and passenger airline terminals at O’Hare and prescribed methodology for charging air carriers for such use beginning May 12, 2018 in the absence of a New Airline Use and Lease Agreement (the “O’Hare Rates and Operations Ordinance”); and

WHEREAS, The City now desires to repeal the O’Hare Rates and Operations Ordinance and amend Sections 10-36-190 and 2-20-020 of the Municipal Code of Chicago (the “Code”) in the event that the City has received fully executed New Airline Use and Lease Agreements with air carriers who, together with their Affiliates, as defined in the New Airline Use and Lease Agreement, collectively represented more than fifty percent (50%) of passengers enplaned in 2017 at O’Hare; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION I. The above recitals are hereby incorporated by reference as if fully set forth herein.

SECTION II. The Mayor is authorized to execute the New Airline Use and Lease Agreement with Alaska, ANA, American, Delta, Lufthansa, FedEx, JetBlue, Nippon, Spirit, and United, and such other air carriers as may be recommended by the Commissioner of Aviation (“Commissioner”), in substantially the form attached hereto as Exhibit 1.

SECTION III. The Commissioner is authorized to execute Affiliate Operating Agreements in substantially the form attached hereto as Exhibit 3 with air carriers approved by the Commissioner from time to time during the term of the New Airline Use and Lease Agreement to operate at O'Hare.

SECTION IV. The Commissioner is authorized to execute Non-Signatory Airline Operating Agreements in substantially the form attached hereto as Exhibit 4 with air carriers approved by the Commissioner from time to time during the term of the New Airline Use and Lease Agreement to operate at O'Hare.

SECTION V. The Commissioner is authorized to execute Short-Term Facilities Use Agreements in substantially the form attached hereto as Exhibit 5 with certain air carriers or aeronautical service providers at O'Hare as may be approved by the Commissioner from time to time during the term of the New Airline Use and Lease Agreement.

SECTION VI. The Mayor, the Commissioner and the Corporation Counsel, and any other City official as shall be designated by the Mayor, the Commissioner or the Corporation Counsel, respectively, are each authorized, individually and jointly, to execute and deliver any and all agreements, documents, instruments or certificates as the executing officer shall deem necessary, advisable or appropriate in connection with the New Airline Use and Lease Agreements, the Affiliate Operating Agreements, the Non-Signatory Airline Operating Agreements, and the Short-Term Facilities Use Agreements.

SECTION VII. The Commissioner is authorized to adopt such rules as the Commissioner may deem necessary or appropriate to implement or administer this ordinance and the agreements contemplated herein.

SECTION VIII. Section 2-20-020 of the Municipal Code of Chicago is hereby amended by inserting the underscored language and deleting the struck-through language, as follows:

2-20-020 Commissioner -- Appointment, Powers And Duties.

(Omitted text is unaffected by this ordinance.)

The Commissioner is authorized to execute such agreements and promulgate such rules as provided for in the 2018 ordinance establishing the O'Hare Airline Use and Lease Agreement, as that term is defined in Section 10-36-190(a).

SECTION IX. Section 10-36-190 of the Municipal Code of Chicago is hereby amended by inserting the underscored language and deleting the struck-through language, as follows:

10-36-190 Compensation For Use Of Chicago-O'Hare International Airport And Chicago Midway Airport.

No person shall use the airport facilities of Chicago-O'Hare International Airport or Chicago Midway Airport, including non-commercial private aircraft, without paying compensation for the use of such facilities in accordance with the following schedule of fees:

(a) For each landing at Chicago-O'Hare International Airport of an aircraft operated by a signatory to ~~(i) an Amended and Restated a Chicago-O'Hare International Airport Airline Use and Lease Agreement and Terminal Facilities Lease, in the form approved by this amendatory ordinance of 2018 the city council as of January 1, 1985, as it may be amended from time to time ("O'Hare Airline Use and Lease Agreement"), or (ii) an International Terminal Use Agreement and Facilities Lease, in the form approved by the city council as of January 1, 1990, as it may be amended from time to time,~~ the landing fee rate per 1,000 pounds approved maximum landing weight shall be the landing fee rate then in effect pursuant to the O'Hare Airline Use and Lease Agreement.

(b) For each landing at Chicago-O'Hare International Airport of an aircraft other than those specified in subsection (a), the landing fee rate per 1,000 pounds approved maximum landing weight shall be determined by the commissioner of aviation consistent with the O'Hare Airline Use and Lease Agreement.

(c) For each aircraft at Chicago-O'Hare International Airport parking for each 24-hour period or fraction thereof in an aircraft parking area designated as public, a fee thereof shall be determined by the commissioner of aviation consistent with the O'Hare Airline Use and Lease Agreement equal to the prescribed landing fee for such aircraft at the airport, except that no fee shall be due for parking an aircraft in such an area during the first hour after landing.

(Omitted text is unaffected by this ordinance.)

~~(i) A charge ("Common Use Gate Charge") for the use of any gate designated by the commissioner of aviation as a Common Use Gate for common, nonexclusive use of airlines shall be paid by each airline which uses such Common Use Gate.~~

~~The commissioner of aviation is hereby authorized to set, in compliance with all applicable federal laws, rules, regulations and orders, the Common Use Gate Charge from time to time applicable to each Common Use Gate calculated in a manner designed to achieve cost recovery plus, if determined by the commissioner of aviation to be in the best interests of the City, a premium not to exceed thirty five percent. The Common Use Gate Charge shall be published in the Rules and Regulations for Chicago O'Hare International Airport.~~

SECTION X. The O'Hare Rates and Operations Ordinance, passed by City Council on December 13, 2017, is hereby repealed in its entirety.

SECTION XI. Sections I through VII of this ordinance shall be in full force and effect from and after the date of its passage and approval. Following passage and approval, Sections VIII, IX, and X shall be in full force and effect on such date, on or after May 12, 2018, that the City has received fully executed New Airline Use and Lease Agreements with air carriers who, together with their Affiliates, as defined in the New Airline Use and Lease Agreement, collectively represented more than fifty percent (50%) of passengers enplaned in 2017 at O'Hare. The receipt of the requisite number of executed New Airline Use and Lease Agreements shall be memorialized by a dated certification that the Commissioner files with the City Clerk.

[Exhibit 3 referred to in this ordinance constitutes (Sub)Exhibit "F" to Airline Use and Lease Agreement at Chicago O'Hare International Airport and printed on pages 72743 through 72752 of this *Journal*.]

[Exhibit 4 referred to in this ordinance constitutes (Sub)Exhibit "H" to Airline Use and Lease Agreement at Chicago O'Hare International Airport and printed on pages 72753 through 72823 of this *Journal*.]

[Exhibit 5 referred to in this ordinance constitutes (Sub)Exhibit "R" to Airline Use and Lease Agreement at Chicago O'Hare International Airport and printed on pages 73030 through 73092 of this *Journal*.]

Exhibits 1 and 2 referred to in this ordinance read as follows: