

## ORDINANCE NO. 448

### AN ORDINANCE ESTABLISHING A CUSTOMER FACILITY CHARGE ON RENTAL CAR TRANSACTIONS AT THE AIRPORT TO FUND RENTAL CAR RELATED PROJECTS, PROGRAMS, AND RELATED EXPENSES

WHEREAS, following the last rental car solicitation process, the Port (as defined in Section 2.15) determined that those facilities that serve the rent-a-car companies are in need of updating, replacement and/or expansion;

WHEREAS, certain projects have been identified or will be in the future at the Airport (as defined in Section 2.1) to improve the convenience, security, and efficiency of rental cars for Airport users; and

WHEREAS, the Port has determined that in order to fund and to provide Airport users with adequate Rental Car Facilities (as defined in Section 2.14) and related programs, it is in the best interest of the Airport, its users, and RACs (as defined in Section 2.11), to impose a Customer Facility Charge on Rent-A-Car Customers (as defined in Section 2.12) who rent automobiles from those RACs that operate from Airport facilities:

BE IT ENACTED BY THE PORT OF PORTLAND:

Port of Portland Ordinance No. 448 is enacted and will read as follows:

#### **Section 1. Findings and Purpose**

1.1 The Port of Portland finds as follows:

1.1.1 That the Port owns and controls a system of airports including that certain airport and air navigation facility located in Multnomah County, State of Oregon, known as the Portland International Airport, which includes the rental car businesses and facilities used by RACs at the Airport; and

1.1.2 That the Airport, including the Rental Car Facilities contributes to 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 public; and

1.1.3 That the Port has required, and will continue to require, substantial expenditure for capital investment, operation, maintenance, and development of the Rental Car Facilities to meet the future demand of the Rent-A-Car Customers; and

1.1.4 That the current state of the Rental Car Facilities has resulted in a negative impact on the quality of services provided to Rent-A-Car Customers; and

1.1.5 That Rent-A-Car Customers receive economic benefit from the use thereof; and

1.1.6 That the revenues received from Airport Rent-A-Car Customers are vital to the economic well-being of the Airport; and

1.1.7 That pursuant to ORS 778.260(1), the Port has the authority to enact ordinances to regulate the use of its properties, including Rental Car Facilities, and in collecting the Customer Facility Charge (as defined in Section 2.4), the Port is imposing a fee for the use of these facilities at the Airport; and

1.1.8 Pursuant to 49 U.S.C. §§ 47107(b)(1) and 47133(a), the Customer Facility Charge proceeds will be used for the construction, maintenance and improvement of Rental Car Facilities and Enabling Projects (as defined in Section 2.5) at the Airport; and

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

1.1.10 That, in order to generate revenue for purposes of maintaining and developing the Rental Car Facilities for the convenience of the traveling public, it is necessary to adopt and implement a system of fees to be paid by Rent-A-Car Customers utilizing the Airport; and

1.1.11 That Rent-A-Car Customers should contribute toward the maintenance and continued development of the Rental Car Facilities; and

1.1.12 That the fees and regulations adopted herein are reasonable for the affected Rent-A-Car Customers.

1.2 The purpose of this 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 Portland International Airport, including all facilities and roads located within the geographical boundaries of Port land designated as Portland International Airport, which, for purposes of this Ordinance, shall include, but is not limited to, the Airport terminal building, the Airport parking garages, the commercial roadway, all Airport parking lots, the airfield, all of Airport Way running from Interstate 205 on the East end and extending West to the Airport terminal building, and all of the frontage roads and adjacent facilities running parallel to Airport Way, including Portland International Center and other adjacent Airport Port owned property.

2.2 "Annual Report" shall mean a report itemizing the number of Transaction Days each RAC had during the prior Port Fiscal Year (as defined in Section 2.8) and the amount of CFCs calculated, collected, and remitted.

2.3 "Concession Agreement" shall mean an agreement entered into with the Port whereby the RAC pays a percentage of its gross revenues to the Port for the privilege of operating on or from the Airport, or any other similar agreement.

2.4 "Customer Facility Charge" or "CFC" shall mean the charge imposed on the Rent-A-Car Customer by the Port for the benefit of the Port and collected and remitted to the Port by the RAC pursuant to this Ordinance.

2.5 "Enabling Projects" shall mean projects and costs necessitated by the construction, maintenance, demolition, or operation of Rental Car Facilities.

2.6 "Executive Director" or "Director" shall mean the Executive Director of the Port, or the Executive Director's designee.

2.7 "Implementation Date" shall mean January 15, 2014, the date on which the CFC shall commence to be charged to the Rent-A-Car Customers.

2.8 "Port Fiscal Year" shall mean July 1<sup>st</sup> of any calendar year to June 30<sup>th</sup> of the following calendar year.

2.9 "Port International Airport Rule(s)" shall mean those rules and regulations issued and published by the Port pertaining to, among other things, the use of the Airport parking garages and Rental Car Facilities.

2.10 "Port Policies/Policy" shall mean any policy adopted by the Port intended to implement or define any portion of this Ordinance.

2.11 "RAC" shall mean any rental car business operating or using Airport facilities at the Airport either under a Concession Agreement, lease, sublease, permit, or any other sort of agreement with the Port or other RAC.

2.12 "Rent-A-Car Customer" shall mean any person or entity renting a vehicle from a RAC operating at, or from, the Airport under a Concession Agreement, lease, sublease, permit, or any other sort of agreement with the Port or other RAC.

2.13 "Rental Car" shall mean an automobile rented from a RAC.

2.14 "Rental Car Facilities" shall mean those facilities which relate to rent-a-car operations and are used either exclusively or in part by the RACs.

2.15 "The Port of Portland" or "Port" shall mean the port district of the State of Oregon that owns and operates the Airport pursuant to Oregon Revised Statutes, Chapter 778.005 through Chapter 778.990, as amended from time to time.

2.16 "Transaction Day" shall mean a twenty-four (24) hour period or fraction thereof for which a Rent-A-Car Customer is provided the use of a Rental Car regardless of the duration or length of the rental term. However, if the same Rental Car is rented to more than one Rent-A-Car Customer within such continuous twenty-four (24) hour period, then each such rental shall be calculated as a 'Transaction Day' except that a partial day that is a grace period of no more than 2 hours after the last twenty-four (24) hour day booked shall not be considered a separate Transaction Day. In the event the Transaction Day or the rental agreement that includes the Transaction Day covers a portion of two different months or Port Fiscal Years, the Transaction Day shall be considered to have taken place and be reported during the month the rental agreement closed.

### **Section 3. Customer Facility Charge**

3.1 Beginning on the Implementation Date, each Rent-A-Car Customer shall pay a fee for the use of the Airport Rental Car Facilities set by the Executive Director, as may be changed from time to time, for each Transaction Day a Rent-A-Car Customer rents an automobile. The initial fee was provided to the RACs no less than thirty (30) days prior to the Implementation Date. Each RAC shall collect and remit such fee to the Port.

3.2 The Customer Facility Charge shall be shown as a separately itemized charge on each customer contract for such RAC and described as "Customer Facility Charge," "CFC," or any other term the Port may approve in writing.

3.3 Each RAC shall include the CFC on all forms of reservations at least thirty (30) days prior to the date the Implementation Date and no later than thirty (30) days prior to any adjustment in the CFC rate.

3.4 Each RAC shall maintain records and controls that are sufficient to demonstrate the accuracy of the CFC revenues collected and the amount of CFC revenue collections remitted. These accounting records must be made available for inspection and examination with

reasonable notice at all reasonable times to the Port or a duly authorized representative. The Port may audit each RAC's books and records at any time to verify compliance with this Ordinance. The Port may use its own staff to perform audits under this Section, or may engage an independent certified public accountant to perform the audit. If an audit reveals the RAC has incorrectly stated and collected the CFCs by more than two percent (2%), the entire expense of the audit shall be borne by the RAC. In any case, the RAC shall remit any additional amounts due that the audit determines within thirty (30) calendar days of the Port's invoice, with interest at the Port's then prevailing delinquency charge. Interest shall accrue from the date any CFC was due under this Ordinance. Charges referenced in this Section are exclusive of any other fees or penalties under this Ordinance or any other agreement the RAC may have with the Port.

#### **Section 4. Eligible Projects**

The Customer Facility Charge collected pursuant to this program shall be expended for projects related to Rental Car Facilities and any related Port approved Enabling Projects and program costs. Such projects, Enabling Projects, and related program costs shall be determined and approved by the Port, and may include, but not be limited to, studies, consulting fees, plans and specifications, construction, demolition, and reimbursements to the Port for Port costs associated with operating and maintaining Rental Car facilities. For the purposes of this Section, projects related to Rental Car Facilities shall include the construction of Rental Car Facilities and any improvements made to existing Rental Car Facilities after the Effective Date of this Ordinance and the maintenance, operation, and demolition of such. Nothing in this Section shall preclude the Port from reimbursing itself for any costs associated with implementation of this Ordinance, including but not limited to, consulting and legal fees. CFCs may be assigned and pledged or otherwise committed to repay debt service on bonds issued or other financing used to fund Rental Car facilities and Enabling Projects, to fund and replenish reserves therefor, and to pay costs associated therewith.

#### **Section 5. Collection**

5.1 Each RAC must hold the CFC revenues collected by it in trust in a fiduciary capacity for the Port. All CFC revenue collected and held will be considered the property of the Port and will be excluded from gross revenues under Concession Agreements.

5.2 Each CFC shall be collected from all Rent-A-Car Customers, including Rent-A-Car Customers receiving complimentary or discounted Rental Cars.

5.3 Each RAC shall remit all CFCs that were collected or those that should have been collected, regardless of whether or not actually collected by the RAC, from Rent-A-Car Customers on a monthly basis to the Port together with the monthly statement of Transaction Day transactions in a format approved by the Port, which shall include Transaction Days. The CFCs shall be remitted and received by the Port no later than the twentieth (20<sup>th</sup>) of the month following the month in which the CFCs were collected. Failure to strictly comply with this Section shall be considered a violation of this Ordinance and those remedies set forth in Section 7 shall be available to the Port. If the Port so directs in its sole discretion, the RAC shall remit the CFCs to a Trustee appointed by the Port for the purpose of retaining the CFCs in trust.

5.4 The RAC shall not be entitled to any compensation for collection and remittance of the CFCs, and shall make no attempt to charge or collect from any Rent-A-Car Customer any such fee for such collection or remittance.

5.5 No later than October 1<sup>st</sup> of each year, each RAC shall furnish an Annual Report to the Port signed by the RAC's chief financial officer or highest ranking financial manager, or employee with actual knowledge and expertise in the CFC collection, or an independent certified

public accounting firm, stating that the CFCs remitted by the RAC to the Port during the preceding year were properly calculated and remitted in accordance with the terms of this Ordinance. The Annual Report shall be in a form approved by the Port and shall contain a complete, itemized statement demonstrating the Transaction Days and the total CFCs calculated and remitted.

**Section 6. Port Reservation Of Rights**

6.1 The Executive Director is authorized to issue and publish additional Port Policies to implement this Ordinance as is deemed necessary by the Director. Should this Ordinance conflict with the Port Policies, this Ordinance shall prevail, but the Port Policies must be applied to the fullest extent that they do not conflict.

6.2 The Executive Director is authorized, at any time and from time to time, as the Director deems necessary, to change the amount of the CFC or place a limitation on the number of Transaction Days the CFC is to be collected from a single Rent-A-Car Customer within a single rent-a-car transaction. This amount or limit on the number of days to be collected, may be modified with sixty (60) days written notice consistent with Section 8 to the RACs at the notice address currently of file under each companies Agreement with the Port.

**Section 7. Violation of Ordinance**

In the event that a RAC violates any provision of this Ordinance or the Portland International Airport Rules pertaining to the CFC, or any applicable law or Port Policy pertaining to collection of the CFCs, the Port may, in addition to any other rights or remedies allowed by this Ordinance, at law or in equity, deem such violation to be a default under the RAC's Concession Agreement, or any other agreement the RAC may have with the Port.

**Section 8. Notice of Violation**

8.1 The Port shall have the authority to issue a Notice of Ordinance Violation. The Notice shall set forth:

8.1.1 The nature of the violation(s) which is the reason for the violation;

8.1.2 The date of the violation(s); and

8.1.3 The date on which the violation shall result in a default under the Concession Agreement.

8.2 Notice as required by this Section 8, or any other notice required by this Ordinance to be given to a RAC, is sufficient if delivered in person or sent by certified U.S. mail, return receipt requested, to the last address on file with the Port. Notice shall be deemed issued when the notice is hand-delivered or deposited in the U.S. mail.

**Section 9. Civil Penalties**

Pursuant to ORS 836.210(2), if allowed by law, the Port shall be entitled to impose civil penalties for the violations of this Ordinance pertaining to the Customer Facility Charge imposed by this Ordinance. Such penalty shall be equal to twenty five percent (25%) of the CFC involved. Where the RAC is required to pay, collect, and/or remit a fee, charge, or toll to the Port, each calendar day the fee, charge, or toll is past due shall be considered a separate violation.

**Section 10. Criminal Sanctions**

Any person violating this Ordinance shall, upon conviction, be punished by a fine not to exceed the maximum penalty set forth in ORS 778.990. Where the violation is continuing, each calendar day the violation continues shall be considered a separate violation.

**Section 11. Remedies Non-exclusive**

All of the rights and remedies set forth herein, as well as all other rights and remedies available at law or in equity for violations of this Ordinance shall be non-exclusive and the Port shall be entitled to pursue one or more of them simultaneously for each violation of this Ordinance.

**Section 12. Time Periods**

Time periods set forth in this Ordinance shall be based on calendar days, unless otherwise specified. In the event the final day for action falls on a Saturday, Sunday, or legal holiday observed by the Port, then the period shall extend to the next day that the Port is open for business.

**Section 13. Effective Date**

This Ordinance shall be effective January 10, 2014.

**Section 14. 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. In the event that a judgment is entered, and all appeals exhausted, which judgment finds, concludes or declares that this Ordinance is unconstitutional or is otherwise invalid, the RAC shall collect and remit to the Port the Customer Facility Charge established by regulations issued by the Executive Director pursuant to this Ordinance.


ADOPTED THIS 11<sup>th</sup> day of December, 2013, being effective thirty (30) days thereafter.

THE PORT OF PORTLAND

By:   
James C. Carter, Commission President

By:   
Pamela Thompson, Assistant Secretary

APPROVED AS TO LEGAL  
SUFFICIENCY FOR THE PORT:

By:   
Counsel for the Port of Portland