

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 3 OF CHAPTER 25.08 OF TITLE 25 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTIONS 25.08.300, 25.08.310, 25.08.500, 25.08.1320, 25.08.1340 AND 25.08.1510 TO INCREASE THE AUTHORITY OF THE DIRECTOR OF AVIATION TO EXECUTE LEASES, LICENSES, EXCLUSIVE USE PERMITS AND OTHER COMMERCIAL ACTIVITY AGREEMENTS WITH TERMS IN EXCESS OF 3 YEARS AND A TOTAL VALUE OF UP TO \$250,000

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1 Section 25.08.300, Part 3 of Chapter 25.08 of Title 25 of the San Jose Municipal Code entitled "Air Carriers and Other Commercial Activities", is hereby amended to be numbered, entitled and read as follows:

25.08.300 Certificated Air Carrier Agreement Requirements

- A. A certificated passenger air carrier shall be authorized to operate regularly scheduled flights to the Airport, upon the fulfillment of the following requirements:
1. The Director determines that there is available space at the terminal apron, gates, and baggage area; and
 2. The Certificated Air Carrier either enters into an agreement with the City providing for its use of space in the Airport terminal facilities with the City, or arranges with another Certificated Air Carrier who is a current tenant at the Airport to share or sublease space in the Airport terminal facilities; and

3. The Certificated Air Carrier enters into an operating agreement pertaining to its use of the airfield and other common facilities of the Airport containing such provisions as the City Council (or the Director if he or she is authorized to execute the agreement) determines to be necessary or desirable to protect the interests of the City or the general public.
- B. The Director shall be authorized to execute any operating agreement required by this Section on behalf of the City if:
1. The total monetary value received by the City from such operating agreement does not exceed two hundred fifty thousand dollars; or
 2. The term of such operating agreement where the total monetary value received by the City exceeds two hundred fifty thousand dollars is for three (3) years or less, including the term of any extensions or renewals of such agreement for which either the City or the Certificated Air Carrier has the option or right to renew under the terms of the operating agreement.
- C. The Director shall be authorized to execute amendments to extend the term of any operating agreement required by this Section on behalf of the City if the total monetary value received by the City from such operating agreement from the original effective date through the extended term does not exceed two hundred fifty thousand dollars.
- D. Any operating agreement executed as provided in this Section by the Director shall be approved as to form by the Office of the City Attorney before execution by the Director, and the original of the operating agreement shall be filed with the Office of the City Clerk.

- E. The City Council shall approve the execution of any operating agreement required pursuant to this Section if:
1. The total monetary value received by the City exceeds two hundred fifty thousand dollars; and
 2. The term of such operating agreement is greater than three (3) years.
- F. The City Council shall also approve the execution of amendments to extend the term of any operating agreement required by this Section on behalf of the City beyond three (3) years, if the total monetary value received by the City from such operating agreement from the original effective date through the extended term exceeds two hundred fifty thousand dollars.

SECTION 2. Section 25.08.310, Part 3 of Chapter 25.08 of Title 25 of the San Jose Municipal Code entitled "Air Carriers and Other Commercial Activities", is hereby amended to be numbered, entitled and read as follows:

25.08.310 Use of Terminal and Landside Facilities by Certificated Air Carriers

- A. Certificated Air Carriers shall be authorized to utilize ticket counter space, holdroom space, baggage make-up space, and/or office space in the terminal facilities or cargo facilities by either a lease or license if the Director determines that there is space available therefor consistent with the convenience of airline passengers and the space needs of other terminal facilities uses or cargo facilities uses.
- B. The Director shall be authorized to execute any lease or license if:

1. The total monetary value received by the City from such lease or license does not exceed two hundred fifty thousand dollars; or
 2. The term of such lease or license where the total monetary value received by the City exceeds two hundred fifty thousand dollars is for three (3) years or less, including the term of any extensions or renewals of such agreement for which either the City or the Certificated Air Carrier has the option or right to renew under the terms of the lease or license.
- C. The Director shall be authorized to execute amendments to extend the term of any lease or license required by this Section on behalf of the City if the total monetary value received by the City from such lease or license from the original effective date through the extended term does not exceed two hundred fifty thousand dollars.
- D. Any lease or license executed by the Director as provided herein shall be approved as to form by the Office of the City Attorney before execution by the Director, and the original lease or license shall be filed with the Office of the City Clerk.
- E. The City Council shall approve the execution of any lease or license required pursuant to this Section if:
1. the total monetary value received by the City exceeds two hundred fifty thousand dollars; and
 2. The term of such lease or license is greater than three (3) years.
- F. The City Council shall also approve the execution of amendments to extend the term of any lease or license required by this Section on behalf of the City beyond

three (3) years, if the total monetary value received by the City from such lease or license from the original effective date through the extended term exceeds two hundred fifty thousand dollars

- G. The Director or the City Council, as the case may be, shall require such leases or licenses to contain terms and conditions considered necessary or desirable for the protection of the safety and convenience of the City and the general public.

SECTION 3. Section 25.08.500, Part 5 of Chapter 25.08 of Title 25 of the San Jose Municipal Code entitled "Car Rental Agencies", is hereby amended to be numbered, entitled and read as follows:

25.08.500 On-Airport Car Rental Agencies

Car Rental Agencies

- A. No On-Airport Car Rental Agency shall occupy Airport terminals, service lots, parking spaces, or other areas on the Airport without a lease providing authorization to occupy such areas in accordance with this Title.
- B. The Director may approve and execute a lease with an On-Airport Car Rental Agency, on behalf of the City, if:
1. The total monetary value received by the City from such lease does not exceed two hundred fifty thousand dollars; or
 2. The term of such lease where the total monetary value received by the City exceeds two hundred fifty thousand dollars is for three (3) years or less, including the term of any extensions or renewals of such lease for which either the City or the On-Airport Car Rental Agency has the option or right to renew under the terms of the lease.

- C. The City Council shall approve the execution of any lease required pursuant to this Section if the total monetary value received by the City exceeds two hundred fifty thousand dollars and the term of the lease is greater than three (3) years. The City Council shall also approve the execution of amendments to extend the term of any lease required by this Section on behalf of the City beyond three (3) years, if the total monetary value received by the City from such lease from the original effective date through the extended term exceeds two hundred fifty thousand dollars..
- D. A lease for use of the Airport for On-Airport Car Rental Agency Commercial Activity that is otherwise within the authority of the Director to execute under this Section may be approved and executed by the Director on behalf of the City if the Director determines:
1. That adequate space is available to accommodate such activity consistent with the space requirements of other Airport uses;
 2. That the proposed lease of space would conform to the most recent Airport layout plan for the Airport; and
 3. That the proposed lease of space conforms to the Council policy for On-Airport Car Rental Agency Commercial Activity.
- E. Approval of such leases by either the Director or the City Council is at the City's sole discretion.
- F. An On-Airport Car Rental Agency shall maintain insurance in amounts and under terms and conditions established by the City's Risk Manager to be necessary or desirable to protect the City and the general public. The insurance requirements shall be included in any leases with the On-Airport Car Rental Agency.

- G. An On-Airport Car Rental Agency shall pay such rentals, fees, charges and deposits as may be established by resolution of the City Council if the lease is approved by the Director, or as otherwise set forth in leases authorized by the City Council.
- H. All leases with an On-Airport Car Rental Agency shall contain such other terms, conditions and provisions as may be determined by the City Council or the Director, if the Director is authorized to approve the leases, to protect the safety, welfare and convenience of the City and the general public.
- I. As an alternative to the authority granted in this Section to approve leases with on-Airport car rental agencies, the Director may enter into license agreements with an On-Airport Car Rental Agency in accordance with the provisions of Sections 25.08.1500, 25.08.1510, 25.08.1310, and 25.08.030.

SECTION 4. Section 25.08.1320, Part 13 of Chapter 25.08 of Title 25 of the San Jose Municipal Code entitled "Commercial Activity – Lease or License Agreements", is hereby amended to be numbered, entitled and read as follows:

25.08.1320 Procedure and Factors for Consideration

- A. Proposals for the lease of land, structures, or other premises on the Airport shall be solicited from all persons, firms, organizations, or other legal entities known by the Director to be potentially interested in submitting a proposal. A minimum of three (3) competitive proposals shall be obtained, if practicable, for the lease of land, structures, or other premises on the Airport.
- B. Land, structures, or other premises on the Airport shall be leased to the responsible proposer who submits the proposal determined by the City to be the

most advantageous, considering, but not limited to, such factors as revenues to the Airport, services to be provided by the proposer to the public and other Airport users, investment in facilities to be constructed on the land or other premises, consistency of the proposed use of Airport land or premises with operation of the Airport, and any such other factors as are relevant to the proposed activity and to the location of the proposed activity on the Airport.

- C. The City is not required to, but may, solicit formal bids to lease land, structures, or other premises on the Airport on an optional basis, pursuant to the terms, procedures, and conditions set forth by the City in the bid package.

- D. Notwithstanding the foregoing, a lease of land, structures, or other premises on the Airport may be awarded after negotiations with a single provider if:
 - 1. The City Council, in its sole discretion, authorizes the negotiation of the lease with a single provider and also authorizes or approves the execution of the lease; or

 - 2. The Director, when executing leases on behalf of the City pursuant to Section 25.08.1340 below, makes a determination that the land, structure, or other premises to be leased is limited as to its potential uses or as to the revenues which could be generated by the lease, such that the City would not benefit from solicitations of proposals; or

 - 3. The Director, when executing leases on behalf of the City pursuant to Section 25.08.1340 below, makes a determination that the services to be provided by the tenant to Airport users or the general public are patented, unique, or available only from one provider.

SECTION 5. Section 25.08.1340, Part 13 of Chapter 25.08 of Title 25 of the San Jose Municipal Code entitled "Commercial Activity – Lease or License Agreements", is hereby amended to be numbered, entitled and read as follows:

25.08.1340 Authority to Execute

- A. In addition to such other authority as may be specifically provided elsewhere in this Title, the Director is hereby authorized to execute, on behalf of the City, any lease or license agreement of land, structures, or other premises on the Airport if:
1. The total monetary value received by the City from such lease or license agreement does not exceed two hundred fifty thousand dollars; or
 2. The term of such lease or license agreement where the total monetary value received by the City exceeds two hundred fifty thousand dollars is for three (3) years or less, including the term of any extensions or renewals of such lease or license agreement for which either the City or the tenant or licensee has the option or right to renew under the terms of the lease or license agreement.
- B. Lease or license agreements shall be approved as to form by the Office of the City Attorney prior to execution by the Director.
- C. The City Council shall approve the execution of any lease or license agreement required pursuant to this Section if the total monetary value received by the City exceeds two hundred fifty thousand dollars and the term of the lease or license agreement is greater than three (3) years.

- D. The City Council shall also approve the execution of amendments to extend the term of any lease or license agreement required by this Section on behalf of the City beyond three (3) years, if the total monetary value received by the City from such lease or license agreement from the original effective date through the extended term exceeds two hundred fifty thousand dollars.

SECTION 6. Section 25.08.1510, Part 15 of Chapter 25.08 of Title 25 of the San Jose Municipal Code entitled "Other Commercial Activity - Permits", is hereby amended to be numbered, entitled and read as follows:

25.08.1510 Permits -- Exclusive Utilization

- A. The Director may issue an Airport commercial operation permit which authorizes the permittee to utilize Airport land or premises to the exclusion of other Airport users if:
1. The total monetary value received by the City from such permit does not exceed two hundred fifty thousand dollars; or
 2. The term of such permit where the total monetary value received by the City exceeds two hundred fifty thousand dollars is for three (3) years or less, including the term of any extensions or renewals of such permit for which either the City or the tenant or licensee has the option or right to renew under the terms of the permit.
- B. The City Council shall approve the execution of any permit required pursuant to this Section if the total monetary value received by the City exceeds two hundred fifty thousand dollars. The City Council shall also approve the execution of amendments to extend the term of any permit required by this Section on behalf of the City beyond three (3) years, if the total monetary value received by the City

from such permit from the original effective date through the extended term exceeds two hundred fifty thousand dollars.

- C. Any permit executed as provided in this Section by the Director shall be approved as to form by the Office of the City Attorney before execution by the Director.

PASSED FOR PUBLICATION of title this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk