

ORDINANCE NO. O-2008-62

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 12, "AIRPORT", ARTICLE III., "COMMERCIAL ACTIVITIES", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY RENEWING AND UPDATING AIRLINE INCENTIVE PROGRAM TO INCREASE INCOMING AND OUTGOING FLIGHTS TO NEW AND EXISTING DESTINATIONS; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Citizens of Tyler and East Texas find that reliable air service is crucial for our region. Passenger boardings recovered since September 11, 2001 and Tyler posted a record year of passenger boardings in 2005. In 2006, boardings continued to be good with Tyler posting the third highest number of boardings in its history. This was done even with reductions in scheduled departures; and

WHEREAS, Tyler Pounds Regional Airport has also performed an aggressive Capital Improvement Program over the past five years. Along with many airfield safety and security projects, the airport opened a new Commercial Air Service Terminal on August 26, 2002. This new facility is capable of serving a growing commercial aviation industry for the next twenty years; and

WHEREAS, Airline customers in the East Texas Region frequently ask for more airline schedule frequency and flexibility in their air travel. The City of Tyler also understands the challenges of the airline industry and the need for airports to share the risk that airlines face when decisions are made to either locate to, or increase service from, a Regional airport. This ordinance is intended to reflect the City's interest in expanding the air service links needed by the community, provide a promotional incentive to new airlines, and encourage incumbent airlines to increase service at Tyler Pounds Regional Airport. This ordinance strives to accomplish these goals in a manner that is fair and non-discriminatory for all; and

WHEREAS, Staff recommends that the Airline Incentive Program be added as a new Section 12-34 for a term of one year after adoption of this ordinance unless extended or amended by the City Council; and

WHEREAS, it is the intent of the City Council to promote the public welfare; and

WHEREAS, Texas Transportation Code Section 22.011(a) states that a local government may plan, establish, construct, improve, equip, maintain, operate, regulate, protect and police an airport or air navigation facility in or outside the territory of the local government, or the territory of the State; and

WHEREAS, Texas Transportation Code Section 22.014(a) states that a local government may adopt ordinances, resolutions, rules and orders necessary to manage, govern and use an airport or air navigation facility under its control or an airport hazard area relating to the airport, and that such authority applies to an airport, air navigation facility, or airport hazard area in or outside the territory of the local government; and

WHEREAS, Texas Government Code Section 29.003(1)(A) provides that a municipal court of record, shall have exclusive original jurisdiction within the municipality's territorial

limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction, in all criminal cases that arise under the ordinances of the municipality; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

and **WHEREAS**, the City Council has adopted airport regulations in City Code Chapter 12;

WHEREAS, on July 11, 2007, the City Council adopted Ordinance No. 0-2007-79, which created an airline incentive program to allow promotional incentives for any new or incumbent 14 CFR Part 121 Airline that agrees to initiate additional or enhanced air service from Tyler Pounds Regional Airport; and

WHEREAS, Staff recommends that the Airline Incentive Program be updated and extended for a term of two years after adoption of this ordinance unless extended or amended by the City Council; and

WHEREAS, it is important to renew and update the Airline Incentive Program; and

WHEREAS, on April 1, 2008, the Airport Advisory Board voted to recommend that the City Council adopt an ordinance renewing and updating the Airline Incentive Program in City Code Section 12-34;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 12, "Airport", Article III., "Commercial Activities", is hereby amended by amending Section 12-34 to read as follows:

Sec. 12-34. Airline Incentives

a. Definitions. For purposes of this section, the following definitions are applicable:

14 CFR Part 121 airline means an airline operating common carrier airplanes that have been certified as Part 121 aircraft by a competent civil aviation authority.

Non-signatory status means any air carrier not engaged in a fully-executed lease agreement with the City of Tyler, and not in an approved holdover status in accordance with the lease provisions as defined by the City of Tyler.

Signatory status means any air carrier continuously engaged in a fully-executed lease agreement with the City of Tyler, or in an approved holdover status in accordance with the lease provisions as defined by the City of Tyler.

b. Any new or incumbent 14 CFR Part 121 airline that agrees to initiate new direct service from Tyler Pounds Regional Airport (TYR) to a new destination airport (not currently served directly by TYR) shall be offered the following promotional incentives:

1. Landing fees shall be waived for a period not to exceed twelve (12) months. Waived landing fees for additional destinations only apply to arriving flights from those additional destinations. For incumbent airlines, the incentive applies provided their other scheduled flights are not reduced from the schedule in effect as of May 1, 2008.

2. **For new airlines:** Airline Ticketing Office (ATO) space rent shall be reduced by fifty percent (50%) for a period not to exceed twelve (12) months. Full ATO

base rent lease rates shall be in effect after the discount period has ended. Airlines must be in a "Signatory status" at the time of initiation of the ATO rental incentive and remain in "signatory" status for at least twelve (12) months. Airlines failing to maintain a lease agreement will immediately incur an obligation for the waived rental fees. **For incumbent airlines:** Additional landing fees totaling a maximum \$1,875.00 per month for a grand total maximum of twenty-two thousand five hundred dollars (\$22,500.00) will be waived for the additional flights for the remaining half of the agreed new service period. The term for the additional landing fee credits will be based on the half of the number of months of the agreed new service period. Example: If the airline agrees to provide the new service for twelve (12) months, additional landing fees not to exceed \$1,875.00 per month will be waived for the last six months of the service period. Waived landing fees for additional destinations only apply to arriving flights from those additional destinations. Landing fee reductions will only apply provided the incumbent airline's scheduled flights are not reduced from the schedule in effect as of May 1, 2008. Incumbent airlines wishing to lease additional ATO space will be entitled to receive the same promotional rental discounts only for additional space.

3. The City will dedicate resources to marketing the new service as shown in subsection e.
- c. Any new or incumbent 14 CFR Part 121 airline that agrees to initiate or add at least one (1) new daily weekday direct flights from TYR to Dallas Ft. Worth Airport (DFW) or George Bush Intercontinental Airport (IAH) shall be offered the following promotional incentives:
1. Landing fees shall be waived for a period not to exceed twelve (12) months. Waived landing fees only apply to the added arriving flights from DFW or IAH. For incumbent airlines accepting the incentive under this subsection, the incentive applies provided the accepting airline's other scheduled flights are not reduced from the schedule in effect as of May 1, 2008.
 2. The City will dedicate resources to marketing the new service as shown in subsection e.
 3. "Non-signatory" rates will apply at the end of a promotional period for airlines that have not signed a lease with the City of Tyler.
- d. Any incumbent 14 CFR Part 121 airline that replaces a smaller aircraft with a larger aircraft without reducing existing scheduled service from Tyler Pounds Regional Airport to a current destination, shall be offered the following promotional incentives:
1. Landing fees for the larger aircraft shall be charged the signatory rate of a SAAB 340 B aircraft (28,500 lbs.) for a period not to exceed twelve (12) months. For purposes of this subsection, the term "larger aircraft" is defined as an aircraft having at least twenty-five percent (25%) more seats than the aircraft it will replace. Reduced landing fees for larger aircraft only apply to those larger aircraft and only if other scheduled flights are not reduced from the schedule in effect as of May 1, 2008. If a smaller aircraft is substituted for the actual flights, the waiver is disqualified.

2. The City will dedicate resources to marketing the new service as shown in subsection e.
3. “Non-signatory” rates will apply at the end of a promotional period for airlines that have not signed a lease with the City of Tyler.

e. Marketing Incentive

➤ Web Site Promotion

- City of Tyler Home page photo and link to press release for one (1) month. This page receives ninety-three thousand (93,000) total visits per month.
 - \$5,000
- Press release would remain in the City News section on the right-hand side of the home page for six (6) months. Each Friday all items in this news listing are e-mailed to site subscribers – currently about two thousand (2,000) individuals.
 - \$5,000
- Flight info page will be created on the Tyler Airport Website.
 - \$5,000

➤ Launch Event/Media Coverage

- Water cannon salute photo op – day of event.
- Host and publicize ribbon cutting for media, VIPs, travel community, plus coordinate projected media coverage.
 - \$8,000

➤ Press Release Service

- Send press release announcing new service to up to thirty-five (35) local media outlets including television, radio, newspaper and magazine.
 - \$5,000

➤ My Tyler TV (government access programming)

- Photo and article will run for sixty (60) days in the scrolling News & Notes segment, which can potentially be viewed by thirty thousand (30,000) basic cable subscribers.
- \$20,000

➤ Media Promotions

- Aviation marketing staff will arrange regional media promotions.
 - \$10,000

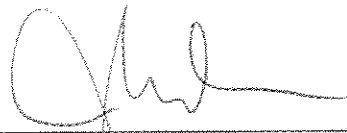
Total Value = \$58,000

- f. This section shall expire at midnight on April 22, 2010. (Ord. No. 0-2007-79; 7/11/07) (Ord. No. 0-2008-62; 4/23/08)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be April 25, 2008.

PASSED AND APPROVED this 23rd day of April, A. D., 2008.



JOSEPH O. SEEBER, MAYOR
CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK

APPROVED:



CITY ATTORNEY

