

CERTIFICATE AS TO ORDINANCE AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached ordinance is a true copy of an ordinance entitled: "ORDINANCE OF THE CITY OF BILLINGS, MONTANA IMPOSING A CUSTOMER FACILITY CHARGE FOR CAR RENTALS AT BILLINGS LOGAN INTERNATIONAL AIRPORT; ESTABLISHING POLICIES AND PROCEDURES FOR COLLECTION AND REMITTANCE THEREOF; AUTHORIZING THE CUSTOMER FACILITY CHARGE TO BE USED TO PAY COSTS OF DESIGNING, CONSTRUCTING, OPERATING AND MAINTAINING IMPROVEMENTS TO AIRPORT FACILITIES USED AND OCCUPIED BY ON-AIRPORT RENTAL CAR COMPANIES; AND PROVIDING FOR AN EFFECTIVE DATE" (the "Ordinance"), on file in the original records of the City in my legal custody; that the Ordinance was duly presented for first reading by the City Council of the City at a regular meeting on June 14, 2010, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Ordinance has not as of the date hereof been amended or repealed.

WITNESS my hand and seal officially this ____ day of June, 2010.

(SEAL)

City Clerk

I further certify that the Ordinance was duly adopted on second reading by the City Council of the City at a regular meeting on June 28, 2010, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Ordinance has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Ordinance at said meeting, the following Council members voted in favor thereof: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle and Clark; voted against the same: None; abstained from voting thereon: None; or were absent: None.

WITNESS my hand and seal officially this ____ day of _____, 2010.

(SEAL)

City Clerk

ORDINANCE NO. 10-5515

ORDINANCE OF THE CITY OF BILLINGS, MONTANA
IMPOSING A CUSTOMER FACILITY CHARGE FOR CAR
RENTALS AT BILLINGS LOGAN INTERNATIONAL
AIRPORT; ESTABLISHING POLICIES AND PROCEDURES
FOR COLLECTION AND REMITTANCE THEREOF;
AUTHORIZING THE CUSTOMER FACILITY CHARGE TO
BE USED TO PAY COSTS OF DESIGNING,
CONSTRUCTING, OPERATING AND MAINTAINING
IMPROVEMENTS TO AIRPORT FACILITIES USED AND
OCCUPIED BY ON-AIRPORT RENTAL CAR COMPANIES;
AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Montana Code Annotated (“MCA”) Title 67, Chapter 10 (the “Municipal Airport Act”), Montana cities are authorized to acquire, establish and operate airports as governmental and public functions; and

WHEREAS, the City of Billings, Montana (the “City”) is the owner and operator of a municipal airport known as Billings Logan International Airport (the “Airport”); and

WHEREAS, pursuant to Section 67-10-302 of the Municipal Airport Act, the City may enter into contracts, leases and other arrangements for the purpose of: granting the privilege of using or improving the Airport or any facilities thereon for commercial purposes; conferring the privilege of supplying goods, commodities, and services at the Airport; making services available at the Airport; and to establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service; and

WHEREAS, pursuant to such authority, the City has entered into rental concession agreements (“On-Airport Rental Car Company Agreements”) with rental car concessionaires at the Airport (“On-Airport Rental Car Companies”) for the use of certain Airport facilities; and

WHEREAS, the City has provided, in addition to space within the Airport Terminal Building, a rental car wash and maintenance facility for the use of the On-Airport Rental Car Companies; and

WHEREAS, the City completed an Airport Master Plan study in 2010, which identified that the existing rental car wash and maintenance facility needed to be relocated, upgraded and expanded; and

WHEREAS, the City proposes to design, construct and maintain a new Rental Car Quick Turn Around Facility (the “QTA”) at the Airport at an estimated cost of \$7,000,000 to replace the existing rental car wash and maintenance facility; and

WHEREAS, the City has determined that the current revenues received under On-Airport Rental Car Company Agreements with the On-Airport Rental Car Companies are not sufficient to pay the costs of designing and constructing the QTA; and

WHEREAS, the City, through the Director of Aviation and Transit (“the Director”), in consultation with the On-Airport Rental Car Companies, has determined that it is necessary and in the best interests of the City and the Airport to impose a customer facility charge as defined herein (the “Customer Facility Charge”) to finance the costs of designing, constructing, operating and maintaining the QTA and other Car Rental Facilities as defined herein that will be used by or provide benefit to the On-Airport Rental Car Companies; and

WHEREAS, this Council has duly noticed and conducted a public hearing on the Ordinance on June 14, 2010.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. Definitions. The following words and phrases, whenever used in this Ordinance, shall for the purposes of this Ordinance, have the following meanings:

“Automobile” shall mean all passenger-type vehicles including vans, SUVs, station wagons, trucks, pickups and motorcycles, but not large special purpose vehicles.

“Airport” shall mean the Billings Logan International Airport and all land and improvements thereon owned and operated by the City.

“Bonds” shall mean Airport Revenue Bonds or other forms of indebtedness issued by the City to finance the costs of designing, constructing, furnishing and equipping the QTA and other Car Rental Facilities, to establish the necessary reserves therefor and to pay costs of issuance thereof.

“Car Rental Facilities” shall mean any City-owned facility at the Airport specifically developed, constructed, set aside or utilized, in whole or in part, by an On-Airport Rental Car Company.

“Contract” shall mean the written agreement under which an Automobile is rented to a customer by an On-Airport Rental Car Company.

“Contract Day” shall mean a continuous twenty-four (24) hour period or fraction thereof, during which an individual Car Rental customer rents an Automobile. In the event the same Automobile is rented to more than one customer within such continuous 24-hour period, then each such rental shall be reflected as a Contract Day. Following the final 24-hour rental period, a grace period not to exceed 2 hours shall not be considered a new Contract Day.

“Contract Year” shall mean the annual timeframe that a contract, agreement or lease is in force between the City and an On-Airport Rental Car Company.

“Customer Facility Charge” or “CFC” shall mean the fee established by this Ordinance and collected per Contract Day for a maximum of fourteen (14) Contract Days for each Automobile rental entered into by an On-Airport Rental Car Company through its operations at the Airport.

“Customer Rental Transaction” shall mean a single rental transaction with a customer for a consecutive number of one or more Contract Days.

“Debt Service” shall mean principal and interest payments on Bonds or other debt instrument and any related required payments or deposits, including but not limited to credit and liquidity fees, coverage requirements and reserves.

“Director” shall mean the Director of Aviation and Transit.

“Eligible Costs” shall mean the costs described in Section 2.02 of this Ordinance.

“On-Airport Rental Car Company” shall mean a car rental company that is currently or shall become located at, upon or within the Airport and has entered into an On-Airport Rental Car Company Agreement.

“On-Airport Rental Car Company Agreement” or “Rental Car Company Agreements” shall mean the agreement or agreements between the City and an On-Airport Rental Car Company authorizing the On-Airport Rental Car Company’s operation at the Airport, the use of specified Airport facilities and specifying the terms, conditions and payment for such use and operation.

“Quick Turn Around Facility” or “QTA” shall mean the new facility to be designed, constructed and maintained at the Airport and used for the purpose of washing, detailing, and fueling Automobiles for rental by On-Airport Rental Car Companies.

Section 2. Imposition, Purpose and Amount of CFC.

2.01. Imposition of Fee. The City hereby imposes a CFC on each customer who rents an Automobile from an On-Airport Rental Car Company, to be applied and collected as provided in this Ordinance.

2.02. Purpose and Uses of the Fee. The CFC is being imposed to provide a specific additional source of revenue to pay the following Eligible Costs for Car Rental Facilities approved in accordance with the provisions of Section 2.03 hereof:

1. the costs of designing, constructing, furnishing and equipping Car Rental Facilities;
2. the payment of annual Debt Service on any Bonds issued to finance the costs of designing, constructing, furnishing and equipping Car Rental Facilities and to establish reserves therefor and to pay costs of issuance of the Bonds;
3. to establish any necessary reserves for the Bonds;
4. to pay costs of operating and maintaining Car Rental Facilities;
5. any other costs that the City, the Airport and the On-Airport Rental Car Companies may approve pursuant to Section 2.03.

2.03. Approval of the Eligible Costs, Car Rental Facilities and Establishing Rate of CFC.

a) Car Rental Facilities. Prior to entering into any contract for the construction of a Car Rental Facility or selling Bonds to finance a Car Rental Facility, the City shall present to the On-Airport Rental Car Companies for their approval, a copy of the final design of the Car Rental Facility, the estimated final construction costs, the principal amount of Bonds to be issued to finance the Car Rental Facility, the term of the Bonds and the estimated maximum amount of the CFC that will be required to meet the Debt Service on such Bonds.

b) Eligible Costs. Prior to including any Eligible Costs other than Debt Service in the calculation of the CFC rate, the City (Airport) shall present to the On-Airport Rental Car Companies for their approval, the proposed list of the Eligible Costs, the maximum annual amount of the Eligible Costs, and the amount of CFC necessary to pay the Eligible Costs and the duration of the collection of CFC for Eligible Costs.

c) The Car Rental Facilities and other Eligible Costs shall be deemed to be approved by concurrence of the On-Airport Rental Car Companies representing at least 51% of the total minimum annual revenues pledged to the City by all On-Airport Rental Car Companies as specified in the On-Airport Rental Car Company Agreements during the year that a Car Rental Facility or other Eligible Costs are being considered.

2.04. Setting of CFC. The CFC shall be established each year at a rate sufficient to produce revenues to pay annual Debt Service on Bonds that have been issued for approved Car Rental Facilities and approved Eligible Costs. In the event that the actual CFCs collected are not sufficient to pay both the annual Debt Service and other approved Eligible Costs, the payment of Debt Service shall have the higher priority for allocation of the CFCs. The Director and the City's Financial Services Manager shall establish the initial rate of the CFC to meet the requirements of this Section. The Director shall notify the On-Airport Rental Car Companies of the CFC rate in accordance with Section 2.06.

2.05. Adjustment by the Director of Aviation and Transit. Upon a determination by the Director and the City's Financial Services Manager that the revenues being collected from the CFC are either more than or less than the amount needed to pay the annual costs of Debt Service and other approved Eligible Costs, the Director, in consultation with the City's Financial Services Manager, may adjust the CFC. The Director shall provide notice of the change of the CFC rate in accordance with Section 2.06.

2.06. Written Notice; Effective Date of Rate. The City shall provide written notice to each On-Airport Rental Car Company of the initial CFC rate, of any increase or decrease in the CFC rate, and shall specify in such notice the date on which the specific CFC rate becomes effective (the "Rate Effective Date"), which date will not be less than sixty (60) days after notice is provided.

2.07. Yearly Report. The Director shall make a yearly report to the City Council within 180 days after the end of each fiscal year for the preceding fiscal year, presenting the costs, including debt service, incurred during such year, CFC revenues collected, and amounts on reserve for the current fiscal year. The report will include a forecast of costs to be incurred, a

forecast of Contract Days, required changes to the CFC, and a forecast of reserves during the current fiscal year.

Section 3. Collection of the Customer Facility Charge.

3.01. Applicability. The CFC shall be collected from all customers of each On-Airport Rental Car Company, including customers receiving complimentary or discounted auto rentals. The CFC shall be shown as a separately itemized charge on each On-Airport Rental Car Contract and described as “Customer Facility Charge” or “CFC” with a footnote approved by the City explaining the term or abbreviation.

3.02. Collection and Reporting. Commencing with the Rate Effective Date, each On-Airport Rental Car Company must collect the CFC at the time of collection of all other fees and charges associated with the rental of an Automobile. Each On-Airport Rental Car Company shall include the CFC rate in all forms of reservations for Automobile rentals and Automobile rental advertisements at least 30 days prior to the Rate Effective Date. Reservations made 30 days prior to a Rate Effective Date shall be exempt from the CFC. Contracts entered into prior to a Rate Effective Date shall also be exempt from the CFC. All CFCs collected and held will be considered the property of the City and will not be considered a revenue or an asset of the On-Airport Rental Car Company.

Each On-Airport Rental Car Company shall segregate, separately account for, and maintain records and controls that are sufficient to demonstrate the accuracy of the CFCs collected, the amount of CFCs collected, and the amount of CFCs remitted to the City. These accounting records must be made available for inspection and examination at reasonable times by the City or a duly authorized representative(s).

Each On-Airport Rental Car Company shall furnish to the City, each calendar month, a statement certified by such On-Airport Rental Car Company and prepared in a manner satisfactory to the City, detailing the CFCs collected, the number of Customer Rental Transactions, and Contract Days that occurred during the previous calendar month. The statement and CFCs collected shall be remitted by the On-Airport Rental Car Company to the City at the address provided in the current On-Airport Rental Car Company Agreement no later than the twentieth day of each month for the preceding calendar month of operation.

3.03. Certified Public Accountant Statement. Within ninety (90) days from the end of each Contract Year, the On-Airport Rental Car Company at its sole cost and expense shall engage a Certified Public Accountant (CPA) to provide a letter stating that the On-Airport Rental Car Company has complied with the monthly CFC collection, reporting and remittance requirements pursuant to and in accordance with this Ordinance. The CPA statement shall be in a format as specified by the City. Any reported discrepancies shall be corrected within ten (10) days of receipt of the CPA statement.

3.04. Default. Any On-Airport Rental Car Company that fails to comply with its obligations under this Ordinance shall be deemed to be in default under its On-Airport Rental Car Company Agreement, and the City may terminate the On-Airport Rental Car Company

Agreement due to such default, or pursue such other remedies as set forth in the On-Airport Rental Car Company Agreement.

3.05. Projections. Each On-Airport Rental Car Company shall provide to the Director no later than March 1 of each year, an estimate of its projected Contract Days (and Customer Rental Transactions) for the City's next fiscal year (which begins July 1).

Section 4. Effective Date. This ordinance shall become effective 30 days after its approval on 2nd reading.

PASSED by the City Council on first reading this 14th day of June, 2010.

PASSED, ADOPTED and APPROVED on second reading this ____ day of _____, 2010.

Mayor

Attest:

City Clerk