

ORDINANCE NO. 10- 16

AN ORDINANCE AMENDING BY RE-ENACTMENT A CUSTOMER FACILITY CHARGE AS INITIALLY ENACTED BY ORDINANCE NO. 04-64 AND AS AMENDED AND RE-ENACTED BY ORDINANCE NO. 07-21; INCREASING THE COUNTY'S CUSTOMER FACILITY CHARGE ("CFC") TO THREE DOLLARS AND SEVENTY-FIVE CENTS (\$3.75) PER TRANSACTION DAY ON ALL RENTAL CAR CONTRACTS ISSUED FOR THE RENTAL OF PASSENGER MOTOR VEHICLES AT THE NORTHWEST FLORIDA REGIONAL AIRPORT; FURTHER AMENDING THE ORDINANCE; PROVIDING AN EFFECTIVE DATE FOR THE AMENDED ORDINANCE AND REPEALING ALL ORDINANCES OR PROVISIONS THEREOF IN CONFLICT THEREWITH.

WHEREAS, the County has entered into a rental car concession agreement and a service facility lease ("Agreements") with each Rental Car Operator ("Operators") having a rental car concession at the Northwest Florida Regional Airport ("Airport"), said Agreements currently being for a term expiring September 30, 2010 and June 30, 2032 respectively; and

WHEREAS, the County is currently imposing and having said Operators collect, on behalf of the County, a Customer Facility Charge of three dollars and twenty-five cents (\$3.25) per Rental Car Transaction Day on all Rental Car Contracts under Ordinance No. 07-21 which charge became effective July 1, 2007; and

WHEREAS, the County desires to increase the Customer Facility Charge to three dollars and seventy-five cents (\$3.75) per Rental Car Transaction Day on all Rental Car Contracts effective December 1, 2010 through this re-enacted Customer Facility Charge Ordinance; and

WHEREAS, revenue from the imposition and collection of the Customer Facility Charge of three dollars and seventy-five cents (\$3.75) per Rental Car Transaction Day will be utilized by the County to pay for the construction, operation and maintenance of facilities and services for the use and benefit of Rental Car Operators and their Customers at the Airport, including but not limited to certain consolidated rental car service facilities heretofore constructed by the County for use by the Rental Car Operators; and

WHEREAS, the imposition and collection of the Customer Facility Charge of three dollars and seventy-five cents (\$3.75) per Rental Car Transaction Day is hereby determined to be in the public interest of providing and maintaining facilities and services for the use and benefit of Rental Car Operators, their Customers, and the traveling public using the Airport;

NOW, THEREFORE, Be It Ordained and Adopted by the Board of Commissioners of Okaloosa County.

SECTION 1. Definitions

Except as otherwise clearly indicated by the context, the word and phrases set forth in this section shall have the following meanings when used in this Ordinance:

- (a) "Covered Rental Car Operator" means a Rental Car Operator that files for bankruptcy protection or has an involuntary bankruptcy proceeding initiated against it after enactment of this Ordinance or a Rental Car Operator that has been non-compliant with the CFC remittance requirements of Section 3 of this Ordinance for a period of more than ninety (90) days. A Rental Car Operator ceases to be a Covered Rental Car Operator when it emerges from bankruptcy protection, or for a Rental Car Operator that has been non-compliant with the CFC remittance requirements of Section 3 of this Ordinance, as aforesaid, after said Operator has been in compliance with the CFC remittance requirements of Section 3 and Section 5 for a period of one hundred and eighty (180) consecutive days.
- (b) "Customer" means any person, firm, corporation, or other entity who or which rents and/or takes possession of a passenger motor vehicle at, through, or from the Airport or an Airport facility under or pursuant to a Rental Car Contract.
- (c) "Customer Facility Charge" or "CFC" means a charge of three dollars and seventy-five cents (\$3.75) per Rental Car Transaction Day.
- (d) "Rental Car Contract" means the document or documents (whether written, electronic, or otherwise) under or pursuant to which any Rental Car Operator rents, arranges for the rental of, and/or delivers possession of a passenger motor vehicle to a Customer.
- (e) "Rental Car Operator" or "Operator" means any person, firm, corporation, or other entity operating a rental car concession at the Airport or any other person, firm, corporation, or other entity authorized by the County to rent and/or arrange for the rental of a passenger motor vehicle to any driver, passenger, or other person, firm, corporation, or other entity at, through, or from the Airport or an Airport facility.
- (f) "Rental Car Transaction Day" means each 24-hour period, or fraction thereof, within a rental period under or pursuant to a Rental Car Contract.

SECTION 2. Imposition of Customer Facility Charge

Each Rental Car Operator shall charge and collect from each of its Customers, including but not limited to those receiving complimentary and/or discounted rentals of passenger motor vehicles, the Customer Facility Charge specified in Section 1 above. Said charge shall be identified on a separate line on each Rental Car Contract before, and conspicuously separate from, any state and local taxes, and shall be described only as the "Airport Customer Facility Charge" or "Airport CFC".

SECTION 3. Collection and Remittance

- (a) All Customer Facility Charges collected by a Rental Car Operator and/or its agents are, and shall be, funds held in trust by or for said Rental Car Operator for the benefit of the County. Said Customer Facility Charges shall be the County's property, and said Rental Car Operator and its agents shall have only a possessory interest in the Customer Facility Charges and shall not have any legal or equitable interest therein.
- (b) The Customer Facility Charges collected by each Rental Car Operator and/or its agents shall be promptly deposited to an interest-bearing account of a Federal Deposit Insurance Corporation insured bank or financial institution and the same shall be due and payable as set forth herein to the County in the currency of the United States of America. The CFC revenue ("CFCs plus interest on CFCs deposits") in such account on the last calendar day of each month shall be remitted to the County by check on a bank insured by the Federal Deposit Insurance Corporation and at the office of the Airports Director or, if said Rental Car Operator is so notified by the County, shall be remitted by electronic transfer to the County's authorized depository financial institution. Such remittance shall be made no later than the fifteenth (15th) calendar day following the end of said month.
- (c) The account to which each Rental Car Operator deposits the Customer Facility Charges shall not be subject to any lien, pledge or hypothecation as a result of any credit or security instrument entered into by said Rental Car Operator. Each Rental Car Operator shall segregate, separately account for, and disclose all Customer Facility Charges as trust funds in their financial statements; provided, however, that the failure to do so shall not alter or eliminate their status as trust funds.
- (d) Each Rental Car Operator shall maintain such accounting records and accounting controls over the collection, deposit, safekeeping, and remittance of said Customer Facility Charges as are required by the terms of its Agreements with the County, as then in effect, or if not so specified therein, as specified by the Airports Director pursuant to Sections 5 and 6 of this Ordinance, and all of said records and controls shall be subject to inspection and audit at all times by the County and its representatives as provided for by the Agreements and/or Section 6 of this Ordinance. Unless otherwise established pursuant to Section 6 of this Ordinance, the inspection and audit provisions contained in the Agreements shall apply to each Rental Car Operator's obligations with respect to Customer Facility Charges under this Ordinance.
- (e) Each Rental Car Operator shall be obligated to remit to the County all Customer Facility Charges imposed on its Customers pursuant to this Ordinance, whether or not they are actually collected from its Customers. Any amount not remitted by a Rental Car Operator to the County when due under this Ordinance shall bear interest at the highest legal rate allowed under Florida law, and the costs of collection and attorneys fees, if any, incurred by the County in obtaining or attempting to obtain payment, plus an administrative fee of two hundred fifty dollars (\$250.00) per each late or incorrect remittance, shall forthwith be paid by such Rental Car Operator to the County.

SECTION 4. Application of Customer Facility Charge Revenue

Revenue from the Customer Facility Charges remitted to the County pursuant to Section 3 above shall be deposited, utilized, and applied from time to time by the County in the priorities as follows:

- (a) Utilized to pay debt service and to fund any other costs of financing related to any rental car facility improvement made by the County for the benefit of the Rental Car Operators or their Customers, including but not limited to the costs of bond issuance, bond coverage and fund deposits, whether said requirements are specified in a trust indenture, bond ordinance or agreement by and between the County and the Rental Car Operators related to said facility or facility improvements.
- (b) Utilized to fund or reimburse the County for the costs (including but not limited to imputed interest on funds expended) of any rental car facility or facility improvements made by the County for the benefit of the Rental Car Operators or their Customers from County funds other than bonds.
- (c) Deposited to the County's Customer Facility Charge Fund to be used by the County to pay or reimburse the County for any capital or operating expenses incurred by the County, which would benefit any Rental Car Operator or its Customers or which would expand or improve ground transportation-related facilities at the Airport, including but not limited to the financing and construction of additional rental car or other ground transportation-related facilities at the Airport, or the payment, reimbursement or abatement of any Rental Car Operator rental or other payment due the County or for operating expenses incurred by the County on behalf of the Rental Car Operators or for any other purpose, expenditure or reimbursement as may be authorized by any agreement between the County and the Rental Car Operators, but only to the extent that CFCs are available and allocated by the County for said purpose or purposes after payment and allocation of amounts provided for in subsections (a) and (b) above.

SECTION 5. Dedicated CFC Account Requirement

In the event that a Rental Car Operator shall become a Covered Rental Car Operator and so long as it remains a Covered Rental Car Operator, it shall in addition to complying with the collection and remittance requirements contained in Section 3 hereof, comply with the following additional special CFC deposit and remittance requirements:

- (a) All Customer Facility Charges collected by a Covered Rental Car Operator or its agents shall be accounted for daily, segregated from the Operator's gross receipts, and deposited daily to the bank account established pursuant to Section 5(b) below.
- (b) So long as a Rental Car Operator is a Covered Rental Car Operator, the Operator shall establish and maintain a separate bank account, meeting all the requirements of Sections 3(a) through 3(c) of this Ordinance, and designate the account as the "Okaloosa County CFC Account". The account shall be used solely for the deposit of CFCs collected by the

Operator pursuant to this Ordinance. The Covered Rental Car Operator shall deposit to the account all the Customer Facility Charge receipts received, accounted for, and segregated daily from the Rental Car Operator's gross receipts pursuant to Section 5(a) above.

- (c) If so directed and whenever directed by the County, the Covered Rental Car Operator shall instruct the bank holding the above CFC account to wire transfer the CFC funds held in the above account to the County's account at the County's authorized depository bank, as instructed by the County.

SECTION 6. Implementation

The Airports Director is hereby empowered to enforce this Ordinance on behalf of the County and to design and require the use of such forms, and to establish such procedures and rules, as he may from time to time deem necessary or appropriate for the administration of this Ordinance, including but not limited to procedures and rules governing the Rental Car Operators' collection, deposit, safe-keeping, record keeping, and remittance of the CFC and the County's rights of inspection and audit with respect to each Operator's obligation under this Ordinance and its Agreements.

SECTION 7. Severability

The provisions of this Ordinance are intended to be severable, so that if any provision or provisions shall be held by a court of competent jurisdiction or by a governmental agency or entity to be invalid or unenforceable, the other provisions shall remain in full force and effect.

SECTION 8. Effective Date and Repeal

This Ordinance shall take effect on December 1, 2010, and does hereby repeal all ordinances or provisions thereof in conflict herewith effective the same date.

DULY PASSED AND ADOPTED in regular session, this 16th day of November, 2010.

OKALOOSA COUNTY, a Political Subdivision
of the State of Florida

By:


WAYNE HARRIS

Chairman, Board of County Commissioners



ATTEST:


DON W. HOWARD

Clerk of Circuit Court

