

ORDINANCE NO. 859**AN ORDINANCE OF THE CITY OF MADRAS ESTABLISHING FUEL FLOWAGE FEES FOR THE MADRAS MUNICIPAL AIRPORT, AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Madras (the "City"), an Oregon municipal corporation, owns and operates the Madras Municipal Airport (the "Airport") pursuant to ORS 836.200; and

WHEREAS, the Airport promotes a strong economic base for the City and surrounding region by facilitating transportation and encouraging trade opportunities; and

WHEREAS, the Madras City Council (the "City Council") desires that the Airport attain financial self-sufficiency in order to continue providing cost-effective aviation facilities; and

WHEREAS, the City incurs costs and makes capital investments in connection with its operation of the Airport, including, without limitation, supplying fuel inventories, pumping facilities, lighting, runway maintenance, personnel, wildlife control, financial management, an Automated Weather Observing System, long-term improvements, tie downs, and parking areas, all of which are paid for by the City, taxpayers, and grants obtained from the Federal Aviation Administration ("FAA"), Oregon Department of Aviation, and other federal, state, and local sources; and

WHEREAS, ORS 836.210 allows Oregon municipalities to establish charges, fees, and tolls for the use of municipal airports; and

WHEREAS, the FAA has directed airports to ensure that any rates, fees, rentals, and other service charges imposed on aeronautical users of airports for aeronautical uses are at fair market value; provided, however, such rates, fees, rentals, and other service charges should not be expected (in general) to finance all public airport operations; and

WHEREAS, it is also important that taxpayers do not unknowingly subsidize private enterprise; and

WHEREAS, to help ensure that taxpayers are not unknowingly subsidizing Airport users and to assist the Airport in becoming self-sufficient, the City Council has determined the need to follow the example of other airports in Oregon and begin charging certain fuel flowage and into aircraft fees.

NOW, THEREFORE, the City of Madras ordains as follows:

SECTION 1: FINDINGS. The above-stated findings are hereby adopted.

SECTION 2: SHORT TITLE. This Ordinance No. 859 (this "Ordinance") may be referred to and cited as the "Fuel Flowage Ordinance."

SECTION 3: DEFINITIONS. Except as otherwise provided in this Ordinance, the following terms have the meanings assigned to them below, whether or not such terms are capitalized:

“Airport” means the Madras Municipal Airport, including all facilities and roads located at or on the Airport.

“Airport manager” means the person or entity designated by the City to manage Airport operations.

“Aircraft” means every contrivance invented, used, and/or designed to navigate or fly in the air.

“Fuel” means any gasoline and any other inflammable or combustible gas or liquid useable as fuel for the operation of aircraft.

“Fuel fee(s)” mean individually and collectively the fuel flowage fee and into aircraft fee.

“Fuel flowage fee” means the fuel flowage fee authorized under this Ordinance.

“Fuel flowage delivery/pumping report” means the form created by the City to assist a fuel operator and aircraft operator with calculating appropriate fuel fees.

“Fuel operator” means any person who is authorized by the City to operate any system or device used to store or dispense fuel at the Airport, including, without limitation, a fuel storage tank, fuel transportation vehicle, and/or similar system or device.

“Into aircraft fee” means the into aircraft fee authorized under this Ordinance.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

SECTION 4: FUEL FEES.

4.1 Every fuel operator will pay a fuel flowage fee on all fuel pumped from the fuel operator's delivery vehicle into a customer's fuel truck and/or fuel holding tank located on the Airport. Upon a fuel operator's entry onto the Airport, the fuel operator will properly complete and submit a fuel flowage delivery/pumping report with the airport manager, which fuel flowage delivery/pumping report will identify, among other things, the amount of fuel being transported onto the Airport. Upon the fuel operator's departure from the Airport, the fuel operator will identify in the fuel flowage delivery/pumping report the amount of fuel pumped from the fuel operator's delivery vehicle into a customer's fuel truck and/or fuel holding tank located at the Airport. A fuel operator's refusal or failure to timely provide a properly completed fuel flowage delivery/pumping report may result in the fuel operator's eviction from the Airport and revocation, after due process, of any permit to operate at the Airport. The City reserves the right to verify any fuel delivery (and the amount of such delivery).

4.2 An into aircraft fee must be paid on all fuel that is pumped into an aircraft from a fueling truck or holding tank if the fuel flowage fee was not applied to such fuel or the fuel was not purchased from the City. Aircraft operators are responsible for completing the fuel flowage delivery/pumping report at the time fuel is pumped into the aircraft operator's aircraft. Refusal or failure to timely provide a properly completed fuel flowage delivery/pumping report may result in the aircraft operator's eviction from the Airport. In addition to any other rights and/or remedies provided under this Ordinance and/or applicable federal, state, and/or local laws, regulations, and/or ordinances, if an aircraft operator fails to timely and properly submit a fuel flowage delivery/pumping report, the City will determine the into aircraft fee by multiplying the estimated hours flown (based upon airport logs or other reliable sources) by the estimated gallons of fuel used per hour by the subject aircraft.

4.3 Fuel fees will be calculated by the number of gallons pumped. Fuel fees will be determined no less than annually by resolution of the City Council. Fuel fees may be increased or decreased at any time by resolution of the City Council. Unless and until modified by resolution of the City Council, the initial into aircraft fee and fuel flowage fee will be \$0.10 per gallon of fuel.

SECTION 5: COLLECTION. Fuel fees will be collected by the City in accordance with procedures established by the city administrator from time to time. Unless and until the city administrator establishes alternative payment procedures, (a) all fuel flowage fees will be paid by the fuel operator when the fuel operator departs from the Airport (unless alternative payment arrangements are mutually agreed upon by the city and fuel operator in writing prior to fuel delivery), and (b) all into aircraft fees must be paid when the fuel is pumped into the aircraft from a fueling truck or holding tank. Delinquency charges and fees (including interest) in an amount established by the city administrator from time to time may be imposed on all fuel fees not paid in full when due. The City reserves the right to conduct an audit to determine compliance with the requirements of this Ordinance. Within ten (10) days after the City's request, all fuel operators and aircraft operators will provide the City all delivery tickets, invoices, and any other records requested by the City to assist the City with its audit.

SECTION 6. FUEL SALES; FUEL TRANSPORTATION VEHICLES. No person will sell and/or provide any fuel for aircraft on the Airport, including, without limitation, fuel for the person's own aircraft, except as authorized or permitted by the City. No person will operate a fuel transportation vehicle on any portion of the Airport except pursuant to an agreement (permit) with the City expressly allowing such operation. The agreement (permit) will contain the terms and conditions required under this Ordinance, applicable fueling standards, and such other terms and conditions the city administrator determines necessary or appropriate. At a minimum, all fuel operators will be required to (a) provide the City written certificates of insurance and endorsements evidencing the insurance coverage required by the City, (b) indemnify the City and its officers, employees, and agents from any claim of any type whatsoever arising out of the presence of the fuel operator and/or fuel operator's provision of fuel at the Airport, and (c) comply with any and all environmental laws and regulations.

SECTION 7: CIVIL SANCTIONS. If any person violates any term or condition of this Ordinance, the City may exercise any rights or remedies allowed by law or equity, including,

without limitation, (a) imposition of a civil penalty pursuant to ORS 836.210 of not more than \$500.00 per violation, and (b) in the case of a violation of any term or condition of any permit granted under this Ordinance, after reasonable notice and hearing, suspension or termination of the rights granted under the permit. If any permit is suspended or terminated, any covenant or condition (including, without limitation, indemnification covenants) set forth in the permit, the full performance of which is not specifically required prior to the suspension or termination of the permit, and any covenant or condition which by its terms is to survive, will survive the suspension or termination of the permit and will remain fully enforceable thereafter.

SECTION 8. ENFORCEMENT; APPLICABLE LAW. This Ordinance may be enforced by any sworn peace officer authorized to enforce the laws of the City and any other city official authorized to administer the regulations governing use of the Airport. In addition, the City may initiate appropriate suit or legal action in a court of competent jurisdiction to enforce this Ordinance. This Ordinance will not substitute for nor eliminate the necessity for conformity with applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, regulations promulgated by the FAA.

SECTION 9: SEVERABILITY; CORRECTIONS. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors.

SECTION 10: EMERGENCY DECLARATION. The City Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of Madras citizens. The City Council further finds that a delay of thirty (30) days prior to the effective date of this Ordinance may result in acts, omissions, and/or conditions detrimental to the City and public welfare. Therefore, an emergency is declared to exist and this Ordinance will be in full force and effect upon its passage and adoption by the City Council and approval of the mayor.

ADOPTED by the City Council and signed by the Mayor this 10th day of June, 2014.