

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 16

DATE: December 2, 2003

STAFF: Dave Gordon

SUBJECT

First Reading of Ordinance No. 168, 2003, Enacting a New Article VII of Chapter 7.5 of the City Code Establishing a Passenger Facility Charge at the Fort Collins/Loveland Municipal Airport.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

FINANCIAL IMPACT

The Passenger Facility Charge ("PFC") will generate an estimated \$100,658 of revenues per year from ticketed airline passengers flying from the airport.

EXECUTIVE SUMMARY

The Aviation Safety and Capacity Expansion Act of 1990 provided a new source of funding (Passenger Facility Charges-PFC), for authorized airports to fund needed airport expansion projects that might otherwise go unfunded. In 1993 and 1995 the Fort Collins/Loveland Airport received approval from the FAA to collect PFCs since the airport was receiving scheduled passenger airline service. In these prior years the FAA allowed a maximum PFC collection of \$3.00 per enplaned passenger, which is the amount the Cities were approved to collect. Once the airport lost scheduled airline passenger service in 1997 the Airport's PFC collections were cancelled.

Allegiant Air started regular scheduled airline passenger service on July 31, 2003 which qualifies the airport to submit a new Application for the collection of PFCs. Since our last PFC Application, the FAA has increased the maximum amount for PFCs from \$3.00 to \$4.50 per enplaned passenger. The approval of this Ordinance will enact a new article of the City Code establishing a PFC for \$4.50 per enplaned passenger flying from the Fort Collins/Loveland Airport.

The PFC funds that will be collected from this Application total an estimated \$100,658 and must be used for the three projects listed in the PFC Application. City Council's designation of these projects, as required by Section 7.5-93 of this Code provision, will be accomplished via a resolution presented to City Council at the time of second reading of this Ordinance. FAA regulations are very specific on the kind of projects eligible for PFC revenues; examples of projects that are not eligible include parking facilities, rental car facilities, restaurants, concessions, or any other exclusive use facility. The three projects submitted with this Application are eligible. The three projects include rehabilitation of the south general aviation ramp area, design of the future snow removal equipment

building and the Master Plan Study. The south general aviation ramp rehabilitation project and the design of the future snow removal equipment building have been completed. The south ramp area work was completed last year and involved reconstructing a 400 X 400 foot section of aircraft ramp area. The design of the snow removal building is 95% complete and will be finished within 60 days. Funding for the construction of the building is not yet programmed by the FAA. Both of these projects were 90% funded with FAA funds. The Master Plan Study will begin early next year; the FAA Grant for 90% of the Study costs has already been accepted by both Cities. The PFC funds generated from this Application will be used to reimburse the Airport's share of funds for the two completed projects and for the Airport's share of funds that will be spent for the Master Plan study. The Master Plan Study will begin early next year and will develop a new 20-year Capital Improvement Plan for future PFC Applications.

The Application approval process takes approximately 10 months to complete. Once approved, the airlines will collect the \$4.50 for each enplaned passenger flying from the airport and then return the collected revenues to the airport on a monthly basis, less a very small handling fee established by federal regulation. It will take approximately twelve months to collect the \$100,658, based on estimated enplaned passengers. Prior to these revenues being fully collected the airport will seek approval from the City to submit a new PFC Application (along with new eligible projects) to the FAA to prevent a lapse of PFC collections.

ORDINANCE NO. 168, 2003
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ENACTING A NEW ARTICLE VII OF CHAPTER 7.5
OF THE CITY CODE ESTABLISHING A PASSENGER FACILITY
CHARGE AT THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the City of Fort Collins and the City of Loveland (the "Cities") have investigated the feasibility of implementing and collecting a Passenger Facility Charge ("PFC") on eligible enplaned passengers at the Fort Collins-Loveland Municipal Airport (the "Airport") in accordance with the Aviation Safety and Capacity Expansion Act of 1990 as approved by the Federal Aviation Administration ("FAA") and to expend such funds on FAA-approved eligible projects; and

WHEREAS, the Cities operate, maintain and develop the Airport with federal grants and user fees; and

WHEREAS, a PFC is not to be considered a tax, but is a user fee authorized by federal law and imposed only on eligible enplaned passengers utilizing the Airport; and

WHEREAS, the Cities have determined that the funds generated by adopting and collecting a PFC are needed to accomplish projects designed to enhance capacity, safety and development of the Airport.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Chapter 7.5 of the City Code is hereby amended by adding thereto a new Article VII to read as follows:

ARTICLE VII. PASSENGER FACILITY CHARGE

Sec. 7.5-90. Definitions.

When used in this Article, the following words and terms shall have the following meanings:

Airport shall mean the area of the Fort Collins-Loveland Municipal Airport.

Charge Effective Date shall mean the date on which the Passenger Facility Charge is effective as provided in § 7.5-92 of this Article.

Enplaned Passenger shall mean a domestic, territorial or international revenue passenger enplaned at the Airport in a scheduled or nonscheduled aircraft in interstate, intrastate or foreign commerce, provided that Enplaned Passenger shall not include a passenger enplaning to a destination receiving essential air service compensation as provided by 14 C.F.R. 158.9 or a passenger both enplaning and deplaning at the Airport.

Manager shall mean the Airport Manager for the Airport.

FAA shall mean the Federal Aviation Administration, Department of Transportation, United States of America.

Passenger Facility Charge shall mean the charge imposed on Enplaned Passengers pursuant to section 7.5-92 of this Article.

Fort Collins or *city* shall mean the City of Fort Collins, a home-rule municipal corporation created pursuant to Colorado state law.

Sec. 7.5-91. Findings and purpose.

The City Council hereby makes the following findings:

- (1) The city, together with the City of Loveland, owns and controls that certain Airport and air navigation facility located in Larimer County, State of Colorado, and known as the Fort Collins-Loveland Municipal Airport (the "Airport").
- (2) The Airport promotes a strong economic base for the community; assists and encourages world trade opportunities; and is of vital importance to the health, safety and welfare of the State of Colorado.
- (3) The Airport is a commercial service airport as that phrase is defined in 14 C.F.R. Part 158, as adopted by the FAA, being a public airport enplaning two thousand five hundred (2,500) or more scheduled air passengers per year.
- (4) The deregulation of the airline industry, the restructuring of airline ownerships, and fluctuating market changes in the field of commercial aviation have placed new financial challenges on the city.
- (5) The operation of the Airport as a public facility attracting scheduled airline passenger service by airline carriers at the Airport imposes financial responsibility on the city for Airport facilities and operations.
- (6) The city will require substantial expenditure for capital investment, operation, maintenance and development of the Airport facilities to meet the future demand for passenger air travel.
- (7) The Congress of the United States has authorized the adoption of a Passenger Facility Charge program by local airports pursuant to the Aviation Safety and Capacity Expansion Act of 1990 (pub. L. 101-508, Title IX, Subtitle B, November 5, 1990) (hereinafter the "Act").

- (8) It is in the city's best economic interest and in the interest of airline passengers that the city adopt a Passenger Facility Charge program as identified in this Article to maintain and further expand the transportation facilities of the city.
- (9) In establishing and implementing the Passenger Facility Charge program, the passengers using the Airport should contribute to a greater degree toward the development of Airport facilities used by passengers and continued development thereof.
- (10) The fees implemented by this Article are reasonable for the use of the Airport and aviation facilities by the general public.
- (11) The purpose of this Article is to enact a Passenger Facility Charge program consistent with the above findings, and this Article shall be liberally construed to effectuate the purpose expressed herein.

Sec. 7.5-92. Imposition of Passenger Facility Charge.

(a) Commencing not later than the first day of the second month thirty (30) days after the approval by the FAA of the City's Passenger Facility Charge program authorized by this Article, or on such date thereafter as the Passenger Facility Charge can be collected as determined by the Manager, there shall be imposed at the Airport a Passenger Facility Charge of four dollars and fifty cents (\$4.50).

(b) The collection of the Passenger Facility Charge authorized by this Article shall terminate on the date determined pursuant to regulations adopted by the FAA.

(b) The Manager or designee is authorized to execute the FAA application for authorization of the city's Passenger Facility Charge program, including the assurances contained therein as well as all other documents necessary for implementation and operation of the Passenger Facility Charge program on behalf of the city.

Sec. 7.5-93. Eligible projects.

The Passenger Facility Charge collected pursuant to this program shall be expended only for projects approved by resolution of both the City Councils of Fort Collins and Loveland and determined by the FAA to be eligible under the Act and rules and regulations adopted by the FAA pursuant thereto.

Sec. 7.5-94. Compliance with FAA requirements.

The Passenger Facility Charge authorized by this Article shall be collected and distributed pursuant to the rules and regulations adopted by the FAA pursuant to the Act.

Sec. 7.5-95. Violations.

In the event any airline or other entity violates any term or condition of this Article, the city may exercise any rights or remedies allowed by law or equity.

Sec. 7.5-96. Savings clause.

In the event any phrase, clause, sentence, paragraph or section of this Article is declared invalid for any reason, the remainder of this Article shall not be invalidated but shall remain in full force and effect, all parts of this Article being declared separable and independent of all others. In the event that a judgment is entered, and all appeals exhausted, which judgment finds, concludes or declares this Article is unconstitutional or is otherwise invalid, the Passenger Facility Charge authorized by this Article shall be suspended and terminated as of the date of declaration of unconstitutionality.

Section 2. The provisions of this Ordinance shall supercede and replace Ordinance No. 16, 1993, which originally established the PFC program.

Introduced and considered favorably on first reading and ordered published this 2nd day of December, A.D. 2003, and to be presented for final passage on the 16th day of December, A.D. 2003.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading this 16th day of December, A.D. 2003.

Mayor

ATTEST:

City Clerk