



CITY OF WASILLA

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COUNCIL MEMORANDUM NO. 92-51

FROM: Mayor Stein
DATE: May 7, 1992
RE: Airport Franchise

Since my April 23, 1992 Council Memorandum No. 92-48 on airport franchising was written, Mr. Harris has found a provision in the FAA airport grant which specifically prohibits "exclusive rights" at FAA funded facilities. Page 5 of FAA Form 5100-100, Paragraph 23 is attached.

This effectively eliminates the issue of airport franchises.

Staff recommends that reconsideration be dropped.



John C. Stein, Mayor

APPROVED

DATE: 5/11/92

BY: HOA

b. It will suitably operate and maintain the program implementation items that it owns and controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.** It will adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.** It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

- a. It will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical uses.
- b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor —
 - (1) to furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
 - (2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants, and combined passenger and cargo flights or all cargo flights. Classification or status as tenant shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on tenant air carriers.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event that the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the sponsor under these provisions.
- h. The sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply: (1) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and (2) If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to

Revisor's Notes - Subsection (c) was enacted as subsection (d) and relettered in 1990, at which time former subsection (c) was relettered as subsection (d).

Effect of Amendments - The 1990 amendment, effective June 22, 1990, in subsection (b), inserted "or other" before "waste material" in the first sentence, added the exception at the beginning of the second sentence, and made a punctuation change in the third sentence; and added present subsection (c).

Editor's Notes - Section 4, ch 176, SLA 1990 provides that the amendments made to this section by secs. 1 and 2, ch 176, SLA 1990 do not apply to a municipality with a population of less than 50,000 until July 1, 1991.

Sec. 29.35.060. Franchises and permits. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may grant franchises, including exclusive franchise privileges, to a person, corporation, organization, or utility not certificated by the Alaska Public Utilities Commission and may permit the use of streets and other public places by the franchise holder under regulations prescribed by ordinance.

(b) Unless the grant is made on a competitive basis, the grant of an exclusive right to use a public street or right-of-way for more than five years to a utility or a transportation system not certificated by the Alaska Public Utilities Commission shall be valid only if approved by a majority of the voters at an election.

(c) This section applies to home rule and general law municipalities. (Sec. 10 ch 74 SLA 1985)

Collateral references. - 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, sec. 140 et seq.

62 C. J. S., Municipal Corporations, secs 279,657.

Liability of municipal corporation for damages for maintenance of sewer disposal plant as nuisance. 40 ALR 2d 1198.

Municipal liability for maintenance of public dump as nuisance. 52 ALR 2d 1134.

Sec. 29.35.070. Public utilities. (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d) - (k) or is exempted under regulations adopted

C. A lessee shall notify any contractor it employs of the dimensions of its leasehold.

D. A lessee shall supply, maintain and keep operable fire extinguishers suitable for extinguishing flames from the type of materials on the premises.

E. A lessee shall maintain the floor of each hangar, hangar apron and ramp area leased or otherwise used in its operations clean and clear of oil, grease, materials or trash, except as may be otherwise provided in a specific lease.

F. A lessee who installs an aircraft tie-down anchor shall install the anchor in accordance with specifications provided by the airport manager. (Ord. 91-01 §3 1991)

5.30.230 Property Control. No person may, without the consent of the airport manager, alter, add to or construct any building, make any excavation or abandon any property on the airport. Such consent shall be given if the airport manager finds that the proposed activity is compatible with airport operations, applicable lease agreement and applicable City, Borough, State and Federal law. (Ord. 91-01 §3 1991)

5.30.240 Conduct of Commercial Activity.

A. No persons may engage in any business or commercial activity on the airport, without a city business license, a permit issued by the airport manager, and in accordance with this code.

B. The consummated lease and development plan of a lessee of airport property shall constitute the permit required by this section except for fuel or petroleum products dispensing.

C. No dispensing, selling, trading or bartering of aircraft fuel products may occur on airport property without a specific fuel dispensing permit issued by the airport manager. Issuance of a fuel dispensing permit requires proof of insurance to protect lessor and lessee against comprehensive public liability for personal injury or property damage, the policy limits of which shall be no less than five million dollars (\$5,000,000).

D. No person may operate or provide service, labor or materials, such as a mobile mechanic, on airport property unless issued a permit by the airport manager. Any holder of a permit authorized under this section shall be required to provide proof of insurance similar to insurance required of lessees of airport property. (Ord. 91-01 §3 1991)

5.30.250 Advertisements. No person may erect or post any exterior signs or advertisement at the airport except with the