



Office of the City Clerk



SO2012-67

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:	12/12/2012
Sponsor(s):	Zalewski, Michael R. (23)
Type:	Ordinance
Title:	An Ordinance authorizing amendment to Rent a Car leases and Off Airport Agreements
Committee(s) Assignment:	Committee on Aviation

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago ("City") owns and operates airports known as Chicago O'Hare International Airport ("O'Hare") and Chicago Midway International Airport ("Midway")(O'Hare and Midway being collectively referred to as the "Airports"); and

WHEREAS, the City may enter into leases and licenses for the use of facilities at the Airports, including licenses and leases for the privilege of operating rental car concessions at the Airports; and

WHEREAS, an ordinance was passed by the City Council on July 27, 2005, entitled "AUTHORIZATION FOR EXECUTION OF CONCESSION LICENSE AGREEMENTS WITH VARIOUS ENTITIES FOR ESTABLISHMENT OF CONSOLIDATED RENTAL CAR FACILITY AT CHICAGO MIDWAY INTERNATIONAL AIRPORT" (C.J.P. pp. 53196-53209) that, among other things, ratified the existing concession agreements with the On-Airport Rental Car Companies at Midway and authorized the Commissioner of the Chicago Department of Aviation ("Commissioner") to enter into new concession agreements with those On-Airport Rental Car Companies and a lease with Midway RACS, LLC, with respect to a consolidated rental car facility to be constructed at Midway (the "Midway Ordinance"); and

WHEREAS, an ordinance was passed by City Council on December 12, 2007, entitled "AUTHORIZATION FOR EXECUTION OF AMENDMENTS TO CURRENT RENTAL CAR CONCESSION LICENSE AGREEMENT AT MIDWAY INTERNATIONAL AIRPORT" (C.J.P. pp 17129-17133) that authorized the amendment of the existing concession agreements ratified by the Midway Ordinance to allow the On-Airport Rental Car Companies to recover from their customers, as a separate charge known as the "Concession Recovery Fee", the concession fee that the rental car companies pay the Airport (the "Midway Amendment Ordinance"); and

WHEREAS, an ordinance was passed by the City Council on December 12, 2007, entitled "AUTHORIZATION FOR EXECUTION OF RENTAL CAR CONCESSION LICENSE AGREEMENTS WITH VARIOUS ENTITIES AT CHICAGO O'HARE INTERNATIONAL AIRPORT" (C.J.P. pp 17133-17137) that authorized the Commissioner to enter into concession agreements with various On-Airport Rental Car Companies at O'Hare and that also allowed those On-Airport Rental Car Companies to charge the Concession Recovery Fee at O'Hare (the "O'Hare Ordinance"); and

WHEREAS, the Midway Ordinance, the Midway Amendment Ordinance and the O'Hare Ordinance all contained provisions that restricted the Concession Recovery Fee so that it could only be charged to "Business renters" or "Business program sponsors", as was restricted by Illinois statute (625 ILCS 5/6-305) at that time; and

WHEREAS, 625 ILCS 5/6-305 has since been amended to allow rental car companies to charge a Concession Recovery Fee to all customers; and

WHEREAS, the On-Airport Rental Car Companies have asked the City Council to repeal the restriction on charging the Concession Recovery Fee to business customers only and to authorize amendment of their concession agreements at both Airports in order for the On-Airport Rental Car Companies to charge a Concession Recovery Fee to all of their customers, as permitted by 625 ILCS 5/6-305, as amended; and

WHEREAS, the City Council desires to repeal the restrictions in the Midway Ordinance, the Midway Amendment Ordinance and the O'Hare Ordinance and to authorize the Commissioner to negotiate and execute amendments; and

WHEREAS, the Midway Ordinance also authorized the Commissioner to impose a customer facility charge ("CFC") on rental car transactions at Midway to finance the design and construction of a consolidated rental car facility at Midway; and

WHEREAS, an ordinance was passed by the City Council on July 28, 2010, entitled "SUPPLEMENT TO 2005 ORDINANCE REGARDING MIDWAY CONSOLIDATED RENTAL FACILITY AND CUSTOMER FACILITY CHARGE" (C.J.P. pp 97290-97300) that, among other things, authorized the Commissioner to determine additional costs that are eligible for use of CFC's at Midway, to establish and collect a fee from Off-Airport Rental Car Companies for use of a Common Use Transportation System by their customers, and to enter into agreements with those Off-Airport Rental Car Companies for the collection of the fee (the "Midway Supplemental CFC Ordinance"); and

WHEREAS, an ordinance was passed by the City Council on June 9, 2010, entitled "IMPOSITION OF CUSTOMER FACILITY CHARGE AND EXECUTION OF CONCESSION LICENSES WITH RENTAL CAR COMPANIES AT CHICAGO O'HARE INTERNATIONAL AIRPORT" (C.J.P. 93499-93505) that, among other things, authorized the Commissioner to impose a CFC to finance the design and construction of a consolidated rental facility at O'Hare and to determine costs that are eligible for the use of that CFC (the "O'Hare CFC Ordinance"); and

WHEREAS, because certain costs that are eligible for use of CFC's are incurred by the rental car companies, the City Council desires to clarify that the Commissioner is authorized to enter into reimbursement agreements from time to time with rental car companies to reimburse those eligible costs using CFC's; and

WHEREAS, On-Airport Rental Car Companies pay rent, concession fees and CFC's to the Airports that help support the operation and maintenance of the Airports, rental car facilities and common use transportation systems; and

WHEREAS, from time to time Off-Airport Rental Car Companies may pick up and drop off Airport passengers at the Airports but do not contribute to the costs of operating and maintaining the Airports; and

WHEREAS, it is fair and equitable that such Off-Airport Rental Car Companies contribute to the cost of the operation and maintenance of the Airports, including the roadways, consolidated rental car facilities and common use transportation systems at each Airport; and

WHEREAS, the City Council desires that the Commissioner be authorized to negotiate and enter into Airport access agreements with such Off-Airport Rental Car Companies and to impose a CFC on Airport passengers using such Off-Airport Rental Car Companies; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

Section 1. The above recitals are adopted as findings by the City Council.

Section 2. Those provisions of the Midway Ordinance, the Midway Amendment Ordinance and the O'Hare Ordinance restricting the imposition of the Concession Recovery Fee to business customers only are hereby repealed, and the Commissioner is hereby authorized to negotiate and execute amendments of the concession agreements with rental car companies at the Airports to allow the rental car companies to charge all customers a Concession Recovery Fee that complies with 625 ILCS 5/6-305, as amended.

Section 3. The Commissioner is hereby authorized to negotiate and execute reimbursement agreements with rental car companies to reimburse them for those costs that have been determined by the Commissioner to be costs that are eligible for use of CFC's.

Section 4. The Commissioner is hereby authorized to negotiate and execute airport access agreements with Off-Airport Rental Car Companies that desire to use Airport roadways and other Airport facilities to pick up and drop off customers at the Airports. Such agreements may contain terms and conditions as may be deemed reasonable by the Commissioner, including but not limited to an access or concession fee not to exceed ten percent of the gross revenues earned by the Off-Airport Rental Car Company on rental car transactions with Airport passengers. The Commissioner is further authorized to prohibit Off-Airport Rental Car Companies that refuse to enter into such access agreements from using Airport roadways and other Airport facilities.

Section 5. The Commissioner is hereby authorized to impose a CFC that complies with 625 ILCS 5/6-305(j) on Airport passengers who rent vehicles from Off-Airport Rental Car Companies. In the event that the Commissioner imposes such a CFC at Midway, it shall be in lieu of the Common Use Transportation Fee authorized by the Midway Supplemental CFC Ordinance.

Section 6. The Commissioner and other City officials are authorized to take such other actions and execute such other documents as may be necessary or desirable in order to implement the objectives of this ordinance.

Section 7. This ordinance shall be effective upon its passage and approval.

Section 8. The resolution attached hereto as Exhibit A to this ordinance is hereby approved and passed by the City Council concurrently with the passage of this ordinance.

RESOLUTION

WHEREAS, it is the policy of the City of Chicago (the "City"), as reflected in various ordinances, regulations, contracts and procedures, to encourage those doing business with the City of Chicago to take affirmative action to ensure that businesses owned by minorities, women and disadvantaged persons have an opportunity to compete appropriately for and provide supplies and services to persons or business entities who enter into contracts with the City; and

WHEREAS, for many years, the City has had in place specific procurement programs designed to achieve these policy goals (the "City M/WBE Program"); and

WHEREAS, for many years, the City has had in place concession license agreements with rental car companies (the "On-Airport Rental Car Companies") for the use of facilities at Chicago O'Hare International Airport ("O'Hare") and Chicago Midway International Airport ("Midway") (collectively "the Airports"); and

WHEREAS, the concession license agreements the City has in place with the On-Airport Rental Companies for operation at the Airports reference the Federal Aviation Administrations' ("FAA") Airport Concession Disadvantaged Business Enterprise Program (the "ACDBE Program") and the City's ACDBE commitment; and

WHEREAS, following submissions by the On-Airport Rental Car Companies, the concession license agreements between the City and the On-Airport Rental Car Companies, each of which was authorized by Ordinances duly passed by the City Council, incorporated a 0% goal for expenditures by these companies on ACDBEs because there are currently no certified ACDBEs in the Illinois Unified Certification Program that provide the types of goods and services that the On-Airport Rental Car Companies would buy; and

WHEREAS, the FAA, airport owners and operators, airport contractors and others involved in the aviation industry have recognized the need to develop and modify rules and regulations relating to the ACDBE Program to enhance opportunities for businesses owned by minorities, women and disadvantaged persons; and

WHEREAS, representatives of the On-Airport Rental Car Companies are actively participating in developing and modifying such rules and regulations as they pertain to companies that provide goods and services used in the rental car industry; and

WHEREAS, notwithstanding the lack of any ACDBE requirements in its concession license agreements and the difficulty in identifying ACDBE certified companies which provide goods and services used by the On-Airport Rental Car Companies in their operations at the Airports, the On-Airport Rental Car Companies have voluntarily proposed to use good faith efforts to implement a program designed to expand contracting opportunities for M/W/DBE certified companies and other businesses that are owned by minorities, women and disadvantaged persons (the "Voluntary Program", attached hereto as Exhibit A) as a good faith effort of the On-Airport Rental Car Companies to meet the spirit of the ACDBE Program until such time as there are certified ACDBEs to support a concession agreement ACDBE goal; and

WHEREAS, in order to advance the City's commitment to ensuring that businesses owned by minorities, women and disadvantaged persons have greater opportunities to provide goods and services in connection with City contracts generally, and contracts involving operations at the Airports in particular, the City Council wishes to formally approve, encourage and support the On-Airport Rental Car Companies' proposed Voluntary Program.

NOW THEREFORE, BE IT RESOLVED as follows:

1. The City Council hereby approves the proposed Voluntary Program of the On-Airport Rental Car Companies attached hereto as Exhibit A.

2. The City Council recognizes that the On-Airport Rental Companies currently have a 0% ACDBE goal in the concession license agreements that were previously authorized by Ordinances duly passed by the City Council, and that the Companies will have to significantly alter their Company-wide purchasing practices as part of their good faith efforts to achieve the foregoing goals, particularly in the initial years. Accordingly, the City Council requests the City's Department of Procurement Services to assist the On-Airport Rental Companies in facilitating contact with businesses owned by minorities, women and disadvantaged persons capable of meeting these Companies' purchasing requirements by providing a list of such companies to the On-Airport Rental Companies.

3. The City Council hereby directs the On-Airport Rental Companies to submit quarterly reports to the Chicago Department of Aviation ("CDA") on the efforts and results in achieving the goals and aspirations set forth in the Program, and to provide information to and as necessary appear before the Committee on Aviation and/or the City Council to report on such efforts and results.

4. The City Council further urges CDA and the On-Airport Rental Car Companies to continue to work with the FAA to adopt rules, regulations and amendments that will expand opportunities for ACDBE certification, including but not limited to opportunities for companies that provide goods and services purchased by the rental car industry.

5. In adopting this Resolution and approving and accepting the Program, the City Council does not intend that the Program supersede, conflict with or in any way impair the ACDBE Program, any federal statute, rule or regulation relating to the operations of the Airports, or the City's M/WBE Program. To the extent anything in this Resolution is interpreted to supersede, conflict with or in any way impair any of the foregoing, this Resolution shall, only to the extent necessary, shall be deemed null and void.

**VOLUNTARY PROGRAM TO PROVIDE GOOD FAITH EFFORTS TO USE
BUSINESSES OWNED BY MINORITIES, WOMEN AND DISADVANTAGED
PERSONS IN CONNECTION WITH AIRPORT OPERATIONS.**

The undersigned On-Airport Rental Car Companies, each of whom operate rental car concessions at O'Hare Airport and Midway Airport (the "Airports") in the City of Chicago ("City") pursuant to license agreements with the City, in furtherance of the policy of the City to encourage those doing business with the City to take affirmative action to assist businesses owned by minority, women and disadvantaged persons to compete appropriately for contracts with and provide supplies and services to persons or business entities who have contracts with the City, hereby undertake the following voluntary program (the "Voluntary Program") to provide good faith efforts to use businesses owned by minorities, women and disadvantaged persons in connection with their operations at the Airports. In proposing the Voluntary Program set forth below, the On-Airport Rental Car Companies do not intend to supersede, conflict with or in any way impair the Federal Aviation Administration's ("FAA") Airport Concessionaire Disadvantaged Business Enterprise Program (the "ACDBE Program"), or the City's Minority-Owned And Women-Owned Business Enterprise Procurement Program (the "City M/WBE Program").

1. Starting immediately, the On-Airport Rental Car Companies will use good faith efforts to expand contracting opportunities for businesses owned by minorities, women and/or disadvantaged persons in connection with "non-fleet expenditures" attributable to the On-Airport Rental Car Companies' operations at the Airports. Subject to paragraph 6 below, the On-Airport Rental Car Companies agree that the goal of their outreach efforts will be to achieve, at a minimum, the following levels of expenditures in the following years with businesses owned by minority, women and/or disadvantaged persons ("M/W/DBE Businesses") that are: (i) certified by the City of Chicago, the County of Cook, the Illinois Unified Certification Program, the Chicago Minority Supplier Development Council and/or the Women's Business Development Council or (ii) not certified by any of the entities listed in subparagraph (i), but are nonetheless owned by minority, women and/or disadvantaged persons.

- 15% of non-fleet expenditures attributable to operations at the Airports for the years 2013-2016.
- 30% of non-fleet expenditures attributable to operations at the Airports for the years 2017 and thereafter.

2. For purposes of this Proposal, "Non-fleet expenditures" encompass all expenditures not attributable to the purchase of vehicles including, but not limited to:

- Insurance
- Chemicals
- Lubricants
- Gasoline
- Auto Parts
- Environmental Services

- Promotional Products
- Marketing
- Advertising
- Auto Body Repair and Painting
- Keys, Key Blanks and Key Cutting Equipment
- Maintenance Products
- Janitorial Products
- Professional Services
- Maintenance and Custodial Services

3. The On-Airport Rental Car Companies will post procurement opportunities for “Non-fleet expenditures” in connection with their operations at the Airports on the City Department of Procurement Service’s M/WBE Forum.

4. The On-Airport Rental Car Companies will provide the Chicago Department of Aviation (“CDA”) and the City Council Committee on Aviation with quarterly reports reflecting their progress in achieving the foregoing goals.

5. The On-Airport Rental Car Companies will work with CDA and Members of the City Council’s Aviation Committee to sponsor public outreach sessions to identify and assist M/W/DBE Businesses in applying for ACDBE Certification.

6. To the extent that any future License Agreements relating to the On-Airport Rental Car Companies’ operations at the Airports contain ACDBE goals that are equal to or greater than the percentages stated in paragraph 1 above, such goals will supersede and replace the goals provided for herein.

7. This Voluntary Program is not meant to supersede conflict with or in any way impair the ACDBE Program, any federal statute, rule or regulation relating to the operations of the Airports, or the City’s M/WBE Program. To the extent anything in this Voluntary Program is interpreted to supersede, conflict with or in any way impair any of the foregoing, this Voluntary Program shall, only to the extent necessary, be deemed null and void.

ENTERPRISE RENT A CAR

HERTZ RENT A CAR

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

AVIS RENT A CAR SYSTEM, LLC

By: _____

Name: _____

Its: _____