



City of Chicago



F2013-33

Office of the City Clerk

Document Tracking Sheet

Meeting Date:

6/5/2013

Sponsor(s):

Mendoza, Susana A. (Clerk)

Type:

Communication

Title:

Approval by Federal Aviation Administration (FAA) dated November 2, 2012 regarding an application by City of Chicago for Passenger Facility Charge (PFC) program at Chicago O'Hare International Airport

Committee(s) Assignment:



CHICAGO DEPARTMENT OF AVIATION
CITY OF CHICAGO

May 3, 2013

The Honorable Susana Mendoza
City Clerk
City of Chicago
City Hall Room 107
121 N. LaSalle Street
Chicago, IL 60602

RECEIVED
2013 MAY -8 PM 12:11
OFFICE OF THE
CITY CLERK

Dear Ms. Mendoza:

Pursuant to the ordinance passed on January 12, 1993, attached hereto please find the approval by the Federal Aviation Administration (FAA) dated November 2, 2012 regarding an application by the City of Chicago for the Passenger Facility Charge (PFC) program at Chicago O'Hare International Airport.

If you have any questions regarding these matters, please contact me at (773) 686-3579.

Sincerely,

Michael Cosentino
Chicago Department of Aviation

Attachment

FINAL AGENCY DECISION

CITY OF CHICAGO, DEPARTMENT OF AVIATION CHICAGO, ILLINOIS

Application number 13-26-C-00-ORD is to impose a passenger facility charge (PFC) at Chicago O'Hare International Airport (ORD) for use at ORD.

In accordance with §158.29 of Title 14, Code of Federal Regulations ("CFR") of the Federal Aviation Regulations¹, this Final Agency Decision (FAD) includes the appropriate determinations to approve or disapprove, in whole or in part, imposition of a PFC at ORD and use of PFC revenue on three projects at ORD².

Procedural History (Dates)

Air carrier consultation meeting: May 16, 2012.

Public notice: April 25, 2012.

FAA receipt of application: October 9, 2012.

FAA finding that application is substantially complete: October 18, 2012.

PFC Level, Amount, and Charge Effective Date

Level of PFC:	\$4.50
Total approved net PFC revenue in this decision:	\$ 2,484,000
Earliest charge effective date:	November 1, 2038

November 1, 2038, is the "earliest" date on which air carriers are obliged to begin collecting PFCs from passengers ("charge effective date") and is based upon the estimated "charge expiration date" for the previously approved collections in application 11-25-C-00-ORD³. If the City of Chicago Department of Aviation (City) changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the City can continue to collect the authorized amount of PFC revenue without a cessation in collections. Title 14 CFR §158.43 contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge expiration date. In establishing its charge effective date, the public agency must comply with §158.43(b)(3), which states, in part, that the charge effective date will be the first day of a month which is at least 30 days from the date the public agency notifies the carriers of approval to impose the PFC.

¹ Elsewhere in this document 14 CFR Part 158 may be referred to in abbreviated form as "Section 158.xx" or "§ 158.xx".

² The projects included in this decision are as follows: Development of non-exclusive use gates and related terminal facilities; renovation of concourse L terminal facilities; and reimbursement to the City for prior development of a common use gate and related terminal facilities in concourse E.

³ Pursuant to Title 14 CFR §158.3: "charge effective date" means the date on which air carriers are obliged to begin collection of a PFC; "charge expiration date" means the date on which air carriers are to cease collecting a PFC.

Duration of Authority

The City is authorized to impose a PFC at ORD until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the City, the FAA estimates the charge expiration date for this decision is December 1, 2038. Should the amount of PFC revenue collected for this application ever exceed the allowable costs for all approved projects in this application, the public agency's authority to impose a PFC for this application ceases.⁴ If the public agency's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to insure that it complies with applicable law, subject to loss of Airport Improvement Program (AIP) grant funds. Section 158.39(d).

CUMULATIVE PFC AUTHORITY DECISION SUMMARY TABLE (including current decision)

Application Number	Approved for Collection	Approved for Use
93-01-C-00-ORD	\$ 500,418,285	\$ 203,169,288
93-01-C-01-ORD	\$ 3,043,976	\$ 0
93-01-C-02-ORD	\$ 4,070,943	\$ 4,070,943
93-01-C-03-ORD	\$ 2,310,816	\$ 0
93-01-C-04-ORD	(\$ 49,381,374)	(\$ 49,381,374)
93-01-C-05-ORD	\$ 2,228,896	\$ 0
93-01-C-06-ORD	\$ 33,289,404	\$ 52,607,489
93-01-C-07-ORD	\$ 7,211,803	\$ 0
93-01-C-08-ORD	\$ 12,397,557	\$ 0
93-01-C-09-ORD	\$ 6,455,531	\$ 5,228,339
93-01-C-10-ORD	(\$ 4,774,097)	(\$ 4,774,097)
93-01-C-11-ORD	\$ 612,594,021	\$ 0
93-01-C-12-ORD	(\$ 115,037,047)	\$ 23,053,275
93-01-C-13-ORD	\$ 214,109,256	\$ 109,210,915
93-01-C-14-ORD	(\$ 80,400,000)	\$ 0
93-01-C-15-ORD	\$ 9,947,249	\$ 8,367,249
94-02-U-00-ORD	\$ 0	\$ 59,572,172
94-02-U-01-ORD	\$ 0	\$ 2,228,896
94-02-U-02-ORD	\$ 0	\$ 7,072,870
94-02-U-03-ORD	\$ 0	(\$ 2,572,624)

⁴ See Title 14 CFR § 158.63(a) (The public agency must provide quarterly reports to air carriers collecting PFCs for the public agency with a copy to the appropriate FAA Airports Office.), § 158.67(c) (The public agency shall annually provide for an audit of its PFC account.), and § 158.39(a) (If excess PFC revenue has been collected, the public agency must use the excess funds for approved PFC projects or to retire outstanding PFC – financed bonds.).

95-03-C-00-ORD	\$ 21,343,524	\$ 48,078,691
95-03-C-01-ORD	\$ 0	\$ 7,211,803
95-03-C-02-ORD	\$ 0	\$ 218,210,000
95-03-C-03-ORD	\$ 0	(\$ 153,928,673)
95-03-C-04-ORD	(\$ 21,343,524)	(\$ 21,343,524)
95-03-C-05-ORD	\$ 0	\$ 23,020,309
95-03-C-06-ORD	\$ 0	\$ 11,700,000
96-04-C-00-ORD	\$ 1,450,000	\$ 1,450,000
96-04-C-01-ORD	(\$ 346,500)	(\$ 346,500)
96-04-C-02-ORD	(\$ 1,103,500)	(\$ 1,103,500)
96-05-C-00-ORD	\$ 386,444,323	\$ 588,747,375
96-05-C-01-ORD	\$ 26,474,108	\$ 27,701,300
96-05-C-02-ORD	\$ 10,774,097	\$ 10,774,097
96-05-C-03-ORD	\$ 33,191,669	\$ 427,575,690
96-05-C-04-ORD	\$ 0	\$ 18,410,975
96-05-C-05-ORD	(\$ 5,288,448)	(\$ 5,288,448)
96-05-C-06-ORD	\$ 16,118,381	\$ 97,996,413
96-05-C-07-ORD	\$ 0	(\$ 80,400,000)
96-05-C-08-ORD	\$ 0	(\$ 10,120,000)
96-05-C-09-ORD	\$ 20,426,238	\$ 20,426,238
97-06-C-00-ORD	\$ 1,470,500	\$ 1,470,500
97-06-C-01-ORD	(\$ 1,470,500)	(\$ 1,470,500)
98-07-C-00-ORD	\$ 61,717,809	\$ 61,717,809
98-07-C-01-ORD	(\$ 8,814,528)	(\$ 8,814,528)
98-07-C-02-ORD	\$ 1,922,127	\$ 1,922,127
98-08-C-00-ORD	\$ 546,526,300	\$ 209,956,300
98-08-C-01-ORD	(\$ 546,526,300)	(\$ 209,956,300)
98-09-C-00-ORD	\$ 1,540,000	\$ 1,540,000
98-09-C-01-ORD	(\$ 1,540,000)	(\$ 1,540,000)
98-10-U-00-ORD	\$ 0	\$ 88,370,000
98-10-U-01-ORD	\$ 0	(\$ 88,370,000)
99-11-C-00-ORD	\$ 1,500,000	\$ 1,500,000
99-11-C-01-ORD	(\$ 1,500,000)	(\$ 1,500,000)
01-12-C-00-ORD	\$1,486,284,358	\$ 787,084,358
01-12-C-01-ORD	\$ 108,543,432	\$ 108,543,432
01-12-C-02-ORD	(\$ 279,500,000)	\$ 0
01-12-C-03-ORD	\$ 25,000,000	\$ 25,000,000
01-12-C-04-ORD	\$ 100,251,514	\$ 100,251,514
01-12-C-05-ORD	\$ 8,432,793	\$ 17,432,793
01-12-C-06-ORD	(\$ 366,700,000)	\$ 0
01-12-C-07-ORD	\$ 222,300,000	\$ 222,300,000

02-13-U-00-ORD	\$ 0	\$ 53,000,000
02-13-U-01-ORD	\$ 0	(\$ 9,000,000)
02-14-C-00-ORD	\$ 2,565,000	\$ 2,565,000
02-14-C-01-ORD	(\$ 2,565,000)	(\$ 2,565,000)
03-15-C-00-ORD	\$ 11,625,000	\$ 11,625,000
04-16-C-00-ORD	\$ 37,000,000	\$ 37,000,000
06-17-C-00-ORD	\$ 73,198,000	\$ 73,198,000
06-18-C-00-ORD	\$ 8,200,000	\$ 8,200,000
06-18-C-01-ORD	(\$ 8,200,000)	(\$ 8,200,000)
06-19-C-00-ORD	\$1,290,509,174	\$1,290,509,174
06-19-C-00-ORD	\$ 132,971,654	\$ 132,971,654
07-20-C-00-ORD	\$ 53,983,000	\$ 53,983,000
07-20-C-01-ORD*	(\$ 53,983,000)	(\$ 53,983,000)
08-21-C-00-ORD	\$ 235,690,213	\$ 235,690,213
09-22-C-00-ORD	\$ 247,195,313	\$ 247,195,313
10-23-C-00-ORD	\$ 1,400,818,394	\$ 1,400,818,394
10-24-C-00-ORD	\$ 4,635,392	\$ 4,635,392
11-25-C-00-ORD	\$ 90,787,103	\$ 90,787,103
12-26-C-00-ORD	\$ 2,484,000	\$ 2,484,000
Totals	\$ 6,616,065,989	\$ 6,616,065,989

Project Approval Determinations

For each project approved in this FAD and for the application as a whole, the FAA, based on its expertise with the PFC program and airport development, exercises its judgment, and based upon its expertise finds that the application and record thereof, contain substantial documentation to support its determinations. Based on its review and pursuant to 49 U.S.C. §40117, the FAA finds that:

- The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the specific project.
- Each project approved at a \$3 or lower level meets at least one of the objectives set forth in 14 CFR §158.15(a) (as set forth in the individual project

determinations); is eligible in accordance with §158.15(b) (as set forth in the individual project determinations); and is adequately justified in accordance with §158.15(c) and paragraph 4-8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001) (as set forth in the individual project determinations).

- Each project approved at a PFC level above \$3.00 will make a significant contribution in accordance with 14 CFR §158.17(b)⁵ (as set forth in the individual project determinations); meets at least one of the objectives set forth in §158.15(a) (as set forth in the individual project determinations); is eligible in accordance with §158.15(b) (as set forth in the individual project determinations); and is adequately justified in accordance with §158.15(c) and paragraph 4-8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001) (as set forth in the individual project determinations).
- Each project approved for collection at a PFC level above \$3, meets the requirements of 14 CFR §158.17(a) (2). The FAA has reviewed the City's funding proposals for each project. For each project, the FAA has determined that the Airport Improvement Program (AIP) funds are not expected to be available to fund the project in whole or in part.
- The collection process, including a request by the public agency not to require a class or classes of carrier to collect PFC, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law.
- The public agency has not been found to be in violation of §9304(e) or §9307 of the Airport Noise and Capacity Act (ANCA) of 1990 (since codified at 49 U.S.C. 47524 and 47526).
- The project-related requirements, concerning approval of the airport layout plan (ALP) and completion of airspace studies have been met.
- Environmental requirements (14 CFR §158.29(b) (1) (iv)) have been completed and are discussed under a separate heading below.

Project Approved for Authority to Impose and Use the PFC at ORD at a \$4.50 Level

Description:

Approved

Amount

O'Hare School Sound Insulation Program – Noise Abatement Modifications – St. Tarcissus School

⁵ A project for a medium or large airport is only eligible for PFC funding at levels of \$4 or \$4.50 if the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport. [See 14 CFR § 158.17(b).]

Pay-as-you-go ⁶	\$	0
Bond Capital ⁷	\$	1,242,000
Bond Financing & Interest ⁸	\$	<u>1,242,000</u>
Total	\$	2,484,000

This project will provide sound insulation for one school, which is significantly impacted by noise as determined by sound attenuation tests. The sound attenuation test has determined that the interior decibel level can be decreased to achieve a 45 decibel level, on the overage, over a school day.

School sound insulation may include, but is not limited to, the following components for the sections of the school used for educational purposes: installation of heating and air conditioning systems; replacement of existing windows and exterior doors with sound insulating windows and doors; the addition of insulation to exterior walls and ceilings; and the addition of baffling devices to all exterior vents.

The school included in this project is St. Tarcissus School.

Determinations:

Approved for collection and use.

Significant contribution: It has been determined that noise mitigation will result in a reduction of noise levels attributable to aircraft noise by at least 5dB at St. Tarcissus School. Thus, this project makes a significant contribution to reducing the impact of aviation noise on people living near the airport and utilizing community services.

PFC Objective: This project will result in a reduction of noise levels for the school being soundproofed. Thus, the project meets the PFC objective of reducing noise or mitigating noise impacts resulting from an airport.

Basis for eligibility: §158.17(b) and §158.15(b)(5), noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504 without regard to whether the measures have been approved pursuant to 14 CFR Part 150.

Adequate justification: This project will result in a reduction of noise levels for the schools being soundproofed. The FAA has examined the proposed costs associated with this project and determined that the proposed costs are reasonable

Estimated total project cost: \$2,484,000.

⁶ "Pay-as-you-go" refers to a method of financing a project where a public agency pays any outstanding project invoices as soon as PFC collections revenue permits.

⁷ "Bond capital" refers to the proceeds of a bond or other debt instrument used to pay the capital costs of a project.

⁸ "Financing and Interest" means the cost of financing a bond or other debt instrument, including debt service.

Proposed sources of financing: PFC revenue \$2,484,000 - the amount requested by the City, and proposed AIP discretionary funds of \$4,968,000.

Environmental Requirements

The school sound insulation was analyzed and approved in a Categorical Exclusion issued on September 4, 2012, thus allowing the City to seek concurrent authority to impose and use the PFCs. The Categorical Exclusion was prepared pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality guidelines implementing NEPA and FAA Orders 1050.1.E and 5050.4B.

All applicable requirements pertaining to ALP approval, airspace and NEPA have been met.

Request Not to Require a Class or Classes of Carriers to Collect PFCs.

The City requests that the following class of air carriers be excluded from the requirement to collect PFCs: *Air taxi*.

Determination: Approved pursuant to 14 CFR §158.11. Based on information contained in the City's application, the FAA has determined that the proposed class accounts for less than 1 percent of ORD's total annual enplanements. The City should confirm, on an annual basis using prior year enplanement data, that the approved class does not exceed 1 percent of the total enplanements at ORD. Upon completion of the annual review, should the approved class (Air taxi) no longer meet the requirement for exclusion; the City must initiate collection of PFCs from this class of carriers.

Compliance with the Airport Noise and Capacity Act of 1990 (ANCA)

The FAA is not aware of any proposal at ORD which would be found to be in violation of the ANCA. The FAA herein provides notice to the City that a restriction on the operation of aircraft at ORD must comply with all applicable provisions of the ANCA and that failure to comply with the ANCA and Part 161 makes the City subject to provisions of Subpart F of that Part. Subpart F, "Failure to Comply With This Part," describes the procedures to terminate eligibility for AIP funds and authority to collect PFC revenues.

Compliance with Subsection 47107(b) Governing Use of Airport Revenue

As of the date of this approval the City of Chicago, Department of Aviation has not been found to be in violation of 49 U.S.C. §47107(b) or in violation of grant assurances made under 49 U.S.C. §47107(b).

Compliance with Requirement to Submit a Competition Plan

As of the date of this approval, the City of Chicago Department of Aviation has complied with the requirement to submit a competition plan in accordance with

§158.29(a)(1)(viii). Furthermore, by letter dated June 2, 2004, the FAA has determined that the plan is in accordance with 49 U.S.C. §47106(f).

Air Carrier Consultation and City's Public Notice

No comments were provided by the air carriers following the May 16, 2012 air carrier consultation meeting.

No comments from the public were received from the City's public notice issued on April 25, 2012.

Legal Authority

This decision is made under the authority of 49 U.S.C. §40117, as amended. This decision constitutes a final order to approve, in whole or in part, the City of Chicago Department of Aviation's application to impose a PFC and use PFC revenue on three projects at ORD. A person disclosing a substantial interest may apply for review of this decision to the courts of appeals for the United States or the United States Court of Appeals for the District of Columbia upon petition, pursuant to 49 U.S.C. §46110, filed within 60 days after issuance of this decision.

Concur



Great Lakes Region
Airports Division Manager

11/2/12

Date

Nonconcur

Great Lakes Region
Airports Division Manager

Date