****

TO: Commissioner Braj Agrawal, Hearing Officer Commissioner Carl Crimmins, Hearing Officer

FROM: Joe Harris, Director, Reliever Airports (612-726-8135)
Kelly Gerads, Assistant Director, Reliever Airports (612-726-8142) Andrew Hanson, Attorney (612-725-8346)

SUBJECT:Hearing Officers’ Report

DATE: October 3, 2024

**FOR ACTION**

**Summary**

On July 15, 2024, a public hearing was held on an ordinance to repeal and replace MAC Ordinance No 119, Rates and Charges for Reliever Airports, as well as amend the fuel flowage fee sections of MAC Ordinance No. 115, Airfield Use and Terminal 2-Humphrey (“Ordinance”). Staff recommends that the Hearing Officers adopt the attached Hearing Officers’ Report, summarizing the ordinance process, the public hearing, and responding to comments from the public.

This action will optimize financial performance while investing to sustain growth. It will promote advancement of MAC’s purpose to provide exceptional airport experiences so Minnesota thrives.

**Fiscal Impact**

[ ]  No Impact [x]  Operating Budget [ ]  CIP [ ]  Other

The proposed Ordinance will modify the current rental rates and charges for users of the Reliever Airports and the fuel flowage fee for general aviation activity at MSP, which will have a direct impact on the operating budget. The proposed changes are estimated to increase revenue, on average, about $700,000 each year over the period of 2025-2030.

**Action Requested**

1. **Adopt the attached Hearing Officers’ Report; and**
2. **Recommend that the Operations, Finance, and Administration Committee consider the attached Findings, Conclusions, and Order as well as the proposed Ordinance and approve a recommendation for the Full Commission that it adopt both.**

**Background**

MAC Ordinance No. 119 governs the rental rates and other charges assessed to users of the MAC’s Reliever Airports. MAC Ordinance No. 115 governs, among other things, the fuel flowage fee applicable to general aviation aircraft operating at MSP. Both ordinances provide governance on rates and charges for general aviation operations in the MAC ‘s system of airports.

***Applicable Legal Authority***

MAC’s legal authority to set and charge rents and fees, and the parameters surrounding that authority, are found in federal law, state law, and lease agreements with airport tenants. Key points are provided in summary form below:

* 49 U.S.C. § 47107(a)(1) (“Grant Assurance 22”);
* 49 U.S.C. § 47107(a)(13) (“Grant Assurance 24”);
* Minnesota Statutes, section 473.651 (Authority to set rates and charges);
* Minnesota Statutes, section 473.608, subd. 17 (Authority to adopt ordinances);
* Minnesota Statutes, section 473.608, subd. 27 (Requiring MAC to divert the maximum feasible number of GA operations from MSP to the Reliever Airports); and
* MAC’s General Aviation Lease Agreements, which include a provision entitled “Revision of Rents,” allowing MAC to adjust the rates without amending the Lease.

***Prior Related Actions***

MAC Ordinance No. 115 was adopted in August of 2012.

MAC Ordinance No. 119 was adopted in June of 2014.

**Analysis**

1. Public Hearing

Staff held a public hearing on July 15, 2024 to present the draft language and take testimony. In addition to MAC staff, eight individuals from the public attended the hearing. Four comments were made at the hearing. One additional written comment was received following the hearing.

The attached Hearing Officers’ Report contains MAC’s response to each comment.

1. Post-Hearing Ordinance Changes

After the public hearing, Staff developed a recommendation for two, minor changes to the proposed Ordinance. These changes were not responsive to feedback received during the public comment period.

The first set of changes is to Section 2.2 (“Gross Sales Thresholds”). Staff made edits to clarify the text. Additionally, Staff noted that past drafts of the Ordinance had included numbers that anticipated a 2024 effective date of the Ordinance, rather than a January 1, 2025 effective date. The numbers have been adjusted to align with the CPI change from 2023 to 2024. Moreover, Staff decided that the same principles that have justified different thresholds for FBOs at the primary and secondary airports was equally at play for non-FBO commercial operators. Hence, this draft of the proposed Ordinance contains different thresholds for non-FBO commercial operators at the primary and secondary airports.

Finally, Ordinance No. 119 does not address which ground rental rate applies to a new Commercial Tenant, or an existing Commercial Tenant for a new lease for a new leasehold. For existing Commercial Tenants, MAC reviews reporting of Gross Revenue over the course of a Reportable Year, defined by MAC Ordinance No. 119. Depending on the total amount of Gross Revenue reported by the Commercial Tenant in that Reportable Year, the Commercial Tenant’s ground rental rate will change.

In order to align with historical practice, Staff proposes that Section 2.2 contain a new provision noting that new Commercial Tenants, or existing Commercial Tenants with new leaseholds, will pay Chart C rates for ground rent until such time that they have been under lease with MAC for a full Reportable Year. Chart C rates are the lowest ground rental rates, which will give Commercial Tenants (who are typically constructing facilities, or just starting their operations) time to establish their businesses prior to (potentially, depending on Gross Revenues) paying a higher ground rental rate.

The second change is to Chart F to add an administrative fee for review and approval of temporary property use agreements or authorizations. Staff regularly receive requests for temporary uses of property at the Reliever Airports. These requests come in two types. The first type of request comes from tenants who request temporary authorization to use their leased premises for a use not included as an authorized use under their lease. For example, they may want to use their hangar to host a fly-in pancake breakfast. In these instances, MAC will approve this additional use for a period of time (and place conditions on that use) within the context of a Temporary Use Authorization executed between MAC and the Tenant. Because these authorizations temporarily amend the Tenant’s lease, MAC assesses the Standard Amendment Fee for review and approval of this lease transaction.

The second type of request comes from persons or entities who are not current Tenants of MAC, or for the use of property that is not currently under lease with MAC. For example, MAC has received requests to use property temporarily for overflow parking for events that occur on adjacent properties, or requests to use undeveloped space for larger events at the airport (Air Expo, at Flying Cloud Airport is an example). In these instances, MAC will enter into a temporary lease (and place conditions on use of the property) within the context of a Temporary Property Use Agreement executed between MAC and the person or entity. Historically, MAC has not had a mechanism for charging an administrative fee for review and approval of these Temporary Property Use Agreements.

Staff proposes that Chart F be amended to include a line-item for review and approval of Temporary Property Use Authorizations and Agreements, and mirror the proposed fee for Standard Amendments.

1. Next Steps

If the Hearing Officers’ Report is approved by the Hearing Officers, the Findings, Conclusions, and Order and the proposed Ordinance will be presented to the Operations, Finance, and Administration Committee (OF&A) for recommendation to the Full Commission.

Attachments:

Hearing Officers’ Report and Attachments