

RESOLUTION NO. 77634

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REVISING THE CITY'S NEW AIR SERVICE SUPPORT PROGRAM TO SUPPORT THE DEVELOPMENT OF NEW AIR SERVICE AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT BY REMOVING THE AIRLINE MATCHING REQUIREMENT ON NEW AIR SERVICE MARKETING FUNDS EXPENDED BY THE CITY, INCREASING THE NEW AIR SERVICE MARKETING FUNDS TO BE EXPENDED BY THE CITY, AUTHORIZING THE DIRECTOR OF AVIATION TO WAIVE THE REQUIREMENT FOR AN AIRLINE TO REPAY WAIVED FEES AND MARKETING EXPENDITURES IN THE EVENT OF EARLY TERMINATION OF SERVICE DUE TO EXTENUATING CIRCUMSTANCES, AND REPEALING RESOLUTION 77099

WHEREAS, the City of San José ("City") owns and operates the Norman Y. Mineta San José International Airport ("Airport" and "SJC"); and

WHEREAS, Federal Aviation Administration policy allows airports to establish air service incentive programs involving waivers or discounting of fees and charges imposed on airlines in exchange for new service, so long as the incentives are limited to a defined promotional period and the incentives are available on a non-discriminatory basis to all airlines that are willing to provide the same type and level of new service consistent with the incentive program; and

WHEREAS, from the program's beginning in 2006, the SJC New Air Service Support Program has continued to evolve to take into account changes in the industry as well as competitive dynamics; and

WHEREAS, the City wishes to further revise the airline Program to remove the airline matching requirement on new air service marketing funds expended by the City,

increase the new air service marketing funds to be expended by the City, authorize the Director of Aviation ("Director") to waive the requirement for an airline to repay waived fees and marketing expenditures in the event of early termination of service, and authorize the Director to discontinue the availability of the program for additional service to an international destination within and outside North America that is currently served by an airline at the Airport;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The Airport's New Air Service Support Program is hereby revised and restated to support the development of new air service at the Airport.

SECTION 2. DEFINITIONS

The definitions set forth in this Section shall govern the application and interpretation of this Resolution. For the purpose of these definitions, any reference to a "new" destination means a destination not currently served by nonstop service at that time. Any terms not specifically defined in this Resolution shall have the meanings as defined in the current Airline-Airport Lease and Operating Agreement.

- a. "Aircraft Operation" means a takeoff or landing at the Airport.
- b. "Airline" means a commercial passenger airline.
- c. "Eligible Terminal Rents" means Ticket Counter Rents and Gate Charges otherwise payable pursuant to the current Airline-Airport Lease and Operating Agreement, but shall not include Charges for use of Exclusive Use Premises, 80/20 Charges for Baggage Make-Up and Baggage Claim, Charges for use of the FIS Facility and International Baggage Claim, or Charges for the use of

Storage Space. For Qualifying Service operated from Preferential Use Premises, Eligible Terminal Rents shall include an amount equal to the Ticket Counter Rents and Gate Charges for use of Common Use Premises calculated as if the Qualifying Service were operated using Common Use Premises.

- d. "Incentive Period" means: (i) for a new Short-Haul Domestic Destination, a period of twelve (12) consecutive months from the commencement of Qualifying Service; (ii) for Long-Haul Domestic Destinations, a period of eighteen (18) consecutive months from the commencement of Qualifying Long-Haul Domestic Service; (iii) for new international destinations within North America, a period of eighteen (18) consecutive months from the commencement of Qualifying Service; (iv) for new international destinations outside North America, a period of thirty (30) months from the commencement of Qualifying Service; (v) for new Qualifying International Seasonal Service that is not converted to year-round service, a period of twelve (12) consecutive months from the commencement of Qualifying International Seasonal Service; (vi) for service to an international destination within North America that was previously operated as Qualifying International Seasonal Service, a period of eighteen (18) consecutive months from the commencement of the initial Qualifying International Seasonal Service; and (vii) for service to an international destination outside North America that was previously operated as Qualifying International Seasonal Service, a period of thirty (30) consecutive months from the commencement of the initial Qualifying International Seasonal Service.
- e. "Long-Haul Domestic Destination" means any domestic destination outside a radius of 1,250 miles from the Airport. The Director may adjust the radius for Long-Haul Domestic Destinations at any time on account of market conditions.
- f. "Minimum Qualifying Period" means: (i) a period of twelve (12) consecutive months from the commencement date of the first Qualifying Service between the

Airport and a new Short-Haul Domestic Destination or international destination;
(ii) a period of twelve (12) consecutive months from the commencement date of a new or increased frequency to a Long-Haul Domestic Destination; or (iii) a period of four (4) consecutive months from the commencement date of the first Qualifying International Seasonal Service between the Airport and an international destination.

- g. "New Entrant Airline" means an Airline that has not operated regular scheduled commercial passenger service at the Airport at any time during the twelve (12) month period prior to the first day of commencing Airline operations at SJC.
- h. "Qualifying International Seasonal Service" means an airline's new Seasonal Service operated at least three (3) days weekly (as documented in OAG (Official Airline Guide) or other worldwide airline schedule system) between the Airport and any new international destination, excluding an airline's new service to a destination commencing within a period of time equal to the length of the Minimum Qualifying Period following that airline's cancellation of previously scheduled service to the same destination during the Minimum Qualifying Period. Notwithstanding the preceding sentence, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying International Seasonal Service. Qualifying International Seasonal Service excludes repeated Seasonal Service, upgrade of equipment type, or increased number of seats on existing flights. Notwithstanding any provision of this Resolution to the contrary, the Director may, at any time, determine that new nonstop commercial passenger air carrier service to an international destination that is then currently served by nonstop commercial passenger air carrier service at the Airport is no longer Qualifying International Seasonal Service.
- i. "Qualifying Long-Haul Domestic Service" means an airline's new or additional nonstop commercial passenger air carrier service operated at least three (3)

days weekly (as documented in OAG or other worldwide airline schedule system) between the Airport and any Long-Haul Domestic Destination, excluding an airline's new service to a destination commencing within a period of time equal to the length of the Minimum Qualifying Period following that airline's cancellation of previously scheduled service to the same destination during the Minimum Qualifying Period. Notwithstanding the preceding sentence, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying Long-Haul Domestic Service. Qualifying Long-Haul Domestic Service excludes repeated Seasonal Service, upgrade of equipment type, or increased number of seats on existing flights. Notwithstanding any provision of this Resolution to the contrary, the Director may, at any time, determine that new nonstop commercial passenger air carrier service to a Long-Haul Domestic Destination that is then currently served by nonstop commercial passenger air carrier service at the Airport is no longer Qualifying Long-Haul Service.

- j. "Qualifying Service" means an airline's new nonstop commercial passenger air carrier service operated at least three (3) days weekly (as documented in OAG or other worldwide airline schedule system) between the Airport and; (i) any new Short-Haul Domestic Destination, or any previously unserved Short-Haul Domestic Destination that commences during the then effective Incentive Period for that Destination; (ii) any new international destination (either within or outside North America), or any previously unserved international destination that commences during the then effective Incentive Period for that international destination. Notwithstanding the preceding sentence, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying Service.
- k. "International Seasonal Service" means nonstop commercial passenger air carrier service operated between the Airport and an international destination for a minimum of four (4) months during a twelve (12) month period.

- I. "Short-Haul Domestic Destination" means any domestic destination within a 1,250 mile radius of the Airport. The Director may adjust the radius for Short-Haul Domestic Destinations at any time on account of market conditions.

SECTION 3. NEW AIR SERVICE SUPPORT PROGRAM

The Director is hereby authorized to act in accordance with the New Air Service Support Program set forth in this Resolution and to implement this Program pursuant to its terms and subject to the following conditions:

- a. Airlines Currently Operating at SJC
 1. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Service to a new Short-Haul Domestic Destination or a new international destination within or outside North America, the City will credit the Airline with Landing Fees that would otherwise be due to the City for the Qualifying Service for the remaining Incentive Period for that destination as of the commencement date of the first Qualifying Service to that destination. From the date of the first Qualifying Service to a new Short-Haul Domestic Destination or new international destination within or outside North America through the end of the Incentive Period for that destination, any airline may apply for the Landing Fee credit for its new service to that destination. However, any such additional service to that destination will receive the Landing Fee credit only for the then remaining portion of the Incentive Period that commenced with the first Qualifying Service to that destination.
 2. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Long-Haul Domestic Service, the City will credit the Airline with

Landing Fees that would otherwise be due to the City for the Qualifying Service for the Incentive Period for that Long-Haul Domestic Destination.

3. Subject to the provisions of this Section 3, for any Airline that commences Qualifying International Seasonal Service to a new international destination, the City will credit the Airline with all Landing Fees that would otherwise be due to the City for the Qualifying International Seasonal Service for the remaining Incentive Period for that international destination as of the commencement date of the first Qualifying International Seasonal Service to that destination. From the date of the first Qualifying International Seasonal Service to a new international destination through the end of the Incentive Period for that destination, any airline may apply for the Landing Fee credit for its new seasonal service to that destination. However, any such additional seasonal service to that destination will receive the Landing Fee credit only for the then remaining portion of the Incentive Period that commenced with the first Qualifying International Seasonal Service to that destination. In order to receive this credit, the Airline must notify the City that its service to the international destination is to be Seasonal Service in its application for the credit.
4. Subject to scheduled temporary service changes made by an Airline as published in OAG and subject also to temporary suspensions as provided in subparagraph 8 below, in the event that an Airline: (i) eliminates any of its nonstop service between the Airport and any destination during the Minimum Qualifying Period for any Qualifying Long-Haul Domestic Service or Qualifying Service; and (ii) fails to replace any such eliminated nonstop service with an equal number of new nonstop flights immediately after the cessation of the eliminated service, the City may, at the Director's discretion, invoice the Airline for all previously credited Landing Fees and Terminal Rents, as applicable, that would otherwise have been due from the commencement date of all otherwise Qualifying Service.

5. An Airline seeking a landing fee credit for Qualifying Long-Haul Domestic Service, Qualifying International Seasonal Service or Qualifying Service shall apply for the credit through the Airport's application process in advance of commencing Qualifying Long-Haul Domestic Service or Qualifying Service.
6. The Director is authorized to suspend and resume the Incentive Period for a destination when all service to a destination is suspended due to circumstances beyond the control of the Airline(s). The extension of the Incentive Period shall be equal to the length of the unforeseen suspension of service to the destination.

b. New Entrant Airlines

1. A New Entrant Airline shall be eligible for the Landing Fee credits available under subsection 3.a. above under the same terms and conditions as airlines currently operating at SJC. In addition, a New Entrant Airline shall also be eligible for the Eligible Terminal Rents credits under this subsection 3.b, but only for service actually commenced within an operational grace period of forty-eight (48) hours from the New Entrant's first day of operation at SJC. Regardless of when a New Entrant announces any additional service, any additional Qualifying Long-Haul Domestic Service, Qualifying Service or Qualifying International Seasonal Service commenced by a New Entrant Airline at any time after the New Entrant's first day of operation at SJC shall be eligible only for the Landing Fee credits otherwise available under subsection 3.a above.
2. Subject to the provisions of this Section 3, for Qualifying Long-Haul Domestic Service, Qualifying Service, or Qualifying International Seasonal Service actually commenced on the New Entrant Airline's first day of operation at SJC, the City will credit the New Entrant Airline with all Eligible Terminal Rents that would otherwise be due to the City for the New Entrant Airline's Qualifying Long-Haul

Domestic Service, Qualifying Service Service, or Qualifying International Seasonal Service on the same terms and conditions and in addition to the credit for Landing Fees provided under subsection 3.a above.

SECTION 4. NEW AIR SERVICE MARKETING

- a. For all Qualifying Service, Qualifying Long-Haul Domestic Service, and Qualifying International Seasonal Service, and subject to appropriation of funds, the Director will be responsible for establishing and managing a Marketing Introduction Program utilizing Airport marketing and community outreach resources to promote the service at the Airport. Such resources may include on-Airport messaging, website announcements, external newsletter announcements, public relations assistance, and community introductions.
- b. Subject to appropriation of funds, the City may expend:
 - (i) up to \$25,000 of marketing funds to promote new air service at the Airport to a new Qualifying Short-Haul Domestic destination;
 - (ii) up to an additional \$50,000 of marketing funds to promote any new or added air service to a Long-Haul Domestic Destination or any new international destination within North America; and
 - (iii) up to \$500,000 of marketing funds to any Airline to promote its new air service at the Airport to any new international destination outside North America. For Seasonal Service to any new international destination outside North America, City's expenditure of marketing funds shall be prorated to account for the Seasonal Service. City shall offer and expend these marketing funds only during the first two years of operation of an

Airline's new air service at the Airport to any new international destination outside North America.

- (iv) up to an additional \$100,000 of marketing funds to any New Entrant Airline to promote its new air service at the Airport to any destination.
- c. For any expenditure of marketing funds, all such expenditures shall be limited to promotion of the specific new air service at the Airport, and City shall have the opportunity to review and approve the Airline's marketing plan prior to placement by Airline. Airline shall place approved advertising and submit copies of paid invoices for advertising to City. City shall reimburse Airline within thirty (30) days of City's approval of the invoice.
- d. In the event that an Airline: (i) eliminates any of its nonstop service between the Airport and any destination during the Minimum Qualifying Period for any Qualifying Long-Haul Domestic Service or Qualifying Service; and (ii) fails to replace any such eliminated nonstop service with an equal number of new nonstop flights immediately after the cessation of the eliminated service, the City may invoice the Airline, at the Director's discretion, for all marketing funds expended by City for any new air service.

SECTION 5. Resolution No. 77099 is hereby repealed.

ADOPTED this 15th day of December, 2015, by the following vote:

AYES: HERRERA, JONES, KALRA, KHAMIS, M. NGUYEN, T.
NGUYEN, OLIVERIO, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: CARRASCO.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk