

Leasing Policy for Non-Commercial Property

Oregon Department of Aviation

As Approved by the State Aviation Board

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SECTION I - INTRODUCTION

The Oregon Department of Aviation (ODA) owns and operates a system of general aviation airports, which are divided into five classes as defined in the 2000 Oregon Aviation Plan. As set forth by the Federal Aviation Administration (FAA) by way of its Airport Sponsor Assurances, any airport developed with Federal grant

assistance is required to operate for the use and benefit of the public and is to be made available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. As sponsor of State-owned airports, ODA receives Federal airport development funding. This Leasing Policy for Non-Commercial Property will assist ODA in maintaining compliance with the Airport Sponsor Assurances, as not to jeopardize its ability to obtain future Federal airport development funding, as well as to provide for the fair and equitable treatment of all Airport non-commercial lessees and users. This Policy has further been developed to assist the ODA in competing fairly with other airports and to maintain fiscal responsibility of the assets entrusted to the Department by the citizens of the State of Oregon.

The purpose of this document is to establish a standardized system for the leasing and rental of Airport non-commercial properties, which will be utilized for all future lessees and users of the Oregon State-owned Airports, and to assist the ODA in maintaining compliance with the Federal Aviation Administration (FAA) Policies, Regulations, guidance documents and Advisory Circulars.

SECTION II - LEASING POLICY

This Leasing Policy for Non-Commercial Property document is intended to provide potential and current non-commercial lessees with an understanding of the policies and processes used by the State of Oregon Department of Aviation (ODA) when leasing non-commercial property. This document sets forth the parameters for leasing Airport land for non-commercial uses, and establishes the following purposes:

- Maintain ODA's public-use Airports in a safe manner to ensure that the Airports can fulfill their role in the State's emergency response system
- Preserve investments in the ODA's system of Airports and their level of service
- Facilitate orderly management of the Airport(s)
- Ensure provision of reasonable leasing procedures, ODA services, and consistent quality of facilities
- Provide equitable and uniform treatment of all lessees and users
- Advance aviation-related services on the Airport(s)
- Assist ODA in the well-ordered development of all State-owned Airports
- Ensure compliance with applicable laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application and acceptance of Federal Funds
- Facilitate and foster good relations with Airport users, and surrounding communities and their residents
- Enable conformity with approved Airport Master Plans
- Make State-owned Airports available for public use on reasonable terms and without undue discrimination
- Maintain a fee and rental structure with the goal of financial self-sustainability
- Enable development and oversight of the Oregon Aviation Plan
- Ensure economic growth by providing access to State, regional, and national markets

SECTION III - MISSION STATEMENT

The Oregon airport system is an important component of the State's overall transportation network, generating economic growth and enhancing livability throughout the State. The Oregon Department of Aviation has established this Leasing Policy for Non-Commercial Property to foster safe, efficient, and high quality facilities for

the Airport users and lessees.

The Oregon Department of Aviation's goals are to:

- Develop aviation as an integral part of Oregon's transportation network
- Increase air service and general aviation services in Oregon
- Create and implement strategies to protect and improve Oregon's aviation system
- Encourage aviation-related economic development
- Support aviation safety and education

A primary goal is to ensure the existing and future airport system will be adequate to meet the needs of all Oregon citizens and businesses relative to air mobility.

SECTION IV - DEFINITIONS

All definitions contained in this section apply to the Oregon Department of Aviation Minimum Standards, Rules and Regulations, Rates and Charges Policy, and Leasing Policies regarding State-owned Airports.

A. Aircraft

- (1) Aircraft -means any contrivance used or designed for navigation of or flight in the air, but does not mean a one-person motorless glider that is launched from the earth's surface solely by the operator's power.
- (2) Air Charter or Taxi - the commercial operation of providing air transportation of person(s) or property for hire either on a charter basis or as an air taxi operator.
- (3) Aircraft Fuel -all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion, jet, or turbine engine.
- (4) Aircraft Operation -an aircraft arrival at, or departure from, the airport.
- (5) Aircraft Owner -a person holding legal title to an aircraft, or any person having exclusive possession of an aircraft.
- (6) Aircraft Parking and Storage Areas -those hangar and apron locations of the Airport designated by the ODA Director or Airport Manager for the parking and storage of aircraft.
- (7) Based Aircraft - an aircraft which is physically located at the airport on a permanent basis, and whenever absent from the Airport, the aircraft is intended to be returned to the airport as its permanent base.

B. General

- (1) Aeronautical Activity -any activity conducted at the Airport that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. These activities include, but are not limited to, aircraft fueling, aircraft storage, aircraft owner- maintenance, and any other activities, which because of their relationship to the operation of aircraft can appropriately be regarded as an "aeronautical activity."
- (2) Airport -means any area of land or water, within or without this state, that is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.
- (3) State-owned Airport – any airport owned and operated by the State of Oregon, Department of Aviation.
- (4) ALP - the current Airport Layout Plan or drawing available for each of the Oregon State-owned Airports.
- (5) Flying Club – a non-commercial and nonprofit entity organized for the purpose of providing its members

with any number of aircraft for their personal use. The flying club shall be the aircraft owner, and the club may not derive greater revenue from the use of the aircraft than the cost to operate, maintain, and replace the aircraft.

(6) Exclusive Right - a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means.

(7) General Aviation - all phases of aviation other than aircraft manufacturing, military aviation, and scheduled or non-scheduled commercial air carrier operations.

(8) Hazardous Material – any substance, waste, or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Oregon, or any political subdivision thereof, and the presence of which requires investigation, removal and/or remediation.

(9) Minimum Standards - the qualifications or criteria, which may be established by the Airport owner as the minimum requirements that shall be met by businesses engaged in on-airport commercial aeronautical activities for the right to conduct those activities. These “operating” Minimum Standards are different from and not related to the Airport “dimensional & layout” minimum standards described in the Oregon Administrative Rules 738, Division 20.

C. Governmental

(1) ODA - the Oregon Department of Aviation (formerly the Oregon Department of Transportation-Aeronautics Division) established by the Oregon State Legislature on July 1, 2000.

(2) Director -the duly appointed Oregon Department of Aviation Director or the Director’s designee.

(3) Airport Manager – the designated individual appointed by the Director to administer and manage all operations of the Airport and Airport facilities, and to supervise all Airport projects or their designee.

(4) Airport Classifications -the five classifications of Oregon Airports as defined in the Oregon Aviation Plan dated February 2000:

(5) FAA -the Federal Aviation Administration.

(6) FAR - federal aviation regulations as published by the FAA.

CATEGORY	SIGNIFICANT FUNCTION	DESIGNATION CRITERIA
1) Commercial Air Service Airports	Accommodate scheduled major/national or regional/commuter commercial air carrier service	Scheduled commercial air service
2) Business or High Activity Aviation Airports	Accommodate corporate aviation activity including business jets, helicopters, and other general aviation activities.	30,000 or more annual operations, of which a minimum of 500 are business related (turbine) aircraft. Business use heliports.
3) Regional or General Aviation Airports	Accommodate a wide range of general aviation users for large service areas in outlying parts of Oregon. Many also accommodate seasonal regional fire response activities with large aircraft.	Generally less than 30,000 operations Geographically significant locations with multiple communities in the near service area. Nearest Category I airport is more than 90 minutes average travel time by road.

4) Community General Aviation Airports	Accommodate general aviation users and local business activities.	2,500 or more annual operations or more than ten based aircraft.
5) Low Activity General Aviation Airports	Accommodate limited general aviation use in smaller communities and remote areas of Oregon. Provide emergency and recreational use functions.	Less than 2,500 annual operations and ten or fewer based aircraft.

D. Fueling

(1) Fueling or Fuel Handling -the transportation, sale, delivery, dispensing, or draining of fuel or fuel waste products to or from aircraft.

(2) Fuel Storage Area - any portion of the Airport designated by ODA as an area in which gasoline or any other type of fuel may be stored or loaded.

(3) Self-Service Fueling - the commercial operation of an unmanned stationary fuel tank and dispensing equipment for general use via a card reader. This includes the operation of anyone utilizing this type of equipment to provide fuel for sale or reuse.

(4) Self-Service -Individuals with approved fuel storage for use in owned aircraft only, or individuals dispensing fuel into aircraft they own from portable containers.

E. Lease and Agreements

(1) Lease -the written contract between the Oregon Department of Aviation and a Lessee specifying the terms and conditions under which the Lessee may occupy and engage in non-commercial aeronautical activities from certain Airport facilities and/or property.

(2) Sublease - the written agreement stating the terms and conditions under which a third party leases space from a Lessee for the purpose of engaging in non-commercial aeronautical activities at the Airport.

(3) Lessee – any person with a lease to occupy space and engage in non-commercial aviation activities at the Airport. .

(4) Person -an individual, corporation, firm, partnership, association, organization, and any other group acting as an entity. t. Person includes a trustee, receiver, assignee or similar representative acting for or in place of lessee..

(5) Caretaker - a person under contract with ODA to oversee, inspect, and maintain specific Airport facilities and operations.

(6) Non-Commercial -aeronautical activities, including use of leased land to construct and use a hangar to store a personal aircraft, that are conducted personally by the lessee and do not involve the exchange of compensation with any party other than ODA.

F. Infrastructure

(1) Airport Operations Area or AOA - the area of the Airport used for aircraft landing, takeoff, or surface maneuvering including hangars, navigation, and communication facilities.

(2) Airpark – a development or area not located on, but adjacent to, and with access to the AOA. Said area may include permanent residences, structures, and taxilanes.

(3) Roadway - any street or road whether improved or unimproved, within the boundaries of the Airport and designated for use by ground vehicles.

(4) Taxilane -the portion of the aircraft parking area used for access between taxiways and aircraft parking positions.

(5) Taxiway - a defined path established for the taxiing of aircraft from one part of the Airport to another.

(6) UNICOM - a two-way radio communication system operated by a non-governmental entity that provides airport advisory information.

(7) Vehicle Parking Area -any portion of the Airport designated and made available for the parking of ground vehicles.

SECTION V – LEASE APPLICATION

5.1 Application

To obtain a non-commercial lease at a state-owned airport, a person shall submit a written application to ODA for review. The application shall be on the form provided by ODA. The application shall include:

- 1 A detailed description of the scope of the proposed development.
- 2 A description of the means to be employed to accomplish the construction.
- 3 The legal name of the person applying to be the lessee and its business name (if applicable).
- 4 The names, addresses, and phone numbers of all owners, officers and directors.
- 5 The dates for commencement and completion of the proposed development.
- 6 Verification that pilot(s) and aircraft comply with State registration requirements.
- 7 A listing of all applicable FAA Certificates.
- 8 A layout (to scale) of the size, configuration, and location of the property proposed for occupancy and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be on paper not less than 8.5 inches x 11 inches in size.

ODA may request a metes and bounds legal description of lease property boundaries. For proposed agreements to lease (or requests for assignment of) existing structures and improvements, application shall include a description of the site based on ODA records.

9. The number of initial projected aircraft to be stored in the proposed structure.

10. **The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.**

5.1.2 Hangar Occupancy

All hangars, whether constructed by the lessee or leased from ODA, shall be used as a base for at least one aircraft registered with the State, or at least one aircraft currently being repaired, modified or constructed. Any aircraft being repaired, modified or constructed must show progress towards an airworthy condition over a twelve-month period, or the lessee shall make arrangements to vacate the leased property, or transfer ownership to a qualified lessee approved by ODA within 30 days of written notice by the ODA.

If any non-commercial lessee occupying a property with a hangar structure exceeds a period of 180 days

without having an aircraft based in the hangar, lessee shall make arrangements to vacate the leased property, or transfer ownership to a qualified lessee approved by ODA within 30 days of written notice by the ODA.

5.2 Financial Responsibility

Lease applicants who will be constructing leasehold improvements shall provide ODA evidence, in a form acceptable to ODA, of its ability to supply proof of the applicant's financial ability to complete the project, in one of the following forms:

- A. A performance bond in the amount equal to the cost for constructing the proposed improvements. The performance bond may be supplied by a contractor.
- B. An irrevocable letter of credit guaranteeing funds to complete the project.
- C. An escrow agreement administered by a title and escrow company.
- D. A trust administered by a commercial bank.

At its option, ODA may require the prospective lessee to obtain one of the above documents as proof of financial responsibility to complete the project.

5.3 ODA Review of Application

ODA shall review the application and financial responsibility documentation and determine whether to approve or deny the application. The decision shall be made in writing to the applicant.

ODA may deny any application if it is determined that

- (A) the proposed construction would create a safety hazard at the Airport or the surrounding community.
- (B) the Applicant does not meet the qualifications, standards, and requirements of ODA or exhibit adequate financial responsibility or capability to undertake the proposed construction.
- (C) the granting of the application will require ODA to expend funds, or supply labor or materials, in connection with the proposed activity or construction, or will result in a financial loss (or hardship) for the Airport.
- (D) no appropriate, adequate, or available site or buildings exist to accommodate the application.
- (E) the proposed development is not consistent with the Airport Master Plan, and/or Airport Layout Plan (ALP), or the development time line for the Airport.
- (F) the development or use of the area requested by the Applicant is likely to result in congestion of aircraft or buildings, or will unduly interfere with operations or activities of any present operator or lessee on the Airport and/or prevent adequate access to the assigned lease area of any present lessee and/or operator.
- (G) the Applicant has failed to make full disclosure, or misrepresented or omitted material facts in the application or in supporting documents.
- (H) the Applicant or a principal of the Applicant, has a record of violating the rules, regulations, statutes, ordinances, laws, or orders of any other Airport, FAA regulations, or any other rules, regulations, statutes, ordinances, laws, or orders applicable to the Airport.

- (I) the Applicant or a principal of the Applicant has defaulted in the performance of any other agreement with the State.
- (J) the Applicant cannot provide applicable insurance in the amounts and type required by ODA for the proposed development.
- (K) Applicant's development and/or operation could be detrimental to the Airport.

SECTION VI - GENERAL LEASE PROVISIONS

6.1 Property Lease

If ODA has approved the lease application, ODA shall provide the Applicant with copies of the Minimum Standards, Airport Rules and Regulations, Rates and Charges Policy, and Leasing Policy for Non-Commercial Property, Applicant shall also be provided a Draft Non-Commercial Lease for review. This Draft Non-Commercial Lease will include, but not be limited to the following details:

- 1 Description of leasehold as provided from ODA records
- 2 Term of lease
- 3 All fees and charges associated with occupying and operating on the premises
- 4 Payment procedures relating to fees and charges
- 5 Approved activities
- 6 Prohibited activities
- 7 Maintenance requirements
- 8 Restrictions on hazardous substances
- 9 Default and penalty provisions
- 10 Remedies on default
- 11 Procedures for vacating premises
- 12 Insurance required
- 13 Names and addresses of responsible parties
- 14 Information on all taxes, liens and utilities
- 15 Compliance with FAA regulations
- 16 Aircraft registration requirements/pilot registration
- 17 Construction or alteration procedures
- 18 Landscaping
- 19 Fire Prevention
- 20 ODA entry onto premises
- 21 Compliance with laws
- 22 Termination of lease provisions
- 23 Termination for Airport development
- 24 Transfer of Airport ownership
- 25 Bankruptcy
- 26 Ingress and Egress to Property
- 27 Sale of Improvements
- 28 Lease Renewal Options

6.2 Lease Term

The Base Term for non-commercial leases will be no longer than twenty-five (25) years. If the lessee requests a renewal, ODA may agree to renew the lease, consistent with this section, for one five year period, or other period that, together with the period of the base term lease, does not exceed 30 years.

At the expiration of the Base Term and any renewals, Lessee may request a new lease. If ODA determines that the lease premises are not required for other airport uses, Lessee has met its obligations under the terms of the preceding lease, and ODA otherwise finds that a new lease is appropriate, ODA may negotiate a new lease. The duration of the new lease shall be at ODA's option.

Each renewal or new lease following the base term lease shall incorporate all current terms and conditions for leases and any special terms ODA deems necessary based on the particular circumstances of the lessee and leased property.

If ODA determines that a renewal or new lease will not be offered, ODA may require Lessee to remove any structures at Lessee's cost at the expiration of the Base Term, any renewal term or new lease term.

6.2.1 Lease Renewals

ODA may grant the renewal request if the following conditions are met:

- A. The existing lease is not in default;
- B. Any improvements to the premises are structurally sound and capable of safe and legal occupancy for the remaining term of the renewal period;
- C. Lessee files a written notice with ODA stating that Lessee has complied with A. and B. above and intends to exercise its renewal. ODA will provide the form of written notice upon request. The notice must be filed not later than 120 days prior to the expiration of the Base Term.
- D. ODA will inspect lessee's improvements for condition and appearance in accordance with ODA's standards for maintaining clean, safe and attractive facilities at the Airport. Items considered will include, but not be limited to, siding and exterior finish, roofing, doors and structural framing. If ODA determines from its inspection that the improvements may not be structurally sound, ODA may require lessee to obtain an inspection by a certified inspector at Lessee's expense to verify the condition of the structure. Any deficiencies noted by ODA's inspection or further structural inspection may be required to be corrected as a condition of Lessee's renewal.

If corrections cannot be completed prior to the expiration of the current lease term, Lessee may request in writing that ODA approve additional time to make the corrections, and ODA shall not unreasonably withhold approval of the request. ODA and Lessee may enter into the renewal, subject to the written

commitment of Lessee to complete the repairs within a specified period. Failure to make the repairs within the specified period may be cause for immediate termination of the renewal term.

ODA may grant the request for a new lease, subject to the policies of this section, if the conditions described above to qualify for a lease renewal are met. The length of the term of a new lease following a base term lease and any renewal shall be at ODA's discretion.

6.2.2 Termination for Default or Airport Development

(A) In the event of termination for default by Lessee, Lessee has two options, either of which must be completed within 120 days of the date of lease termination. Lessee may sell the lease improvements to a buyer who is able to enter into a lease with ODA. As an alternative, within that same period Lessee may remove the improvements at Lessee's expense and restore the premises to their original condition. Lessee shall pay basic rent for any post-termination occupancy, until another buyer has entered into a lease agreement with ODA or until the premises are restored to their original condition.

(B) If ODA makes a determination, in accordance with the airport master plan and FAA-approved Airport Layout Plan, that the leased premises are required for airport development, it shall offer to Lessee an alternative site if such other suitable space is available on airport property. If no other site is available or Lessee chooses not to relocate, the lease may be terminated by either party. Upon termination, Lessee shall vacate the premises upon 120 days written notice by ODA to buy out the remaining base term of the lease. If Lessee's lease is not a base term lease, then ODA will not pay compensation for lease termination.

The base term buy-out will be determined by amortizing the construction cost of the hangar (or other improvement) over the base term of the lease factoring in straight-line depreciation and adjusted for inflation based on ODA'S periodic rental increases. ODA will purchase each remaining year of the base term according to the amortization/depreciation schedule.

6.2.3 Sale of Improvements

ODA will not allow assignment or sublease of any non-commercial lease. However, if lessee desires to sell the improvements, ODA will consider entering into a new lease with the buyer of the improvements. The buyer must meet all requirements imposed on any lessee with a non-commercial lease. If the buyer qualifies to obtain a lease, ODA will offer a lease with the terms, conditions and rates then in effect. The term of the new lease will be determined by ODA, consistent with the policies in 6.2 (Lease Term) and

6.2.1 (B, C and D).

The original lessee's lease will remain in full force and effect until ODA and the buyer of the improvements have entered into a new lease. The original lessee must comply with all terms and conditions of the lease until the new lease is executed and in effect. At that point, the original lease is automatically terminated by mutual agreement of the parties.

6.3 Rates and Charges

It is the intent of the ODA Rates and Charges Policy to support the State airport system for the benefit of the public by the establishment of a standardized system of rates and charges, which is based on the following ODA obligations:

- (A) Ensure compliance with applicable legal requirements regarding Airport rates and charges through local communications, negotiations, and resolution with the State-owned Airport users.
- (B) Ensure the rates, charges, and fees imposed on the aeronautical users of the State-owned Airports are fair and reasonable.
- (C) Make each State-owned Airport available for public use on fair and reasonable terms without unjust discrimination. Ensure that any airport lessee is subject to the same rates, fees and charges as are uniformly applicable to all other lessees engaging in non-commercial aeronautical activities or utilizing similar facilities at the Airport.
- (D) Maintain a rate and fee schedule that guides the Airport toward financial self-sustainability.
- (E) Expend revenue generated from State-owned Airport activities and services only for aeronautical purposes (no revenue diversion).

6.4 Insurance Requirements

Each lessee shall meet all State of Oregon insurance requirements and shall therefore maintain the types and amounts of insurance as specified in the lease or agreement.

SECTION VII - APPLICABLE STATE DOCUMENTS

All lessees and prospective lessees are encouraged to read all ODA policy documents that may have a bearing on tenancy on a State-owned Airport. These documents can be obtained by contacting the Oregon Department of Aviation. The following documents are recommended; however, ODA should be contacted for information on other pertinent policies regarding any proposed tenancy and/or operation.

- Leasing Policy for Commercial Aeronautical Activities
- Leasing Policy for Non-Commercial Property
- Minimum Standards
- Rules and Regulations
- Rates and Charges Policy
- Ingress/Egress Permits
- State-Owned Airport Insurance Requirements