

NOTICE OF RULE ADOPTION

ADOPTION DATE: January 21, 2021

The Executive Director of the Aviation Department of the City of Austin, Texas has adopted the following rule. Notice of the proposed rule was posted on December 15, 2020. Public comment on the proposed rule was solicited in the December 15, 2020 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on January 21, 2021.

TEXT OF ADOPTED RULE

The rule repeals and replaces Rule No. R161-19.17 and adopts an incentive program for airlines that provided scheduled air service to Austin-Bergstrom International Airport.

A copy of the complete text of the proposed rule is attached to this notice and available for public inspection and copying at the following locations. Copies may be purchased at the following locations at a cost of ten cents per page:

Department of Aviation, 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719.

Office of the City Clerk, City Hall, located at 301 W. 2nd Street, Room 1120, Austin, Texas 78701.

SUMMARY OF COMMENTS

The Aviation Department received comments regarding the rule adopted in this notice. A summary of the comments is set out in the following table.

Date	Submitted By	Comment summary
1/12/2021	Laura Huffman as CEO of The Austin Chamber and Doug Driskill as Chair, Air Service Task Force of the Austin Chamber	General support for adoption of rule; particularly supporting the COVID-19 scheduled air service restoration program and supporting robust international air service.
1/14/2021	Tom Noonan President and	General support and encouragement for adoption of rule; particularly for the role enhanced air service will

	CEO of Visit Austin	play an important role for the hospitality industry as we emerge from the pandemic.
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No changes were made to the proposed rule.

A copy of the comments is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Aviation Department, 3600 Presidential Boulevard, Suite 411, Austin, Texas 78719.

Office of the City Clerk, City Hall, located at 301 W. 2nd Street, Room 1120, Austin, Texas 78701.

The text of the adopted rule is also available on the City of Austin Airport website at <http://www.abia.org>.

AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of the City Code is provided in Chapters 1-2 and 13-1 of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, e-mail address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the City Clerk. A copy of the appeal will be provided to the City Manager, the Director of the department adopting the rule, and the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, amend, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. **Notice of the City Manager's decision on an appeal will be posted by the City Clerk and provided to the City Council.**

On or before the 16th day after the City Clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption R161-21.09, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of administrative authority.

REVIEWED AND APPROVED



Jacqueline Yaft, Department of Aviation
Chief Executive Officer

Date: 1/18/2021

Anne L Morgan

Anne L Morgan, City Attorney
Law Department

Date: January 19, 2021

This Notice of Proposed Rule was posted on the City website by the City Clerk. Date and time stamp are on the front of the notice.

Adopted Rule No.: R161-21.09

Repeal and replace Rule No.: R161-19.17 with the following:

AUSTIN-BERGSTROM INTERNATIONAL AIRPORT DOMESTIC AND INTERNATIONAL AIR SERVICE INCENTIVE PROGRAM

In order to increase competition and to enhance domestic and international air service to and from Austin-Bergstrom International Airport, the City of Austin Department of Aviation offers this Domestic and International Air Service Incentive Program ("Program"). Under this Program, any Qualifying Carrier providing new qualifying scheduled service to or from domestic or international destinations may be offered temporary waivers in specified Airport fees and charges and may be offered marketing assistance. The incentives offered under this Program are subject to the availability and limits of the Airport's approved budget.

1. Definitions.

- A. Agreement means an executed (1) Austin-Bergstrom International Airport Use and Lease Agreement or (2) Austin-Bergstrom International Airport Airline Operating Agreement with the Department.
- B. Airport means the Austin-Bergstrom International Airport in Austin, Travis County, Texas.
- C. City means the City of Austin, Texas.
- D. Department means the City of Austin Department of Aviation.
- E. Destination Airport means an airport with an IATA code. More than one airport may be within the standard census definition of metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA).
- F. Facility Fees means amounts payable by a Qualifying Carrier to the City of Austin Aviation Department for the use and occupancy of space or facilities in the Barbara Jordan Terminal, including to the extent applicable, ticket counter and associated queuing space, terminal hold rooms, operations office space, baggage storage space, common space rent, Remain Over Night aircraft parking, terminal equipment, US Customs Service, and Shared Use Fees. Facility Fees do not include charges for Passenger Facility Charges (PFCs) or other non-Department fees or costs.
- G. Good Standing means a Qualifying Carrier that (1) is in compliance with the Program and its Agreement and (2) does not owe any rents, fees, and other charges payable to the Department or the City of Austin.
- H. Incumbent Air Carrier means an air carrier that is currently serving AUS with scheduled service.
- I. Landing Fees means amounts payable to the Department by a Qualifying Carrier for the privilege of landing an aircraft at the Airport
- J. New Entrant means (1) a Qualifying Carrier that has not, in the 12 months prior to commencing scheduled service, served the Airport either directly or indirectly

through one of its subsidiaries, or (2) an airline that operates at the Airport solely as an "Affiliate" (as that term is defined in the Airport Use and Lease Agreement) of an Incumbent Air Carrier that is not eligible to participate in the New Entrant Incentive Program.

- K. New Route means (1) a nonstop round-trip flight between Austin, Texas (AUS) and a destination airport that, at the time of service announcement, (a) does not have nonstop scheduled service to AUS and (b) nonstop service has not been publicly announced by another carrier; or (2) a nonstop round-trip flight between AUS and a destination airport that currently only maintains scheduled service on a seasonal basis.
- L. Participating Airline means a Qualifying Carrier that is participating in the Program.
- M. Program means this Domestic and International Air Service Incentive Program.
- L. Qualifying Carrier means a certificated air carrier that is a party to an Agreement. A Qualifying Carrier must have a Letter of Credit or Security Deposit on file and be in Good Standing with the Department. A Qualifying Carrier may be either a New Entrant or an Incumbent Air Carrier operating at the Airport.

2. Program Qualifications and Incentives.

A. New Entrant Incentive Program Qualifications. A New Entrant that:

(1) Initiates and maintains round trip scheduled air service to Destination Airport(s) from the Airport with not less than eight departures per month on average for 12 consecutive months to at least one Destination Airport from the date of commencement of operations at the Airport ("Minimum Departure Requirement"); and

(2) Complies with the terms, conditions, and covenants of this Program and its Agreement shall be offered:

a. Facilities Incentives.

i. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.A (1) shall be offered a waiver of all facilities fees payable by the Qualifying Carrier to the City under its Use and Lease Agreement or Airline Operating Agreement for a period of 12 months from the effective date of such Agreement.

ii. Expressly excluded from the Program are (a) rent or other fees paid for use of a terminal other than the Barbara Jordan Terminal at Austin-Bergstrom International Airport, (b) amounts paid to another carrier operating at the Airport to sublease or use terminal space and/or equipment leased by such other carrier at the Airport, and (c) other fees such as STS, badge fees, finance charges, penalties, late fees, etc.

b. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.A (1) shall be offered a waiver of Landing Fees for a period of 12 months from the date it first initiates service in AUS.

c. Marketing Introduction Program as described in Section 3.

- (3) If New Entrant, other than Transoceanic Seasonal New Entrants, does not meet the Minimum Departure Requirement, the Department may, at its discretion, reduce any Incentive.

B. Continental U.S. New Route Program Qualifications. A Participating Airline that:

- (1) Initiates service from AUS to any destination in the Continental U.S.; and
- (2) Complies with the terms, conditions and covenants of this Program and its Agreement shall be offered:
 - a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.B shall be offered a waiver of Landing Fees attributable to all flights from the Continental U.S. New Route(s) for a period of twelve (12) months from the date it first initiates service in AUS.
 - b. Marketing Introduction Program as described in Section 3.
 - c. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.B., may be offered a maximum of \$25,000 in advertising and marketing costs for year one, for a total amount not-to-exceed \$50,000 for two or more routes announced simultaneously. The marketing incentive may be reduced at the discretion of the Executive Director for any carrier that operates the Continental U.S. New Route for less 12 consecutive months from service inception.

C. Hawaii New Route Program Qualifications. A Participating Airline that:

- (1) Initiates service from AUS to any destination in Hawaii; and
- (2) Operates the Hawaii New Route a minimum of 8 times a month for a period of not less than one year from service inception; and
- (3) Complies with the terms, conditions and covenants of this Program and its Agreement shall be offered:
 - a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.C shall be offered a waiver of Landing Fees attributable to all flights from the Hawaii New Route(s) for a period of 24 months from the date it first initiates service in AUS.
 - b. Marketing Introduction Program as described in Section 3.
 - c. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.C., may be offered a maximum of \$100,000 in advertising and marketing costs for year one and \$50,000 for year two.

D. North/Central/South American (Non-U.S.) New Route Program Qualifications. A Participating Airline that:

- (1) Initiates service from AUS to a North, Central or South American Destination not located in the Continental U.S. or Hawaii; and
- (2) Complies with the terms, conditions and covenants of this Program and its Agreement shall be offered:

- a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.D shall be offered a waiver of Landing Fees attributable to all flights from the North, Central and South American New Route(s) for a period of 12 months from the date it first initiates service in AUS.
 - b. Marketing Introduction Program as described in Section 3.
 - c. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.D. may be offered a maximum of \$100,000 in advertising and marketing costs for year one and \$50,000 for year two. The marketing incentive may be reduced at the discretion of the Executive Director for any carrier that operates the North, Central or South American New Route for less 12 consecutive months from service inception and/or less than 12 flights per month.
- E. International Priority Routes (Amsterdam, Beijing, Dublin, Paris, Seoul, Shanghai and Tokyo only) New Route Incentive Program Qualifications. Executive Director may amend this list of International Priority Routes with no advance notice. A Participating Airline that:
- (1) Initiates service to Amsterdam, Beijing, Dublin, Paris, Seoul, Shanghai, or Tokyo only from AUS; and
 - (2) Complies with the terms, conditions and covenants of this Program and its Agreement, shall be provided:
 - a. Facilities Incentives.
 - i. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.E shall be offered a waiver of all Facilities Fees payable by the Qualifying Carrier to the City under its Use and Lease Agreement or Airline Operating Agreement for a period of 24 months from the effective start date of service.
 - ii. Expressly excluded from the Program are (a) rent or other fees paid for use of a terminal other than the Barbara Jordan Terminal at Austin-Bergstrom International Airport, (b) amounts paid to another carrier operating at the Airport to sublease or use terminal space or equipment leased by such other carrier at the Airport, and (c) other fees such as STS, badge fees, finance charges, penalties, late fees, etc.
 - b. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.E. shall be offered a waiver of Landing Fees attributable to all flights from the applicable International Priority New Route(s) for a period of 24 months from the date it first initiates service in AUS.
 - c. Marketing Introduction Program as described in Section 3.
 - d. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.E. may be offered a maximum of \$300,000 in advertising and marketing costs for year one (1) and a maximum of \$200,000 in advertising and marketing costs for year two (2) for a total

amount not to exceed \$500,000 in advertising and marketing costs for the twenty-four (24) months.

F. Transoceanic Seasonal New Route Incentive Program Qualifications. A Participating Airline that:

- (1) Initiates service to a destination not located in North or South America; and
- (2) Continuously operates the Transoceanic New Route for a minimum of two times per week for a period of not less than 8 weeks from effective start date of service; and
- (3) Complies with the terms, conditions and covenants of this Program and its Agreement, shall be provided:
 - a. Facilities Incentives.
 - i. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.F shall be offered a waiver of all Facilities Fees payable by the Qualifying Carrier to the City under its Use and Lease Agreement or Airline Operating Agreement for a period of 12 months from the effective start date of service.
 - ii. Expressly excluded from the Program are (a) rent or other fees paid for use of a terminal other than the Barbara Jordan Terminal at Austin-Bergstrom International Airport, (b) amounts paid to another carrier operating at the Airport to sublease or use terminal space or equipment leased by such other carrier at the Airport, and (c) other fees such as STS, badge fees, finance charges, penalties, late fees, etc.
 - b. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.F. shall be offered a waiver of Landing Fees attributable to all flights from the Transoceanic Seasonal New Route(s) for a period of 12 months from the date it first initiates service in AUS.
 - c. Marketing Introduction Program as described in Section 3.
 - d. Marketing Incentive. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.F. may be offered a minimum of \$50,000 and maximum of \$150,000 in advertising and marketing costs for year one and a maximum of \$100,000 for year two.

G. COVID-19 Scheduled Air Service Restoration Program Qualifications. A Participating Airline that:

- (1) Provided *only international* scheduled service from the Airport from April 1, 2019 through August 31, 2019; and
- (2) Provided less than 20 scheduled departures from the Airport from April 1, 2020 through August 31, 2020; and
- (3) Complies with the terms, conditions and covenants of this Program and its Agreement, shall be provided:
 - a. Landing Fee Incentives. A Qualifying Carrier that meets the qualifications set forth in paragraph 2.G shall be offered a waiver of Landing Fees attributable to all flights from the COVID-19 Scheduled Air Service Restoration Program for a period of 12 months from the date it

first restores service in AUS, which must occur on or before December 31, 2021.

b. Marketing Introduction Program as described in Section 3.

H. All incentives offered under this Program are subject to the availability and limits of the Airport's approved budget.

3. Marketing Introduction Program.

The Department will provide a variety of public relations, media strategies, advertising, and trade opportunities to promote the Airport's new air service for business and leisure passengers. The Airport's marketing incentive program is tailored to the characteristics of each specific route and the carrier providing the new service and is primarily directed at maximizing exposure to the local media and travel and tourism trades. The Department uses established strong partnerships with local travel, tourism, and business entities to organize inaugural events and generate publicity in key business publications. The Department arranges introductions to key decision-makers at local businesses and organizations, arranges familiarization trips for tourism trade representatives and facilitates access to targeted databases of partner organizations. The Department utilizes its in-house advertising program to supplement the airline's key advertising message with advertising in the Airport terminal and on the Airport web site. This provides daily exposure to thousands of travelers, meeters, greeters, and the general public. For airlines willing to provide tickets for promotions, Department staff will assist the airline in bartering the tickets for advertising and promotional media time.

4. General Provisions.

A. Incentives Non-Transferable. Incentives under this Program may not be transferred or assigned to another air carrier, except a carrier that succeeds to substantially acquire all of the Qualifying Carrier's assets by merger or acquisition.

B. Effective and Expiration Date. This Program is effective on the date formally adopted by the Department ("Effective Date") and remains open for enrollment for a period of five years. To qualify for incentives under the New Entrant Incentive Program, the New Entrant must request the incentives from the Airport within five years from the Effective Date of this Program. To qualify for incentives under the New Route Incentive Program(s), a Qualifying Carrier must commence operations on the New Route within five years from the Effective Date of this Program. A Qualifying Carrier must be in Good Standing at the time that it qualifies for the New Entrant Incentive Program and/or the New Route Incentive Program(s) and remain in good standing in order for the incentives to take and remain in effect. In the event the Qualifying Carrier reaches Good Standing within 10 days after receipt of written notice from the Department specifying failure and maintains Good Standing for a minimum of six consecutive months following such notice, the incentives under the Program may be reinstated by the Department at its sole discretion. The

Participating Airline must execute a rider or addendum to its Agreement incorporating the provisions of the Program.

C. Request. An air carrier must submit a written request to participate in this Program with the following:

- (1) A request to participate in the New Route Incentive Program(s) identifying the New Routes and schedule the Participating Airline plans to operate, including the proposed date of initial service for each New Route.
- (2) A request to participate in the New Entrant Incentive Program demonstrating that the air carrier meets the requirements of the Program.
- (3) A copy of the executed Agreement.

If a Participating Airline's Agreement expires, or is terminated, for any reason, its right and entitlement to incentives under the Program will automatically terminate as of the date of expiration or termination without notice.

D. Notices. In order to ensure ongoing compliance with the terms and conditions of the Program, the Participating Airline shall give the Department written notice of any change in its scheduled operations to or from the Airport no later than the earlier of (a) the date such schedule change is published in the Official Airline Guide or similar schedule publication media, or (b) 60 days in advance of effective service change date.

E. Duplication of Incentives. A Participating Airline may qualify to receive incentives under both the New Entrant and the New Route Programs; provided, however an air carrier that is participating in both the New Entrant and New Route Programs is entitled to receive only one set of the marketing incentives described in Section 3. A Participating Airline may not receive incentives under other or additional incentive programs the Department may adopt in the future while it is receiving incentives under this Program. If a Participating Airline qualifies for incentives under some other or additional incentive program the Department may adopt in the future, it must elect the program in which it wishes to participate. If the Participating Airline fails to make such election, it is deemed to have chosen the program in which it first participated.

F. Subject to Applicable Law. The Program is subject to all applicable laws, statutes, rules, regulations (including, Federal Aviation Regulations set forth in Title 14 United States Code of Federal Regulations), and the provisions of any agreement between the City and the United States concerning the operation or maintenance of the Airport, required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, the expenditure of federal funds for the development of the Airport, or to impose or use passenger facilities charges under 49 U.S.C. § 40117. The Department may, without incurring any liability to Participating Airlines, amend or terminate the Program, including any payments or fee discounts under the Program, upon advice of its legal counsel, if necessary to

comply with the requirements of applicable law, and agreements with the United States as a condition precedent to the granting of funds for the improvement of the Airport or to impose or use passenger facility charges under 49 USC §40117.

- G. Funding of Incentives. Fee waivers and marketing incentives under the Program are funded from Department non-airline revenue.
- H. Right to Amend. The Executive Director has the right to amend any portion of this Program based on Airport business needs and resources.

5. Default and Remedies.

- A. Default. Each of the following is a default by a Participating Airline and a material breach of the Program:
 - (1) The Agreement of the Participating Airline expires or is terminated for any reason.
 - (2) A New Entrant, other than Transoceanic Seasonal New Entrants, fails to satisfy the Minimum Departure Requirement for the applicable Destination Airport, and does not resume flight operations at the Airport within 10 days after receipt of written notice from the Department.
 - (3) A Transoceanic Seasonal New Entrant fails to satisfy the operational requirements of paragraph 2.F (2) and does not cure the default within 10 days after receipt of written notice from the Department.
 - (4) A Participating Airline:
 - (a) fails to timely initiate service on a New Route;
 - (b) ceases to operate a New Route for a period of 14 consecutive days or longer; or
 - (c) fails to operate a New Route as originally announced and schedules filed; incentives could be partially or totally revoked.
 - (5) A Participating Airline fails to timely submit any report required by the Department or fails to keep, perform, or observe any other term or condition of the Program, and fails to cure such failure within 10 days after receipt of written notice from the Department specifying the failure.
 - (6) A default under its Agreement.
- B. Remedies of Department. In the event of a default by a Participating Airline, the Participating Airline's participation in the Program and all incentives under the Program terminate. Termination of incentives arising out of a cessation of air service or failure to operate a New Route is effective as of the date the Participating Airline first ceased flight operations at the Airport, or first ceased to operate the New Route, as applicable. In addition, the Participating Airline may be required at the discretion of the Department to reimburse any incentives received under the Program.

CITY OF AUSTIN
DEPARTMENT OF AVIATION



AUSTIN CHAMBER

Ms. Tracy Thompson
Chief Administrative and External Affairs
Austin-Bergstrom International Airport
Via email

January 12, 2021

RE: Proposed Rule No.: R161-21.09

Ms. Thompson,

On behalf of the Greater Austin Chamber of Commerce's Air Service Task Force and our over 2,000 member businesses, we are writing you today to voice our support for proposed rule number R161-21.09, specifically the COVID-19 scheduled air service restoration program.

The Chamber's Air Service Task Force was created over ten years ago in order to support Austin-Bergstrom (ABIA) in securing new, non-stop international routes and has been a successful partner in landing British Airways to London, Lufthansa to Frankfurt, and the upcoming KLM to Amsterdam.

In light of the unprecedented times we are in, we support ABIA's proposed rule change that will allow our region to be best positioned for international flights once the pandemic has receded. As you know, our region continues to grow with new businesses headquartering in the region and existing companies choosing to expand. A robust international air service is key to continuing our growth.

If you have any questions regarding this letter, please do not hesitate to contact us. Thank you for your time.

Sincerely,

Handwritten signature of Doug Driskill in black ink.

Doug Driskill
Chair, Air Service Task Force
Dell Technologies

Handwritten signature of Laura Huffman in black ink, enclosed in a rectangular box.

Laura Huffman
President & CEO
Austin Chamber



January 14, 2021

Tracy Thompson
Department of Aviation
3600 Presidential Boulevard, Suite 411,
Austin, Texas 78719

Dear Ms. Thompson:

I am submitting this letter on behalf of Visit Austin in support of adopting the proposed rule changes for the Austin Bergstrom International Airport (AUS), Rule No. R161-21.09, for the Domestic and International Air Service Incentive Program.

It is vital to our city and to the hospitality industry that we continue to enhance our international and domestic air service to AUS. The proposed rule change to the incentive program will play a very important role for our industry as we emerge from the pandemic.

Please feel free to reach out should you require additional information.

Sincerely,

A handwritten signature in black ink that reads "Tom Noonan". The signature is written in a cursive style with a long horizontal line extending to the right.

Tom Noonan
President & CEO
Visit Austin