



City of Chicago



O2020-2365

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	4/22/2020
Sponsor(s):	Lightfoot (Mayor)
Type:	Ordinance
Title:	Authorization of COVID-19 federally compliant emergency relief for airport Concession Agreements at Chicago's O'Hare International Airport and Midway International Airport
Committee(s) Assignment:	Committee on Aviation

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OFFICE OF THE MAYOR
CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

April 22, 2020

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Aviation, I transmit herewith an ordinance providing for COVID-19-related relief for airport concessionaires.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in black ink that reads "Lori E. Lightfoot". The signature is written in a cursive, flowing style.

Mayor

ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government as defined in Article VII, §6(a) of the Illinois Constitution, and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City owns and operates Chicago O'Hare International Airport and Midway International Airport (the "Airports") and possesses the power and authority to lease its premises and facilities and to grant other rights and privileges with respect thereto; and

WHEREAS, the City is vested with authority to provide for the needs of aviation, commerce, shipping, and traveling to and around the Airports to promote and develop the Airports, and, in the exercise of such power, to enter into agreements with entities to manage City-owned properties at the Airports, upon such terms and conditions as the corporate authorities of the City shall approve; and

WHEREAS, the United States Secretary of Health and Human Services ("HHS") declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d) and March 1, 2020, pursuant to sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), it was found and proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency (the "Emergency"); and

WHEREAS, the COVID-19 outbreak has led to orders of shelter-in-place or stay-at-home by state governments throughout the United States, including that of Illinois, and by foreign governments to contain the spread of the outbreak; and

WHEREAS, a substantial reduction in commercial travel to and from the Airports has occurred since declaration of the Emergency with the Airports experiencing significantly reduced enplanements, aircraft operations, and passenger volume, adversely affecting the ability of airport concessionaires (as defined by 49 CFR § 23.3) at the Airports ("Concessionaires") to continue to operate; and

WHEREAS, this City Council hereby finds and determines that the provisions of this Ordinance are public purposes for the benefit of the people of the City and its Airports, and will reduce conditions of unemployment, will help ensure that airport concessions businesses that serve the citizens of the City as well as travelers from around the world remain solvent to resume normal operations when the Emergency ends, and will encourage those businesses' continued development; and

WHEREAS, this City Council further finds that the purpose of this Ordinance is, in part, to protect and preserve the employment of individuals affected by the economic impacts of the COVID-19 pandemic at the Airports and to stimulate commercial growth and remove economic stagnation that would otherwise occur without the benefits provided in this Ordinance; and now, therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are incorporated by reference as if fully set forth herein.

SECTION 2. Subject to the criteria in Section 4 of this ordinance, the Commissioner of Aviation ("Commissioner") or her designee is hereby authorized to execute, with the approval of the Chief Financial Officer of the City ("CFO"), and the approval of the Corporation Counsel as to form and legality, changes to agreements with existing Concessionaires to provide for temporary relief for the Concessionaires in response to the Emergency. Relief shall be as the Commissioner deems appropriate for a particular Concessionaire and may take the form of any of the following, as applicable: (A) rent reductions; (B) adjustments to minimum rent; (C) rent deferral; (D) reduced deposit or letter of credit requirements; (E) relaxation of mandatory minimum or maximum operating space requirements; (F) short extension of term to extend amortization of costs; (G) authorization of operational alternatives including, but not limited to kiosks, retail merchandising units, food carts, mobile drink dispensers and other mobile facilities, subject to applicable ordinances and laws; or (H) other relief consistent with federal airport grant assurances and other legal requirements (the "Relief"). The Relief may not exceed three years, may be given in renewable increments, may be retroactive to as early as February 1, 2020, and may be conditioned on Concessionaires' compliance with such requirements as are determined by the Commissioner to serve the interests of the City in maintaining a strong and resilient concessions program. Such Relief conditions must include requirements to maintain a certain percentage of the workforce for a certain period of time, and at the Commissioner's option may include, but are not limited to, relief being given to subtenants/sublicensees of any tier as applicable. To implement this Section, the Commissioner may amend concession agreements or execute new short term concession agreements to memorialize the Relief and Concessionaires' commitments that condition that Relief, to include term extension if applicable. Such amendments or short term agreements may not revisit contract terms unrelated to Relief under this section if not at least as favorable to the City as those in the currently applicable agreement. Rent reductions, adjustments, or deferrals under this section shall be given only when, in the judgment of the Commissioner, the underlying basis for such rent has temporarily declined or materially altered due to the Emergency, or when otherwise consistent with federal airport grant assurances.

SECTION 3. Subject to the criteria in Section 4 of this ordinance and contingent upon a determination that such action is in compliance with Federal Aviation Administration ("FAA") requirements for the use of Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") grant proceeds, the Commissioner, with the approval of the CFO, the Corporation Counsel as to form and legality, the availability of appropriate funds, and to the extent permitted under federal airport grant assurances, federal regulations, and other legal requirements, is hereby authorized to make funds available ("Funding Assistance") through any appropriate means, to Concessionaires or participants in concessions at the Airports from CARES Act grant proceeds, or other general airport funds, to facilitate Relief under Section 2 of this ordinance or as the Commissioner may otherwise determine is necessary to help maintain a strong and resilient concessions program in light of the challenges of the Emergency. The Funding Assistance provided pursuant to this Section may not exceed three years. Documents memorializing Funding Assistance under this Section shall be executed by the Commissioner and CFO or their designees.

SECTION 4. The Commissioner's exercise of authority under Sections 2 and 3 of this ordinance shall be applied in accordance with FAA guidance and applied objectively and uniformly to similarly situated businesses. In making a determination to grant Relief and/or Funding Assistance to a particular entity, the Commissioner shall be guided by objective factors,

such as the business and financial situation of the entity and that entity's owner(s); the changed circumstances created by the Emergency; the availability of other governmental or insurance relief that the entity may have or may receive; an appropriate term for such relief; and possible subsequent conditions that, if triggered, would end the relief. Such a subsequent condition could be the receipt of governmental forms of relief, insurance recovery if any, or an end to the Emergency.

SECTION 5. The Commissioner, with the advice and consent of the Corporation Counsel and the CFO, is authorized to promulgate rules governing the programs described in the sections above.

SECTION 6. The Commissioner and her designees are authorized to take such actions and execute such other documents as may be necessary or desirable to implement the objectives of this ordinance. Any and all such actions undertaken prior to the effective date of this ordinance to enable Relief and Funding Assistance to be made available as soon as possible are hereby authorized and ratified, it being a core goal of this ordinance to provide such assistance as rapidly as possible.

SECTION 7. This ordinance shall take effect immediately upon its passage and approval.