Enrolled 13

~~PROPOSED~~ ORDINANCE 157-~~13~~

REPEAL AND RECREATE CERTAIN SECTIONS OF
CHAPTER 6 OF THE WAUKESHA COUNTY CODE OF ORDINANCES
TO ALLOW SELF-FUELING WITH FUEL STORED OFF AIRPORT GROUNDS

WHEREAS, in June of 2000, the Board of Supervisors of Waukesha County adopted Enrolled Ordinance 155-26, which was incorporated into Chapter 6 of the Waukesha County Code of Ordinances, and which permits self-fueling at the Waukesha County airport with fuel that is stored at the Airport in an aboveground tank, and

WHEREAS, certain tenants at the Airport have expressed a desire to engage in self-fueling with fuel that is stored off the Airport grounds, and

WHEREAS, the Waukesha County self-fueling work group has studied the option of self-fueling with fuel that is stored off site, and has determined that with appropriate regulations, the off-site option is a suitable and safe method of self-fueling, and

WHEREAS, the Stipulation between Waukesha County and Cedarhurst Air Charter, Inc. in the, federal lawsuit brought against the County by Cedarhurst, which Stipulation was approved by the County Board on December 11, 2001, requires that self-fueling with fuel that is stored off site be permitted and the ordinance be so amended.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that:

SECTION 1. Sections 6-103 through 6-112 shall be repealed and recreated to read as follows:

Sec. 6-103. Fueling Restrictions; Permit Process.

(a) Except for a fixed base operator, no person shall transfer fuel into an aircraft unless the person has first obtained a self-fueling permit from the Commission and the person complies with this ordinance. A self-fueling permit authorizes the permittee to transfer fuel only into an aircraft owned by or leased exclusively to the permittee. Except for a fixed base operator, no person shall transfer fuel into an aircraft not owned by or leased exclusively to that person, nor shall any person sell fuel to any other airport user. The County will not recognize an organization formed by several aircraft owners for the purpose of self-fueling as a single aircraft owner or exclusive lessee for purposes of this ordinance.

(b) A self-fueling permit may be issued for either or both of the following methods of self-fueling: (i) self-fueling with fuel that is stored in an aboveground tank on land at the Airport that is leased from the County by the permittee, hereafter referred to as the "On-site" method, and (ii) self-fueling with fuel that is stored off the Airport premises and that is brought onto the Airport for direct transfer into an aircraft, hereafter known as the "off-site" method.

(c) An application for a self-fueling permit shall be made by supplying to the Manager such information as is prescribed by the Commission. The information shall include, but not be limited to, (1) a description of the aircraft to be fueled,

(ii) the aircraft fuel servicing vehicles that will be used, (iii) the employees who will operate the aircraft fuel servicing vehicles and who will conduct the fueling operations, (iv) an emergency response plan, (v) a fuel-handling personnel training program, (vi) a tank system (for on-site storage) and fuel truck inspection and maintenance program, and (vii) fuel transfer procedures. The Manager shall review the information for completeness and, if complete, shall refer the application to the Commission.

(d) At a public meeting, the Commission shall review the application to determine whether the proposed self-fueling will comply with all applicable ordinance, permit and lease provisions and whether the required plans, programs and procedures are satisfactory. If the determination is favorable, the Commission shall issue the self-fueling permit. Any person whose application for a self-fueling permit is denied may appeal this denial pursuant to the administrative appeal procedure set forth in Chapter 2, Article VIII of the Waukesha County Code.

(e) When issued, a self-fueling permit shall be signed by the permittee and shall set forth, among other things, the permittee's agreement to meet appropriate insurance, indemnity and hold harmless requirements, requirements for aircraft fuel servicing vehicle maintenance and inspection, and responsibility for damage to the Airport. The permit shall require the permittee's consent to reasonable amendments or additions to permit requirements as circumstances may warrant.

(f) A permittee shall pay an annual self-fueling fee of $1,000.00.

(g) In conducting self-fueling operations, a permittee shall not vary materially from the application information unless a written request for a variation is submitted to and approved by the Commission. A material variation includes, but is not limited to, a different aircraft or a different aircraft fuel servicing vehicle, vehicle operator or fueling operations individual than what is stated in the application information. The Manager may allow temporary variations from the application information while a request for a variation is pending.

(h) A self-fueling permit is not assignable and not transferable. Unless it is revoked as allowed by this ordinance, a self-fueling permit shall remain effective (i) until the termination or expiration of the land lease that is required by section 6-104, if on-site storage is used, or (ii) for twenty years, if off-site storage is used.

Sec. 6-104. Land Lease.

(a) Upon the issuance of a self-fueling permit for on-site storage, the permittee shall enter into a land lease (the "lease") with the County for land located in a centralized area that is designated by the Commission for the bulk storage of fuel. The lease shall allow the permittee to site a fuel tank system on the land in accordance with this ordinance.

(b) The lease shall be for a term not to exceed 20 years. The lease rate shall be $0.15 (15 cents) per square foot per year for the year 2000, with annual adjustments based on the Consumer Price Index.

(c) At a minimum, the lease shall contain the following provisions:

(1) A security deposit in an amount equal to $5,000.00 plus $2,000.00 per tank plus the amount of the self-insured retention (deductible) in the pollution liability and environmental impairment insurance which the lessee will be required to provide, with interest payable to the lessee, to be held by the County as security for and against any loss, cost or expense incurred by the County as the result of any activity related to self-fueling engaged in by the permittee, including the permittee's failure to pay the fuel flowage fee required by this ordinance;

(2) Insurance, indemnity and hold harmless requirements to protect the County against liability and expense, including insurance for fuel vendors;

(3) Requirements for tank maintenance and inspection and clean-up and removal at the end of the lease;

(4) Record-keeping, audit and inspection rights for the County, and

(5) Incorporation of the requirements of this ordinance.

(d) Prior to execution by the County, the lease shall be reviewed and approved by the Commission, the Office of the Corporation Counsel and the Department of Administration.

Sec. 6-105. Fuel Tank System.

(a) Fuel that is to be used for self-fueling through on-site storage may be stored only in an aboveground tank on land leased from the County at the Airport as required by section 6-104. Any other storage of fuel that is to be used for self-fueling through on-site storage is prohibited.

(b) A fuel tank system must meet all of the following requirements:

(1) For each fuel type, have at least one single-compartment tank with a minimum capacity of 10,000 gallons and a maximum capacity of 20,000 gallons, which tank shall (i) have all product transfer piping and equipment located above ground, (ii) have an Underwriters Laboratory Listing marking of UL 142, (iii) have marking and color coding in accordance with FAA Advisory

Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing On Airports, and (iv) have a fuel monitoring system that is acceptable to the Commission;

(2) Be installed pursuant to construction plans that have been approved by the Commission and the Wisconsin Department of Commerce prior to~ the start of construction;

(3) Include security fencing and gates, and

(4) Be owned by the permittee.

(c) No later than 72 hours before self-fueling operations begin, the permittee shall notify the Manager that construction of the fuel tank system is complete.

(d) The permittee shall operate the fuel tank system in a safe, efficient and clean manner and shall not allow the use of any defective fuel tank system equipment. The permittee shall perform repair and maintenance upon the fuel tank system as required by the lease.

Sec. 6-106. Aircraft Fuel Servicing Vehicles.

(a) The permittee shall have a single-product aircraft fuel servicing vehicle for each type of fuel. Each vehicle shall meet all of the following requirements:

(1) Have a tanker capacity of no less than 2,000 gallons and no more than 10,000 gallons;

(2) Have its own bottom tank loading and grounding services and approved hoses and dispensing nozzles;

(3) For on-site self-fueling, when not in use, be parked (i) in a location sited in accordance with NFPA 407 standards within the parcel of land leased from the County for the permittee's fuel tank system, which location shall be designed to capture and contain the aggregate tanker capacity of the aircraft fuel servicing vehicles that are parked there, or (ii) in the area designated for aircraft fuel servicing parking pursuant to section 6-108;

(4) Have marking and color coding in accordance with FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing On Airports, and appropriate lighting and radio communication equipment;

(5) Be owned by or leased exclusively to the permittee, and

(6) If used for off-site self-fueling, have a fuel metering device that is acceptable to the Commission.

(b) No later than 72 hours before an aircraft fuel servicing vehicle is placed in service for self-fueling, the permittee shall notify the Manager of the vehicle's intended use.

(c) The permittee shall operate the aircraft fuel servicing vehicle in a safe, efficient and clean manner, and shall not allow the use of a defective vehicle. The permittee shall perform such repair and maintenance upon the vehicle as is necessary to ensure its safe operation and as required by the lease.

(d) The operator of any aircraft fuel servicing vehicle that is on the Airport premises for any purpose related to self-fueling shall meet all of the following requirements:

(1) Possess a valid Wisconsin operator's license;

(2) Be an employee of the permittee, and,

(3) Comply with all NFPA 407 and FAA requirements regarding operators of aircraft fuel servicing vehicles.

Sec. 6-107. Fueling Operations.

(a) Any vehicle that is on the Airport premises for any purpose related to self-fueling shall use only such roadways or aircraft movement areas as are designated by the Manager.

(b) Fueling operations during which fuel is transferred between an aircraft fuel servicing vehicle and an aircraft shall occur only in areas designated for that purpose by the Manager.

(c) No individual may perform a fueling operation unless the individual meets all of the following requirements and does all of the following things:

(1) Remains with the fueling apparatus at all times during the fueling operation;

(2) Exercises extreme caution to prevent a fuel spill, and if a fuel spill occurs, immediately ceases fueling operations and notifies the Manager;

(3) Is an employee of the permittee, but this

requirement does not apply to an individual delivering fuel into a fuel storage tank;

(4) Can demonstrate that he or she is authorized, trained and fully qualified to operate the fuel transfer equipment by (i) having completed, or been trained by an individual who has completed, an accepted FAA training program, and (ii) carrying with him or her an identification card issued by the employer which certifies his or her qualifications;

(5) Complies with all NFPA 407 and FAA requirements regarding fuel transfers for aircraft fuel servicing.

(d) The permittee shall maintain proof of training of its employees for two years and make the training records available to the Manager upon request.

Sec. 6-108. Parking: Off-site Method

At any time that an aircraft fuel servicing vehicle that is used for self-fueling through off-site storage is not engaged in a fueling operation, it shall be parked in an area designated for such purpose by the Manager. A reasonable fee for such parking shall be established by the Commission.

Sec. 6-109. Fuel Flowage Fee.

The permittee shall pay a fuel flowage fee of $0. 10 (10 cents) for each gallon of fuel (a) delivered to permittee's fuel tank system if the on-site storage method is used, and (b) transferred into an aircraft if the off-site storage method is used. Payment of the fee shall be made to the Manager on the 20th day of each month for fuel that was delivered during the previous month. Any late payment shall be subject to interest in the amount of 1.5% per month. With each payment, the permittee shall furnish the Manager with a statement and documentation showing the number of gallons delivered or transferred for the applicable payment period.

Sec. 6-110. National Fire Protection Association.

The County adopts and makes a part of this ordinance as though fully set forth all of the provisions of NFPA 407. If there is any conflict between any provision of this ordinance and any provision of N7FPA 407, the provision that is more stringent shall apply. Any violation of NFPA 407 is a violation of this ordinance.

Sec. 6-111. Compliance with other Laws.

A permittee shall comply with all local, federal and state laws, codes, ordinances, rules and regulations now or hereafter in force and effect applicable to any activity associated with self-fueling. This includes, but is not limited to,

compliance with ordinances of the City of Waukesha and rules of administrative agencies of the State of Wisconsin. A permittee shall also comply with all FAA Advisory Circulars and Orders pertaining to the storage, handling and dispensing of aircraft fuel and all amendments and revisions thereto. A violation of any law, code, ordinance, rule, regulation, circular or order referred to in this section is a violation of this ordinance.

Sec. 6-112. Inspections, Records and Audits.

(a) The permittee shall make daily, weekly and monthly inspections of any fuel tank system it has and the aircraft fuel servicing vehicles it uses as required by FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling and Dispensing on Airports, and shall maintain a written record of such inspections. The permittee shall also keep and maintain written records of all fuel brought to the Airport for self-fueling purposes (including dates, supplier and quantity) and of all fuel quantities transferred into aircraft by aircraft identification number. The permittee shall also maintain accurate records of fuel product monitoring to ensure that there is no leakage from any fuel storage tanks it has and from its aircraft fuel servicing vehicles. The records required by this paragraph shall be kept for a minimum of two years and shall be made available to the Manager upon request.

(b) In addition to the records required by paragraph 1, the permittee shall (i) provide the Manager with information and records which are requested for the purpose of determining compliance with this ordinance including, but not limited to, records pertaining to business organization and ownership, ownership of equipment, and employee status, and (ii). promptly forward to the Manager copies of any fire or safety inspection reports, underwriting audits or insurance company reviews that relate to its self-fueling operations at the Airport, including its fuel tank system and aircraft fuel servicing vehicles. The permittee shall also allow the Manager to inspect the permittee's fuel tank system and aircraft fuel servicing vehicles for the purpose of determining compliance with this ordinance.

(c) The County shall have the right, during reasonable hours and upon reasonable advance notice, to audit permittee' s records regarding its self-fueling operations at the Airport.

SECTION 2. This ordinance shall be effective upon approval and publication.

SECTION 3. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the County of Waukesha, Wisconsin, as an addition or amendment thereto and shall be appropriately renumbered to conform to the numbering system contained therein.

SECTION 4. Any code section or part of a section in conflict with this ordinance is hereby repealed and declared null and void and of no effect.

REPEAL AND RECREATE CERTAIN SECTIONS OF
CHAPTER 6 OF THE WAUKESHA COUNTY CODE OF ORDINANCES
TO ALLOW SELF-FUELING WITH FUEL STORED OFF AIRPORT GROUNDS

Presented by:
Public Works Committee

Richard L. Manke, Chair

James R. Behrend

Genia C. Bruce

Hank G. Carlson

Karl Nilson

Rodell L. Singert

David W. Swan

Approved by:
Executive Committee

James T. Dwyer, Chair

Patricia A. Haukohl

Kenneth C. Herro

Walter L. Kolb

Richard L. Manke

Duane E. Paulson

Duane Stamsta

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: May 31, 2002, Patricia E. Madden
Patricia E. Madden, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:
Approved: ✓
Vetoed: _____

Date: 5-31-02, D. M. Finley
Daniel M. Finley, County Executive

157-O-014

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/28/02 (ORD) NUMBER-1570014

1 K. HERRO.....AYE	2 R. THELEN.....NAY
3 D. STAMSTA.....AYE	4 H. CARLSON.....AYE
5 J. MARCHESE.....AYE	6 D. BROESCH.....AYE
7 J. JESKEWITZ.....AYE	8 J. DWYER.....AYE
9 P. HAUKOHL.....AYE	10 S. WOLFF.....AYE
11 K. HARENDA.....AYE	12 J. GRIFFIN.....AYE
13 J. MORRIS.....AYE	14 J. LA PORTE.....AYE
15 D. SWAN.....AYE	16 R. MANKE.....AYE
17 J. BEHREND.....AYE	18 D. FANFELLE.....AYE
19 M. SONNENTAG.....AYE	20 M. KIPP.....AYE
21 W. KOLB.....AYE	22 G. BRUCE.....AYE
23 P. PRONOLD.....NAY	24 A. SILVA.....AYE
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27 D. PAULSON.....AYE	28 P. JASKE.....AYE
29 M. THOMAS.....AYE	30 K. NILSON.....AYE
31 V. STROUD.....AYE	32 P. GUNDRUM.....AYE
33 D. PAVELKO.....AYE	34 R. SINGERT.....AYE
35 C. SEITZ.....NAY	

TOTAL AYES-32 TOTAL NAYS-03

CARRIED X DEFEATED_____

UNANIMOUS_____ TOTAL VOTES-35