

**AN ORDINANCE**

**AN ORDINANCE TO AMEND  
THE CODE OF DEKALB COUNTY, GEORGIA,  
CHAPTER 6, ARTICLE III, PERTAINING TO AVIATION  
AND FOR OTHER PURPOSES.**

**WHEREAS**, the Governing Authority of DeKalb County is tasked with the protection of the county's public health, safety, and general welfare; and

**WHEREAS**, PDK Airport is an enterprise fund department of DeKalb County, Georgia independent of the financial support from County taxes; and, PDK Airport routinely enters into long-term lease agreements with lessees who base private businesses at PDK Airport, and

**WHEREAS**, there is a need to provide a framework governing such leasing and rental decisions as they relate to the development of new agreements and, as appropriate, modifications to existing agreements.

**WHEREAS**, all such leases provide the County with significantly more value and revenue in the form of capital improvements and escalating lease payments than other types of leases at PDK; and

**WHEREAS**, there exists a need to achieve the optimal use of scarce assets under changing market conditions, the governing authority desires to ensure that in executing such leases at PDK, the County is obtaining the most advantageous lease provisions and rental terms from current and prospective tenants; and

**WHEREAS**, the County may determine the fair market value for the use of such premises at the airport without necessarily submitting the lease of such premises through a competitive bid process, such as the Request for Proposal ("RFP") process; and,

WHEREAS, based upon certain objective criteria, the County may desire to renew its lease of such premises at PDK Airport to current tenants at fair market value, as opposed to submitting the re-lease of such premises through a competitive bid process, if, at the sole discretion of the governing authority, such is determined to be in the best interest of DeKalb County.

NOW, THEREFORE, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 6, Article III of the Code of DeKalb County, Georgia is hereby amended as follows:

#### **PART I. ENACTMENT**

By amending chapter 6, Article III, Section 6-36 to add the definition of the following term in alphabetical order as follows:

##### **Sec. 6-36. Definitions.**

“Lease” means a written agreement between the county and a person which gives rise to a new or renewed relationship of landlord and tenant or Lessor and lessee for property, real or personal, located at PDK Airport, whether such written agreement creates a leasehold interest by an assignment, extension, modification, amendment or conversion for a different purpose of an existing lease.

Rentals for commercial office and shop space, airplane tie-downs and Airport T-hangar space for aircraft parking shall not be considered as a “lease” for purposes of this ordinance.

By amending Chapter 6, Article III, to add the following new Division 5, Sections 6-133 through 6-135 to read as follows:

#### **DIVISION 5. LEASES**

##### **Sec. 6-133. Authority to Lease.**

The Governing Authority of DeKalb County, Georgia has the authority to enter into leases and the renewal of leases of premises located at the Airport.

##### **Sec. 6-134. Consistency with Long-Range Master Plan.**

Airport property proposed to be leased shall be located in areas designated for the proposed uses according to the airport master. Airport property proposed to be leased shall be

located in areas designated for the proposed uses according to the airport master and layout plans and the DeKalb County comprehensive land use plan (current edition) and shall not constrain the County's ability to achieve its long-range developmental plans.

**Sec. 6-135. Requirement for Appraisal.**

Prior to extending any lease covered by this article or amending the length of the term of any lease covered by this article, the airport director shall obtain one (1) professional airport-aviation related appraisal of the available leasehold interest in order to determine the current and future Fair Market Value (FMV) to be placed on such leasehold. One (1) review appraisal shall be obtained to ensure the overall validity and methodology used in the actual appraisal.

**Sec. 6-136. Requirements for Renewal of Leases.**

- (a) All requests for renewal of a lease by a lessee must be made at least 365 calendar days prior to the expiration of the lease term or such requests shall not be considered by the County. The written request to extend the term of any lease must contain the details of the lessee's proposal for the extension and must address all of the factors set forth in this section. The County shall exercise good efforts to conclude negotiations for renewal of the subject lease no later than six months before the expiration of the existing lease.
- (b) The written request may be hand delivered or mailed (U. S. first class, postage prepaid) to the airport director or designee. If a request for renewal or extension that complies with the requirements of this section is not received by the airport director in a reasonably timely manner, such as may result in the subject premises becoming vacant at the expiration of the existing lease term, the airport director shall then take any and all necessary action to seek competitive offers pursuant to a publicly advertised request for proposal process for rental of the subject premises at the expiration of the lease at issue.
- (c) A request for renewal of any lease shall be for no more than the shortest reasonable duration taking into account (1) the operational needs and capital investment in leasehold improvements of the tenant and (2) the ability of the County to manage capacity and long-term airport development. In no case shall the term of any lease exceed 20 years, unless it is determined by the Governing Authority that substantial benefit would inure to the public.
- (d) A request for renewal shall, in part, include:
  - (1) the legal names of all persons requesting renewal of the lease; and
  - (2) the names of the members of the board of directors, chief executive officer, chief operating officer, the president, and executive vice-presidents, of any form of corporation, partnership, limited liability company, joint venture, or association requesting renewal of the lease; and

- (3) a copy of the articles of incorporation, corporate charter, and partnership or joint venture agreement of any form of corporation, partnership, limited liability company, joint venture, or association requesting renewal of the lease.
- (e) In the event a timely request for renewal is received by the airport director, the County, shall perform its due diligence in deciding whether to extend the current lease, and shall consider such factors as:
- (1) the history of the relationship with the lessee, including whether the lessee has violated any airport or county polices, rules, or regulations or has violated any environmental laws, rules or regulations, including but not limited to unreported fuel spills, unapproved washing or de-icing of aircraft;
  - (2) whether the lessee has in all material respects complied with the existing lease terms, including whether all lease payments have been made in a timely manner;
  - (3) whether the proposed rental payment meets or exceeds the appraised fair market value of the premises;
  - (4) whether the current lessee has agreed to accept lease provisions recommended by the Airport Director, including, but not limited to, a requirement to make capital improvements to the leasehold with such capital improvements reverting to the County at the expiration of the lease; escalating rental payments; payments for various fees; additional rental payments to the County in the form of a fixed percentage of gross revenue of tenant or gross rental revenue received by the tenant from approved sub-lessees;
  - (5) whether the overall proposal improves or adds value to the airport premises, and is consistent with the long-term vision of the governing authority;
  - (6) whether the overall proposal adds value or benefit to the communities surrounding the airport and DeKalb County;
  - (7) the written recommendation of the Airport Advisory Board;
  - (8) the opinion and recommendation of the Airport Director; and
  - (9) the appraisal required by Section 6-134.

**Sec. 6-137. Airport Investment.**

Tenant investment actions in existing facilities, or in the construction of new facilities, will be shaped through this Ordinance and the long-range master plan or airport land use or any airport layout plans. Tenant investment shall be approved in advance by the Governing Authority; constructed in accordance with airport guidelines, applicable building codes and environmental standards and subject to ongoing oversight by the County. The County may condition its approval of tenant improvement requests in accordance with the provisions of this Ordinance.

Unless otherwise stated in a lease, title to improvements financed by tenants or third parties shall revert to the County at the expiration or termination of the lease or earlier as provided for in the lease agreement. The County may, at its option, negotiate in the lease the right to require that tenant demolish and remove such improvements and return the premises to their original condition, ordinary wear and tear excepted.

Except as provided in the lease agreement, tenants shall be responsible for maintaining the entire premises including existing structures, all facilities, and any improvements to the premises.

**Sec. 6-138. Encumbrances.**

A tenant shall not mortgage, pledge, assign as collateral, encumber, or in any manner transfer, convey, or dispose of leased premises or improvements thereon or any interest therein for any purpose or intent without the prior written consent of the Governing Authority, which consent shall not be unreasonably withheld. The encumbrance of land is expressly prohibited under any circumstances.

**Sec. 6-139. Prohibited Activities.**

Airport land or improvements shall not be occupied or used for any activity that is contrary to the safe and efficient operation of the airport, including, but not limited to, any activity that jeopardizes the safety of the public, aircraft, or the property located at the airport, or any activity that is inconsistent with current Federal Aviation Administration grant certifications and assurances.

**Sec. 6-140. Compliance.**

The Airport Director shall monitor compliance with lease provisions. The premises of each lease shall be subject to periodic physical inspection and audits conducted by the County Finance Department. The premise inspections and lease compliance audits should be conducted as appropriate with reasonable advance notification.

**Sec. 6-141. Consideration of Proposal by Airport Advisory Board.**

All requests for extensions of leases shall be presented to the Airport Advisory Board by the airport director for consideration and evaluation within a reasonable time of receipt. After due consideration of any proposal and request for extension of a lease and within a reasonable time of its first presentation to the Airport Advisory Board, the Airport Advisory Board shall provide the airport director with its written recommendation. The airport director shall then consider the Airport Advisory Board's recommendation and shall forward his/her own written recommendation to the chief executive officer along with the recommendation of the Airport Advisory Board within a reasonable time of receipt of the request to extend the term of the lease. If the airport director does not receive a timely written recommendation from the Airport Advisory Board, the airport director shall nonetheless forward his/her own recommendation to the chief executive officer as required by this section.

**Sec. 6-142. Final Award.**

Once placed upon the agenda, the board of commissioners shall have the authority to award such leases in accordance with the factors in Section 6-135, or such other factors as the board of commissioners shall deem necessary. After consideration of the agenda item, the board of commissioners also has the discretion to take any necessary action to seek competitive offers pursuant to a publicly advertised request for proposal process for rental of the subject premises at the expiration of the lease at issue.

**Sec. 6-143. Exemption from 365-day Requirement.**

If at the time of the effective date of this ordinance any affected person desires an extension of a lease covered by this article and cannot meet the 365-day requirement of Section 6-135(a), then such person shall within sixty (60) business days of approval of this article by the chief executive officer, give written notice of intent of his request to comply with the provisions of this article to the airport director who is then authorized to consider such request in accordance with the remaining requirements set forth in Sections 6-135 c, d, and e, 1-6 of this article.

**Sec. 6-144 – 6-200. Reserved.**

**PART II. EFFECTIVE DATE**

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

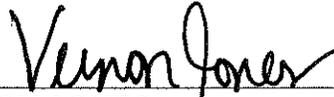
November 13, 2006

**ADOPTED** by the DeKalb County Board of Commissioners, this 28 day of November 2006.



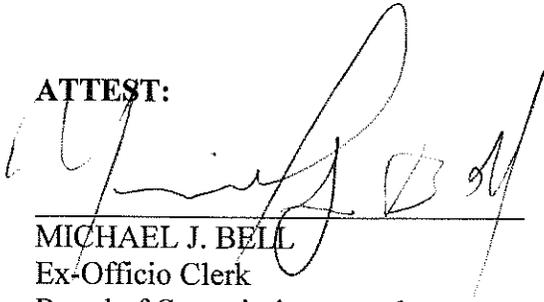
**BURRELL ELLIS**  
Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this 30 day of November 2006.



**VERNON JONES**  
Chief Executive Officer  
DeKalb County, Georgia

**ATTEST:**



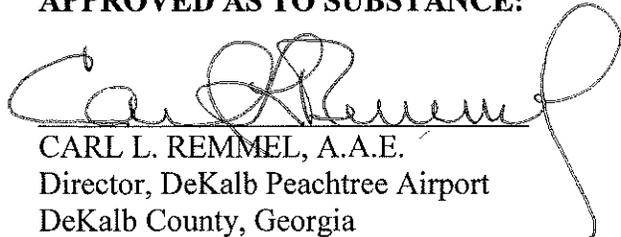
**MICHAEL J. BELL**  
Ex-Officio Clerk  
Board of Commissioners and  
Chief Executive Officer  
DeKalb County, Georgia

**APPROVED AS TO FORM:**



**WILLIAM J. LINKOUS, III**  
County Attorney  
DeKalb County, Georgia

**APPROVED AS TO SUBSTANCE:**



**CARL L. REMMEL, A.A.E.**  
Director, DeKalb Peachtree Airport  
DeKalb County, Georgia