

LOCAL LAW NO. \_\_\_\_-2005

A LOCAL LAW to amend Section 712.462 of the Laws of Westchester County in order to clarify the scope of application of the Westchester County Terminal Use Procedures which are outlined therein.

**BE IT ENACTED** by the County Board of Legislators of the County of Westchester, as follows:

**Section 1.** Section 712.462 of the Laws of Westchester County is hereby amended as follows:

**Section 712.462 Westchester County Airport Terminal Use Procedures**

**1. Applicability.** This Section shall apply to all use of the passenger terminal (“terminal”) and the terminal ramp at the Westchester County Airport (“Airport”) by Airlines providing Passenger Service, as that term is defined herein. The terminal ramp shall be for the exclusive use of Airlines providing Passenger Service. This Section does not apply to any activities by Airport users not providing Passenger Service. All Passenger Service provided at the Airport shall be provided at the Terminal.

**2. Definitions.** The following terms as used in this Section shall have the following meanings:

a. “Airline” shall mean any person providing Passenger Service in aircraft designed for more than (9) passenger seats, including but not limited to, any air carrier or other operator certificated to provide Passenger Service under Parts 119, 121 or 135 of the Federal Aviation Regulations, Title 14, Code of Federal Regulations. For purposes of this Section, “person” shall mean any individual, firm, company, association, society, corporation, partnership, co-partnership, joint-stock company, trust, estate, governmental entity or any other legal entity or legal representatives, agents or assigns thereof. The masculine gender shall include the feminine, and the singular shall include the plural, where indicated by context.

b. “Commissioner” shall mean the Commissioner of Transportation of Westchester County or his or her designee, which designee may include the Airport Manager of the Westchester County Airport.

c. "Ground Handling Services" shall include, at a minimum, ramp services, aircraft arrival and departure marshalling, aircraft parking and push-back, external engine starting, gate access coordination, aircraft deicing/anti-icing, Americans with Disability Act compliance on the Terminal Ramp, and any other services needed in the ordinary course by Airlines using the Terminal Ramp.

d. An "Incumbent Passenger Allocation" shall mean a Passenger Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.

e. An "Incumbent Ramp Allocation" shall mean a Ramp Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.

f. "Limited Qualified Airline" shall mean any Airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide at the Airport; (2) has, or has immediate and demonstrable, access to the aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has a valid Limited Terminal Use Agreement with the County in effect; (4) furnishes proof of requisite insurance pursuant to the terms of the then-current Limited Terminal Use Agreement; (5) has designated a representative for purposes of this Section; (6) is current on its financial obligations with the County; and (7) has conducted no more than four (4) operations constituting Passenger Service at the Airport within the previous 90 days.

g. "Limited Terminal Use Agreement" shall mean that agreement that Airlines must execute with the County in order to satisfy in part the requirements of Subsection 2(f) above.

h. "Passenger" shall mean any person enplaned or deplaned at the Terminal. Federal employees who are actually on official duty and Airline employees shall not be deemed to be Passengers.

i. "Passenger Allocation" shall mean the authorization to schedule the enplanement or deplanement of one passenger onto or from an aircraft that has a Ramp Allocation.

j. “Passenger Service” shall mean any air service to or from the Airport for which seats are individually offered or sold to the public or a segment of the public, regardless of whether such individual seats are offered or sold directly by the aircraft operator, a charterer, another Airline, or any other entity.

k. A “Qualified Airline” shall mean any Airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide at the Airport; (2) has, or has immediate and demonstrable access to, sufficient aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has a valid Terminal Use Agreement with the County in effect; (4) furnishes proof of requisite insurance pursuant to the terms of the then-current Terminal Use Agreement; (5) has designated a representative for purposes of this Section; and (6) is current on its financial obligations with the County.

l. “Ramp Allocation” shall mean the authorization to schedule an Airline aircraft operation on the Terminal Ramp during a designated half hour each day, or for a single designated half hour in the case of a Limited Qualified Airline operating pursuant to Subsection 7 hereof. An operation shall consist of an arrival or a departure.

m. “Technical Specifications and Procedural Requirements” shall mean any applicable and lawful technical, engineering, and mechanical specifications for the Airport, including but not limited to the Terminal Ramp, that are issued from time to time by the Commissioner, based upon Federal Aviation Administration guidelines and regulations, and upon the safety, efficiency and physical limitations of the Airport, including the Terminal and Terminal Ramp. The Technical Specifications and Procedural Requirements shall at least address maximum aircraft length, maximum wingspan, and maximum weight for aircraft using the Terminal Ramp.

n. “Terminal Ramp” shall refer to that portion of the apron at the Airport that is immediately adjacent to the Terminal building and which is available for scheduled Airline operations.

o. “Terminal Use Agreement” shall mean that agreement that Airlines must execute with the County in order to satisfy in part the requirements of Subsection 2(h)(j) above.

### 3. Terminal Ramp Use and Capacity.

a. Terminal Ramp Capacity. A maximum of four aircraft may be scheduled to use the Terminal Ramp at any time. It is the responsibility of each Airline to schedule arrivals and departures of its aircraft so as to avoid the need to

wait elsewhere on the Airport for access to the Terminal Ramp. Allocation of the Terminal Ramp capacity shall be governed by Subsection 5 below.

b. Use of Terminal Ramp. An Airline must hold a Ramp Allocation for each aircraft operation scheduled to use the Terminal Ramp. The Commissioner may deny access to the Terminal Ramp to any aircraft without a current Ramp Allocation. Subject to availability and subject to other Ramp Allocations, the County will endeavor to accommodate any aircraft arriving outside of the half-hour slot of its Ramp Allocation for such arrival or departure if caused by weather, airspace delays, mechanical difficulties, or other factors.

c. Parking on the Terminal Ramp. Subject to the use of the Terminal Ramp by Qualified Airlines that have valid Ramp Allocations, and subject to the efficient management of limited space on the Terminal Ramp and security considerations, the County will attempt to accommodate Qualified Airlines (1) who wish to park aircraft overnight on the Terminal Ramp after the last scheduled Ramp Allocation for the day or (2) when a Qualified Airline has nonsequential arrival and departure Ramp Allocations for the same aircraft. Any actions by the County allowing use of the Terminal Ramp for such parking pursuant to this provision shall not entitle an Airline to any changes in its Ramp Allocations. An Airline is not entitled to occupy a parking position during any half hour for which it has no Ramp Allocation and must vacate the Terminal Ramp when directed by Airport staff.

d. Technical Specifications. All Airlines shall comply with the Technical Specifications and Procedural Requirements as issued by the Commissioner from time to time.

e. Ground Handling Services. Ground Handling Services for all Airline operations shall be provided by the County or its contractors. An Airline must be a Qualified Airline or Limited Qualified Airline to receive Ground Handling Services.

**4. Passenger Capacity of the Terminal.** In the interest of passenger safety, security, public health, and comfort, the Terminal was designed for a capacity of 240 passengers per half hour, without consideration of whether such passengers are enplaning or deplaning. Allocation of this capacity shall be governed by the provisions of Subsection 5.

**5. Allocation of Terminal Ramp and Terminal Capacity.** In order reasonably and equitably to allocate the available Terminal building and Terminal Ramp capacity, to ensure competition, and to promote orderly and efficient Airport operations, the County shall allocate available Terminal Ramp and Terminal building capacity by means of a lottery as set forth in this Subsection.

a. Incumbent Allocations: A Qualified Airline that has Incumbent Ramp Allocations or Incumbent Passenger Allocations may continue to operate pursuant to such Allocations under this Section after November 30, 2004, so long as (1) this Section is in effect; and (2) the Airline complies with applicable County ordinances, laws, rules and regulations governing the Airport, including this Section. After December 31, 2004, Incumbent Ramp Allocations and Incumbent Passenger Allocations shall be treated identically to later-acquired Ramp Allocations and Passenger Allocations for purposes of compliance with this Section, including the provisions of Subsections (5)(d)-(m).

b. Future Quarterly Allocations:

i. By the last business day of December 2004, the Commissioner shall publish a report (“Terminal Capacity Allocation Report”) identifying all Incumbent Ramp Allocations and Incumbent Passenger Allocations as of November 30, 2004. The Terminal Capacity Allocation Report shall list (1) the time slots for, and names of, Qualified Airlines using each Incumbent Ramp Allocation and Incumbent Passenger Allocation; and (2) available Ramp Allocations and Passenger Allocations, on a half-hourly basis.

ii. By the last business day of every third month after November 30, 2004, the Commissioner shall make a preliminary determination of the then-available Terminal and Terminal Ramp capacity by subtracting all Ramp and Passenger Allocations from total Passenger and Ramp capacity and shall make a report of such available capacity (“Quarterly Available Capacity Report”) available in a convenient form for Qualified Airlines and all other interested persons.

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iii. The allocation of available capacity shall be by means of a Quarterly Lottery. The Quarterly Lottery may be conducted through representatives of the County and Qualified Airlines or may be conducted electronically, as the Commissioner shall determine from time to time.

iv. No later than December 15, 2004, and by the 15th day of each third month thereafter, any Qualified Airline seeking an Allocation of any available capacity by means of the Quarterly Lottery shall submit a request to the Commissioner in the manner specified by the Commissioner. The request shall, at a minimum, identify the Airline’s designated representative for the forthcoming Quarterly Lottery and the aircraft with which

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the Qualified Airline proposes to provide service for any Ramp Allocation.

v. On January 4, 2005, and on the first Tuesday of each third month thereafter, the County shall conduct the Quarterly Lottery to allocate capacity for the half hourly periods for which there is available capacity. The Commissioner may designate alternative dates for the Quarterly Lottery upon 14-days notice to the designated representative of each Qualified Airline.

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vi. At the commencement of the Quarterly Lottery, the Commissioner will provide a report of then-available Passenger and Ramp Allocations. All Qualified Airlines who submitted a request pursuant to Subsection (5)(b)(iv) shall be randomly assigned numbers to establish their order of selection in the first round of the Quarterly Lottery. Each Qualified Airline, in its order of selection, may draw Ramp Allocations and Passenger Allocations for up to a total of four (4) operations to take place in four half-hourly periods, up to the available Passenger and Ramp capacity identified in Subsections 3 and 4, whichever may first be reached. An operation shall be either an arrival or a departure. Draws may include increases in Passenger Allocations (so long as the total of Passenger Allocations for all Qualified Airlines during the half-hour period does not exceed 240 passengers) for operations for which the Qualified Airline has a Ramp Allocation.

vii. At the conclusion of the first round of the Quarterly Lottery, should any Passenger or Ramp capacity remain, the process shall be repeated, with the same order of selection, for such number of additional rounds as may be necessary until no Qualified Airline that submitted a request pursuant to Subsection (5)(b)(iv) seeks Allocations.

c. Other Matters. Routes, rates, selection of aircraft and other matters not addressed by this Section, other County law or regulation, the Airport's Technical Specifications and Procedural Requirements, or Terminal Use Agreement shall be determined by the Qualified Airline or the Federal Aviation Administration pursuant to federal law.

d. Compliance with Applicable Requirements. All Airlines operating at the Airport shall at all times be in compliance with all applicable and lawful Airport rules and regulations, County ordinances and laws, including all Airport Technical Specifications and Procedural Requirements that may be

issued from time-to-time. Any Airline violating or causing the violation of such rules, regulations, ordinances, laws, agreements or technical specifications shall cure such violation within fifteen (15) days of being so notified by the County. Failure to so cure shall result in the cancellation by the Commissioner of the Ramp Allocations and Passenger Allocations connected with such violations.

e. Calculation of Allocation Usage for Purposes of Determining Compliance. For purposes of determining whether an Airline is exceeding its Passenger Allocations for any half-hour period under Subsection (5)(h), the County shall employ a calendar month average. For the purposes of determining whether an Airline should have its Passenger Allocations adjusted for under-use pursuant to Subsection (5)(g), the County shall employ a three-calendar-month average based on the data reported pursuant to Subsection (5)(f). In calculating such averages, the denominator shall be the number of aircraft operations actually flown during the period pursuant to a particular Ramp Allocation and the numerator shall be the number of passengers actually enplaned and deplaned on all such operations. For purposes of using averages: (1) any average that is not a whole number shall be rounded down to the next lowest whole number if the fraction greater than the next lowest whole number is lower than five tenths; and (2) any average that is not a whole number shall be rounded up to the next highest whole number if the fraction greater than the next lowest whole number is equal to or greater than five tenths. In calculating such averages, the County shall not include, either in the numerator or the denominator, data concerning operations during the following holiday periods:

- i. Christmas/New Year from December 20 through January 5.
- ii. The Presidents' Day holiday from three (3) days before Presidents' Day through three (3) days following Presidents' Day.
- iii. Easter from five (5) days prior to Easter through the fifth day following Easter.
- iv. Memorial Day from three (3) days before Memorial Day through three (3) days after Memorial Day.
- v. July 4, from July 1 through July 7.
- vi. Labor Day, from three (3) days prior to Labor Day through three (3) days after Labor Day.
- vii. Thanksgiving from five (5) days prior to Thanksgiving through five (5) days after Thanksgiving.

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f. **Reporting.**

i. Airlines operating at the Airport shall certify actual passenger loads, on a per flight, per day, enplaned, deplaned, basis to the County twice monthly in the form designated by the Commissioner by no later than five business days from (1) the 15th of each month and (2) the last day of each month.

ii. Each Airline shall designate at the time of any application under Subsection (5)(b)(iv), Quarterly Lottery draw under Subsection (5)(b)(vii), or transfer under Subsection (5)(k), the type of aircraft to be used for each Ramp Allocation time slot. Such designation shall be in the form established for this purpose by the Commissioner. Further, any Airline seeking to change the type of aircraft using a Ramp Allocation shall provide notice to the County, in the form designated by the Commissioner, at least seven days prior to such change. Any designation or change in aircraft type shall comply with the Technical Specifications and Procedural Requirements.

iii. The County may, at any time, audit passenger ticket lifts and/or other appropriate passenger statistics of any Airline to determine actual passenger enplanements or deplanements.

iv. Failure to comply with any of the reporting or audit requirements contained in this Subsection (5)(f) within five days of an Airline's receipt of notice of noncompliance by the Commissioner shall result in immediate termination of the Ramp Allocation(s) and Passenger Allocations of the Airline. Further, any intentional misstatement of information required in this Section, as determined by the Commissioner, shall result in the immediate termination of the Ramp Allocation(s) or Passenger Allocations of the Airline.

g. **Failure to Use Allocations.** If for any three-calendar-month period, an Airline's actual average passenger load for any half-hour for which it has Passenger Allocations should be less than 85 percent of the total of its Passenger Allocations, then the Commissioner shall reduce its Passenger Allocation for the subsequent quarter to 115 percent of such reported three calendar-month-average passenger loads for that half-hour period. The review and reduction made pursuant to this Subsection shall be made for successive, and not for overlapping, three-month periods. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total passenger enplanements at the Airport have been



significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.

h. **Exceedance of Passenger Allocations.** If for any calendar month, an Airline's average passenger load during any half-hour period should exceed its Passenger Allocations for that period, then such Airline's Passenger Allocations shall be adjusted to such average load figure or such portion thereof as the available capacity of the Terminal shall accommodate ("Adjusted Passenger Allocations"). If two or more Qualified Airlines' average passenger loads for a calendar month in a particular half-hour time period exceed their Passenger Allocations and there is insufficient Passenger Capacity to accommodate all of these exceedances, the Commissioner shall assign Adjusted Passenger Allocations proportionally to the Qualified Airlines' shares of Passenger Allocations for that half-hour period. If there is insufficient available Terminal capacity to accommodate all of the exceedances of Passenger Allocations by an Airline, then the Commissioner shall issue a written Notice of Violation to such Airline, and the Airline shall, within fifteen (15) days from such notice, reduce its average passenger load to the Adjusted Passenger Allocations level. For the purposes of determining compliance with such mandated reduction, the average passenger load will be calculated for the period from 15 days prior to the Notice of Violation to 15 days after the Notice of Violation ("Compliance Test Period"). In lieu of such mandated reduction, a Qualified Airline may obtain sufficient Passenger Allocations from another Airline pursuant to Subsection 5(k) to accommodate its average usage during the Compliance Test Period. Should any Airline fail to reduce its average passenger load during the Compliance Test Period then:

- i. On the sixteenth day following the Notice of Violation, such Airline's Passenger Allocations for the applicable half-hour period shall be reduced by the amount by which that the Airline's average loads exceeded the Airline's Passenger Allocations as set forth in the Notice of Violation. The Airline shall thereupon be required to comply immediately with such reduced Passenger Allocations.
- ii. The Airline shall lose the privilege of participating in the next subsequent Quarterly Lottery for either Passenger Allocations or Ramp Allocations.
- iii. Should such Airline's average passenger load during the calendar month following the reduction in its Passenger Allocation under Section 5(h)(i) not comply with such reduced Passenger Allocation, then the Commissioner may terminate, upon twenty days' written notice, such Airline's Ramp Allocation and Passenger Allocations for the subject half-hour period.

i. Use of Ramp Allocations.

i. Any Airline obtaining a Ramp Allocation must initiate service within 60 days from the date it obtains such Allocation and must provide such service on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation. Should any Airline fail to initiate service within such 60-day period, such Airline shall, on the 61st day, lose such Ramp Allocation and Passenger Allocations. Such Airline shall also lose the privilege of participating in the next Quarterly Lottery. Notwithstanding the foregoing, any Airline may, within ten days of any Quarterly Lottery, surrender to the County without penalty any Passenger Allocations or Ramp Allocation or portions thereof obtained in such Quarterly Lottery. Any surrendered Allocations will become available capacity in the next Quarterly Lottery.

ii. Any Airline with a Ramp Allocation must schedule use of such Allocation on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation, or transfer the Allocation to another Airline or Airlines (pursuant to Subsection k) which together would provide service that schedules use of such Passenger Allocations, on at least a five-day-per-week basis.

(a) Failure to schedule use of a Ramp Allocation on at least a five-day-per-week basis shall result in a notice of violation from the Commissioner. If the Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis within 15 days of the notice of violation from the Commissioner, the Commissioner shall immediately cancel such Airline's Ramp Allocation and associated Passenger Allocations. If an Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis for a second time within a one-year period, the Commissioner shall immediately cancel the Airline's Ramp Allocation and associated Passenger Allocations upon one-day notice. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total operations at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.

(b) The Commissioner may also terminate an Airline's Ramp Allocation and associated Passenger Allocations if he or she determines that an Airline's actual use of its Ramp Allocation is inconsistent with its published schedules for use of the Ramp Allocation, indicating an intent to hold a Ramp Allocation without making use of it on a five-day-per-week basis.

iii. Before initiating new or changed service, a Qualified Airline must have approval from the Commissioner regarding scheduled arrival and departure times pursuant to Subsection (5)(j).

j. **Scheduled Departure and Arrival Times.** The Commissioner shall approve changes in and new scheduled arrival or departure times. Any changes not disapproved within 10 days of receipt of notice of such changes shall be deemed approved. Approval or disapproval of any changes shall be based on the following criteria:

i. All arrival and departure times must be scheduled within the half hour for which the Qualified Airline holds a Ramp Allocation;

ii. The Qualified Airline must have adequate Passenger Allocations;

iii. The scheduled arrival and departure times must allow for the aircraft's passengers to be enplaned and/or deplaned within the half hour for which the Qualified Airline holds a Ramp Allocation and Passenger Allocations;

iv. Adequate ramp time outside of the half-hour period for which the Qualified Airline holds a Ramp Allocation is available, if necessary, to accommodate the proposed operation;

v. Scheduled times shall not interfere with efficient handling of other operations within the same half-hour period or in an adjacent period;

vi. Scheduled operations shall minimize the need for any arrival or departure holds on other Airport aprons;

vii. Operations shall maintain a reasonable balance of arrival and departure passengers in the Terminal;

viii. In no event shall the Commissioner's approval or disapproval of scheduled departure or arrival times deny a Qualified Airline the authority to use its Ramp Allocation and/or Passenger Allocation or affect Airline rates or routes.

k. **Transfer of Allocations**; Notice.

i. Qualified Airlines may, upon two (2) weeks prior written notice to the County, transfer:

(a) Ramp or Passenger Allocations to another Qualified Airline provided that the transferor has operated flight(s) under such Allocations, employing aircraft capable of using the entire Allocations, for 30 days on at least a five-day-per-week basis, or

(b) Ramp Allocations and Passenger Allocations from one time period into another time period as long as no such transferred Allocations would result in use of the Terminal or Terminal Ramp in excess of capacity for any half-hour time period.

ii. The Commissioner may, in his sole discretion, waive either the notice period or the transferor's required use of the Allocation under this Section for short-term transfers but in no event shall waive the notice requirement.

iii. Notice to the County shall be in such electronic and/or other form designated by the Commissioner. Any notice of a transfer shall set forth (a) the names of the transferor and transferee; (b) the duration or any other conditions on the transfer, or whether the transfer is unconditional; and (c) whether the transfer is for all, or a portion (and if so, what portion) of the Allocation.

iv. The County's review of notices pursuant to this Subsection shall be limited to a determination that the proposed transaction (a) involves Qualified Airlines and (b) will not result in exceedance of the capacity limits set forth Subsections 3(a) or 4 of this Section.

l. **New Entrants.** An Airline not currently providing service at the Airport can become a Qualified Airline and obtain Allocations through the Quarterly Lottery and/or transactions with other Airlines pursuant to Subsection (5)(k) if it demonstrates compliance with the criteria set forth in Subsection (2)(h).

m. Disputes Regarding Allocations. To the extent that any Qualified Airline disputes the identity of the designated holder of Ramp Allocations and/or Passenger Allocations, such Qualified Airline shall seek to resolve its dispute informally among the affected Airlines. If such efforts should fail, any Qualified Airline may petition the Commissioner for resolution of the dispute. After providing all Qualified Airlines with notice of the dispute, an opportunity to provide supporting information, and an opportunity for a meeting with all affected Airlines, the Commissioner shall make one of three findings: (1) find that the Allocation is properly identified by the County in the reports required in Subsections (5)(b)(i), (5)(b)(ii) and/or (5)(b)(vi); (2) that another Qualified Airline is properly the holder of the relevant Allocation; or (3) that no Qualified Airline has a clear right to the allocation and that the Allocation is forfeited and available for reallocation pursuant to the provisions of Subsection (5). All determinations of the Commissioner shall be final.

#### **6. Hearings; Enforcement of This Section.**

a. Request for Hearing and Reconsideration. Any Airline that disputes a decision by the Commissioner to terminate its Ramp Allocation(s) and/or Passenger Allocations is entitled to seek a hearing and reconsideration of the Commissioner's decision by submitting to the Commissioner a formal request within 10 days of such decision. Upon receipt of such request, the effectiveness of the Commissioner's decision to terminate an allocation shall be suspended until he or she renders a decision under Subsection (6)(c).

b. Process for Hearing.

i. Upon request for a hearing and reconsideration, the Commissioner shall cause to be held a hearing before a hearing officer selected by the County on the termination at issue.

ii. A formal hearing shall be on due and adequate notice to the party concerned and shall be set down for a day certain no less than 15 days and no more than 30 days from the Airline's request for hearing and reconsideration.

iii. A notice of hearing shall set forth:

- (a) The time and place of the hearing;
- (b) The basis or bases for the Commissioner's decision to terminate Ramp Allocations and/or Passenger Allocations;
- (c) The right to present evidence;

(d) The right to examine and cross-examine witnesses;

(e) The right to be represented by counsel; and

(f) That failure to appear shall constitute a default by the respondent, that the hearing may proceed in the respondent's absence and a determination made based upon evidence submitted by the Westchester County Department of Transportation.

iv. The hearing officer may grant adjournments upon request of any party to the proceeding, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.

(a) If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer in writing, and shall specify the reason for such request.

(b) In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.

v. To aid in the administration of this Section, the Commissioner or any hearing officer designated by him or her in a particular proceeding, may issue subpoenas in the Commissioner's name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing or proceeding conducted under this Section. Service of such subpoena(s), enforcement of obedience thereto, and punishment for disobedience thereof, shall be had as and in the manner provided by the Civil Practice Law and Rules relating to the enforcement of any subpoena. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.

vi. On the return day of the hearing, the hearing officer shall note the appearances of the persons attending the hearing. Witnesses shall be sworn and testimony shall be recorded either by a certain stenographer or by use of an electronic recording device.

vii. Testimony shall be transcribed upon the request of any interested party. The party requesting the transcript shall pay the costs and expenses in connection therewith.

viii. The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but the determination shall be founded upon sufficient legal evidence to sustain it.

ix. After the conclusion of a formal hearing, the hearing officer shall prepare and issue findings of fact, conclusions and recommendation(s) to the Commissioner.

c. Decision by Commissioner

i. Upon the conclusion of a formal hearing and after receipt of the hearing officer's report and recommendation(s), the Commissioner shall make a decision based on such findings, determinations and recommendations as he or she deems proper, and shall execute an order carrying such decision into effect.

ii. The Commissioner may direct a rehearing or require the taking of additional evidence and may rescind or affirm, in whole or in part, a prior determination after such hearing.

iii. The Commissioner shall cause to be served upon the Airline, copies of findings of fact, conclusions and recommendations and orders made as a result of a formal hearing.

d. Service by County. Service of findings of fact, conclusions and recommendations, and orders, shall be made by hand or by overnight delivery to the designated representative of the Airline.

e. Hearing Cost. The cost of the hearing process (including but not limited to the fees for the hearing officer, transcription and other clerical costs, and the cost of providing witnesses but excluding any salaries of County employees) shall be borne equally by all Airlines who are parties to the hearing.

f. **Injunctions.** The County may maintain actions in any court of competent jurisdiction to restrain by injunction any attempted use of the Terminal or Terminal Ramp by any Airline without current, valid Ramp Allocations or Passenger Allocations or any attempted Passenger Service in violation of this Section.

**7. Limited Qualified Airlines.**

- a. **Applicability.** A Limited Qualified Airline may use the Terminal for an operation subject to the requirements of this Subsection.
- b. **Operations.** The Commissioner shall approve each operation by a Limited Qualified Airline so long as he has determined that there is **adequate Terminal and Terminal Ramp space available** for such operation **and either** of the following conditions exists:
  - i. The Limited Qualified Airline has executed an agreement with a Qualified Airline for the use of the Qualified Airline's Ramp Allocation and the operation would not result in the use of the Terminal in excess of the limits set forth in Subsection 4 of this Section; or
  - ii. The Limited Qualified Airline provides the County with at least seven days' notice that it intends to conduct a single operation for which there is an available Ramp Allocation.

**Limited Qualified Airlines shall comply with the applicable provisions of Subsections 3, 4, and 5(d) of this Section. Each approval by the Commissioner under this Subsection 7 shall constitute a one-time Ramp Allocation for purposes of Subsections 3(b) and 3(c) of this Section.**

- c. **Reporting.** An Airline shall provide the Commissioner with a report, on a form provided by the Commissioner, regarding any Passenger Service operation authorized pursuant to Subsection 7(b). The County may, at any time, **audit** passenger ticket lifts and/or other appropriate passenger documents of any Airline to determine actual passenger enplanements or deplanements.
- d. **Effect of Noncompliance.** The Commissioner may **terminate any Airline's** authority to use the Terminal and to receive Ground Handling services for **90 days** upon a finding that the Airline has failed to comply with the requirements of this Subsection 7.
- e. **Hearings.** Any Airline that disputes a decision by the Commissioner pursuant to Subsection 7(d) is entitled to seek a hearing and reconsideration of the Commissioner's decision. Such hearing and reconsideration shall substantially follow the process outlined in Subsection 6.
- e. **Effect on Qualified Airline Reporting.** Use of Ramp Allocations by a Limited Qualified Airline pursuant to this Subsection shall not affect the calculations under Subsections 5(g) or 5(h).

**Section 2.** This Local Law shall take effect sixty (60) days from its enactment.