



April 17, 2025

Matt Staehling  
Duluth City Administrator  
411 West First Street  
Duluth, MN 55802

Dear Mr. Staehling,

I am writing today with regard to stormwater system charges that are being assessed against airport property which we have determined are impermissible and assessed in violation of federal law. Federal statutes and policies of the Federal Aviation Administration (FAA) (which have the force of law) both prohibit the Duluth Airport Authority from making some of these payments and require the City to reimburse the Airport Authority for some past impermissible payments.

As you are aware, the City of Duluth assesses stormwater system charges against property that is being used for the Duluth International and Sky Harbor Airports. The fees are assessed in the same manner as other property within the City, based upon Equivalent Residential Units (ERUs). As of December 2024, Sky Harbor is being assessed for 89.28 ERUs and Duluth International for 1,190 ERUs. (In both cases, as required by City ordinances, no ERUs are assessed for airport runways and taxiways.)

### **Federal Legal Requirements**

Unlike other City authorities, the airport is heavily regulated by the FAA. Among the most important and stringent regulatory burdens on airport sponsors like the City are the requirements that apply to use of airport revenue, i.e., revenue that is earned from rates, charges, leases, and operations of the airport.

Federal law specifies that when an airport sponsor like the City accepts a federal Airport Improvement Program grant, it must agree to certain contractual terms and conditions known as Airport Sponsor Assurances ("Grant Assurances").<sup>1</sup> Pursuant to both federal statute and Grant Assurance 25, a grant-obligated airport sponsor may only use airport revenue for "the capital or operating costs of the airport [or] other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property."<sup>2</sup>

The City's Grant Assurance obligations are grounded in federal law. Congress enacted 49 U.S.C. § 47017(k), which essentially tasked the FAA with clarifying its policies and controlling the rampant problem of illegal diversion of airport funds by the sponsoring government's general fund

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<sup>1</sup> See generally 49 U.S.C. § 47107(a).

<sup>2</sup> Id. § 47107(b)(1)(A), (C); Grant Assurance 25(a).



or to support non-airport functions.<sup>3</sup> Congress required, at a minimum, that FAA prohibit the diversion of revenue for “direct payments or indirect payments, *other than payments reflecting the value of services and facilities provided to the airport*, [and] payments in lieu of taxes or *other assessments that exceed the value of services provided*.”<sup>4</sup> These prohibitions do not apply, however, if the payments qualify as a permissible use of airport revenue under 49 U.S.C. § 47107(b) (i.e., they are a capital or operating cost of the airport).<sup>5</sup>

In response to the Congressional mandate, the FAA adopted its *Policy and Procedures Concerning the Use of Airport Revenue* (“Revenue Use Policy”), which imposes specific restrictions on the methodology used and the amount an airport sponsor may reimburse its sponsoring government entity for costs of services and contributions to an airport.<sup>6</sup> Under the Revenue Use Policy, a sponsoring government like the City use airport funds to reimburse it for a certain “indirect costs,” which are generally costs borne by the government as a whole on behalf of multiple departments (often functions such as human resources, IT, accounting, etc.).<sup>7</sup> Indirect costs can be “operating costs” of an airport that are proper uses of airport revenue under appropriate circumstances.<sup>8</sup> In particular, among other requirements, the allocation methodology used to calculate the airport’s share of such indirect costs must *not* “result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport.”<sup>9</sup> In essence, these legal requirements mean that the City cannot assess fees or charges against the Authority’s airports or against airport property unless such expenditures can be shown to provide direct or indirect benefits to the airport. Any other use of airport revenue is unlawful.

Unlawful use of airport revenue is a very serious matter. If the FAA finds that an airport sponsor like the City has impermissibly used airport revenue, FAA may require that the sponsor repay the airport fund the amount of revenue diverted over the past six years, plus applicable interest.<sup>10</sup> If the sponsor fails to reimburse the airport fund, the FAA is authorized to withhold future grant payments until the reimbursement is made or withhold an amount equal the amount diverted (again, plus interest).<sup>11</sup> If the sponsor fails to reimburse the airport fund within 180 days from notification of the revenue diversion and FAA is unable to withhold a sufficient amount of grant

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<sup>3</sup> Because of certain high-profile cases around the country at that time, Congress was concerned with airports diverting airport revenue to pay for the airport parent’s non-airport costs or programs. See H.R. REP. NO. 104-714, pt. 1, at 38 (1996) (“Congress did not want an airport to receive an AIP grant for a specific project and then divert a like amount of money off the airport for a non-airport purpose.”).

<sup>4</sup> 49 U.S.C. § 47107(k)(2)(A), (C) (emphasis added).

<sup>5</sup> See *id.* at § 47107(k)(2) (stating that the prohibitions do not apply to uses otherwise permitted under § 47107(b)).

<sup>6</sup> See FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7,696, 7,719 (Feb. 16, 1999).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 7,718 (“Operating costs for an airport may be both direct and indirect.”).

<sup>9</sup> *Id.* at 7,719.

<sup>10</sup> *Id.* §§ 47017(m)(1) – (2).

<sup>11</sup> *Id.* § 47017(m)(3).



funds, FAA is authorized to assess a civil penalty equal to three times the amount of diverted revenue, plus interest.<sup>12</sup> Despite these potentially harsh penalties, FAA is often willing to consider sponsor requests for payment plans and other accommodations if the diversion is self-reported and corrected and the FAA is convinced that systemic changes have been made to prevent future revenue diversion.<sup>13</sup>

### **Impermissible Current Stormwater Charges**

In accord with our obligations to ensure the proper use of Duluth Airport Authority funds, we have determined that the Authority's payment of some of the City stormwater charges have been impermissible expenditures of airport revenue, as follows.

1. Sky Harbor does not receive any stormwater system benefits. Therefore, payment of any charges levied against Sky Harbor property for the City's stormwater system would constitute an impermissible diversion of airport revenue.
2. A significant portion of the Duluth International Airport property does not receive any stormwater system benefits because surface water from the property does not drain into the City stormwater system. (See enclosed map.) Since this property does not use the City system, this portion of the Duluth International Airport property should not be assessed ERUs. Any payment of fees assessed for this property would constitute an impermissible diversion of airport revenue.

*Going forward, the City must immediately discontinue all stormwater system assessments against the Sky Harbor property and must discontinue stormwater system assessments for the Duluth International property that does not drain into the City system per the attached map. As explained above, continued assessment of these charges would violate federal law and would subject the City to federal legal sanctions.*

### **Past Impermissible Charges**

In addition to ceasing any impermissible stormwater charges going forward, the City is also liable for any impermissible past expenditures of airport revenue that have occurred in the six years prior to discovery of the illegal use of airport revenue to pay stormwater charges. Therefore, by this letter, we request that the City reimburse the Airport Authority fund for six prior years of payments of all stormwater fees paid for Sky Harbor and all fees charged for areas which do not run into the City stormwater system at Duluth International between 2019 to current. The Duluth Airport Authority understands that there will need to be a review of previous stormwater fee payments and supporting information. We are willing to work with the City on a repayment solution which must be acceptable to the FAA. My team is ready to engage with yours and share

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<sup>12</sup> *Id.* § 47017(m)(4); *id.* § 46301(a)(3).

<sup>13</sup> See FAA Airport Compliance Manual, Order 5190.6B at ¶ 16.7(c) ("If, at any point, the airport sponsor takes...corrective action....the Director will dismiss the complaint. This is consistent with the practice discussed elsewhere in this Order that the best results can be achieved by a positive, continuing educational program to assist sponsors in knowing what their obligations are and promoting their voluntary compliance with their obligations.").



## **DULUTH AIRPORT AUTHORITY**

information in the interest of a mutually agreeable path forward. Upon repayment of these funds or determining an alternative payment proposal, we will self-report the reimbursement to the FAA and are optimistic that the agency will not pursue any legal action against the City.

Please let me know if you have any questions about the City's obligations. I look forward to receiving the City's response to this letter by May 19, 2025.

Sincerely,

**Tom  
Werner**

Digitally signed by  
Tom Werner  
Date: 2025.04.17  
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Tom Werner, A.A.E.  
Executive Director  
Duluth Airport Authority

enclosure





## DLH Stormwater Map

Duluth International Airport  
Duluth, Minnesota

## Enclosure

Updated Map  
02/2025; DULAI 179456

