



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken

**SUBJECT:** SEE BELOW

**DATE:** November 15, 2021

Approved

Date

**11/17/21**

**SUBJECT: AMENDMENT TO THE NORMAN Y. MINETA SAN JOSE  
INTERNATIONAL AIRPORT MASTER PLAN EIR FOR THE  
OUTDOOR ADVERTISING DIGITAL BILLBOARDS**

## RECOMMENDATION

- (a) Adopt a resolution approving the Addendum to the Amendment to the Norman Y. Mineta San Jose International Airport Master Plan Environmental Impact Report (EIR) (SCH# 2018102020), certified by the San Jose City Council on April 18, 2020, in accordance with the California Environmental Quality Act.
- (b) Conduct a Public Hearing regarding the Project Plan for two (2) Outdoor Advertising Digital Billboards under the "Norman Y. Mineta San Jose International Airport City of San Jose Advertising Concession Agreement by and between the City of San Jose ("City") and Clear Channel Outdoors Inc. ("Concessionaire") with estimated annual revenue to the Airport of \$490,000.

## OUTCOME

Adoption of the resolution will allow Concessionaire to proceed with coordinating the installation of two outdoor advertising digital billboards ("electronic signs") on Norman Y. Mineta San Jose International Airport ("Airport") premises. Conducting a public hearing for the Project Plan will comply with the public noticing requirement in Council Policy 6-4.

From the date of installation through June 30, 2027, the two (2) electronic signs will generate a Minimum Annual Guarantee ("MAG") of \$490,000 in additional revenue to the City, apart from the \$2,101,250 paid by Concessionaire to the City annually for the in-terminal all digital advertising program. In addition to the guaranteed revenue, the Concessionaire will dedicate ten percent of the advertising time to the Airport to promote Airport services and initiatives.

## **EXECUTIVE SUMMARY**

Clear Channel Outdoors Inc. was selected following an extensive request for proposals process in 2007. The agreement and subsequent amendments approved by City Council, delegated authority to the Director of Aviation to approve and execute a Project Plan with the Concessionaire for additional marketing income opportunities for locations on Airport premises. The Project Plan outlines the scope, timeline, and revenue to the City. Following the adoption of City Policy 6-4, City staff received a proposal from Concessionaire to add three outdoor electronic signs on designated sites within the Airport Influence Area as listed in the Policy. On February 21, 2020, the Director approved the Project Plan for the entitlement, development, and operation of three outdoor digital advertising billboards located at 2200 and 2341 Airport Boulevard respectively, facing the 101 freeway and one located at 1128 Coleman Avenue. On April 22, 2020, the Airport and Concessionaire mutually agreed to remove the Coleman Avenue electronic sign due to safety concerns for the pilots on the approach into the Airport.

Although Council Policy 6-4 environmentally cleared the locations in the Airport Influence Area for additional commercial signage, paragraph 2 of the “Sign Approval Process”, requires development-specific environmental clearance under CEQA. An addendum to the amendment to the Norman Y. Mineta San Jose International Airport Master Plan Environmental Impact Report was prepared, and City staff elected to conduct a 30-day public comment period. Pursuant to CEQA Guidelines Section 1564(c), “an addendum need not be circulated for public review.” However, City staff exceeded legal requirements when Planning, Building and Code Enforcement (PBCE) reviewed the EIR addendum and posted a copy for public comment on July 26, 2021. Some of the questions submitted during the EIR commentary period were outside of the scope of the environmental review, yet staff made efforts to answer all questions received.

Council Policy 6-4 states that a Site Development Permit is not required, consequently, PBCE cannot issue a Site Development Permit for signs in the Airport Influence Area. Paragraph 2 of the same policy requires that the City follow the noticing requirements that would apply for a Site Development Permit. Therefore, a public hearing for the Project Plan at Council is the only available discretionary action to comply with the policy. A public hearing of the Project Plan and approval of the Addendum to the Amendment to the Norman Y. Mineta San José International Airport Master Plan Environmental Impact Report, will allow the Concessionaire to proceed with the process to install two free-standing electronic signs and meet the requirements as outlined in Policy 6-4.

## **BACKGROUND**

Following an extensive Advertising Concession Request for Proposal at the Norman Y. Mineta Airport, on June 5, 2007, Council adopted a resolution authorizing the City Manager to negotiate and execute an Advertising Concession Agreement with Clear Channel to conduct advertising operations at the Airport for a period of seven (7) years beginning on July 1, 2007, with a three

(3) year extension at the option of the City. The Concession Agreement was executed on July 31, 2007.

On October 1, 2008, the City Manager executed a minor First Amendment to the Agreement that was entered into to make a clerical correction to the Agreement.

On June 15, 2010, a Second Amendment to the Agreement was approved by Council to simplify the administration of advertising inventory, modify the advertising fixture refurbishment requirements, eliminate the MAG for new advertising sites, as well as eliminate some advertising sites along with their associated capital investment requirements and MAG's.

On September 18, 2012, a Third Amendment was approved by Council to combine the minimum capital investment requirements for the various advertising categories, provide Concessionaire with 261 square feet of office and storage space at no additional charge to support its operations at the Airport, resolve all outstanding Concessionaire claims related to the MAG and modify administrative requirements that mutually benefit Concessionaire and the City.

On June 18, 2013, Resolution No.76681 was adopted, authorizing the City Manager to exercise the City's option to extend the Advertising Concession Agreement between the City of San José and Clear Channel on the same terms and conditions for three years; from July 1, 2014, through June 30, 2017, retaining the annual MAG of \$4,222,324.

On, February 18, 2014, Council approved a Fourth Amendment to extend the Agreement an additional 3 years from July 1, 2017, through June 30, 2020, and modify the MAG from the current \$4,222,324 to \$1.8 million, \$1.9 million, and \$2.0 million respectively for each year of the extension period.

On, December 11, 2015, Council approved a Fifth Amendment to the Agreement to increase the advertising sites approved by the Director and provide a percentage fee of 25% for these new sites in addition to the current MAG. Effective July 1, 2017, the percentage fee on the additional sites increased to 65%.

On June 7, 2018, Council approved Resolution 78714 delegating authority to the City Manager to negotiate and execute the Sixth Amendment to the Agreement to extend the term and convert to the first all-digital based Airport advertising program in the country. The Agreement was executed on April 3, 2019.

On September 25, 2018, Council approved the proposed amendments to the General Plan Land Use Policy CD-10.4, City Council Policy 6-4, and Title 23 of the San José Municipal Code to allow signs on City-owned property, including billboards, programmable electronic signs, and signs displaying off-site commercial speech, as Phase 1 of a two-phase work plan. These amendments were in response to Council Priority #4 Electronic Billboards, options for public and private property that allows for installations of electronic digital off-site advertising signs or

billboards. Attachment A of Council Policy 6-4 identified locations throughout the City including four sites on Airport property in the “Airport Influence Area” that are environmentally cleared for additional commercial signage.

On August 6, 2019, item 4.2 provided Council an update on Council Priority #4 for Electronic Billboards. Amongst the updates, this memo established that the four sites on Airport property that are referenced in Council Policy 6-4 would not be included in the City of San Jose’s Request for Proposal for Electronic Billboards. In this update, City staff stated to Council the Airport’s intent to leverage its existing Concession Agreement with Concessionaire to address other advertising opportunities, including outdoor electronic signs, once the all-digital, in-terminal program was fully developed.

The Agreement allows the Concessionaire to propose additional marketing income opportunities at other locations on Airport premises, and delegates authority to the Director of Aviation (“Director”) to approve and execute a Project Plan that outlines the scope and the proposed revenue to the City. On February 21, 2020, the Director approved the Project Plan for the entitlement, development, and operation of three (3) outdoor digital advertising billboards located at 2200 and 2341 Airport Boulevard respectively, facing the 101 freeway and one located at 1128 Coleman Avenue. On April 22, 2020, the Airport and Concessionaire mutually agreed to remove the Coleman Avenue electronic sign due to safety concerns for the pilots on the approach into the Airport. The signs on Airport Boulevard are located within the Airport Influence Area as listed in Attachment A of Council Policy 6-4, and sit adjacent to the 101 freeway, across from the Airport’s fuel farm, and are more than 0.06 light candles away from any residential or commercial areas. Concessionaire is responsible for all costs associated with the design, permitting, development, construction, and management of the electronic signs. The electronic signs must comply with all guidelines as outlined in Council Policy 6-4 and operate in conformance with the operational requirements for Programmable Electronic Signs as specified in the San José Municipal Code.

The City receives the greater of a MAG of \$2,101,250 or 55% of Gross Revenue from Concessionaire for the in-terminal all digital program. The Project Plan for the outdoor electronic signs includes the greater of 55% of Gross Revenue or a MAG of \$300,000 on the Northern location and \$190,000 for the Southern location on Airport Boulevard for additional guaranteed annual revenue of \$490,000 for both signs. In addition to the guaranteed revenue, ten percent of the advertising time is allocated to the Airport to promote new destinations, services, and other Airport initiatives.

## **ANALYSIS**

Following the Director’s approval of the Project Plan, Concessionaire and the City has followed the process to install two free-standing digital billboard structures on freeway-facing, City-owned Airport sites as outlined in Council Policy 6-4. The signs are in the Airport Influence

Area and will conform to the illumination requirements, as specified in the San José Municipal Code and meet all Federal Aviation Administration (“FAA”) criteria. Concessionaire submitted all appropriate documentation to the FAA and received the FAA 7460 "Determinations of No Hazard" for the sign located at 2341 Airport Boulevard. The sign located at 2200 Airport Boulevard was resubmitted on September 9, 2021, when the location shifted and is under review by the FAA and will receive approval from the FAA prior to construction.

### **Addendum to the Airport’s Environmental Impact Report (“EIR”)**

Although Council Policy 6-4 environmentally cleared the locations in the Airport Influence Area for additional commercial signage, paragraph 2 of the “Sign Approval Process”, requires development-specific environmental clearance under CEQA.

On April 28, 2020, City Council certified the Amendment to the Norman Y. Mineta San José International Airport Master Plan Final Environmental Impact Report (Airport Master Plan EIR) (File No. PP18-103) and approved the amended Master Plan, which provides a blueprint for the continued growth of the Airport through the year 2037.

The proposed San José Airport Electronic Signs Project (the Project) was not included in the Airport Master Plan project and, therefore, represents a change to the project analyzed in the Airport Master Plan EIR. As a result, the City of San José, as CEQA Lead Agency, prepared an Initial Study/Addendum for the Project. Under CEQA Guidelines Section 15162(a), the purpose of the Initial Study/Addendum was to determine on the basis of substantial evidence, if the Project would result in one or more of the following outcomes:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:
  - The project will have one or more significant effects not discussed in the previous EIR; or
  - Significant effects previously examined will be substantially more severe than shown in the previous EIR; or
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The Initial Study/Addendum (July 2021) concluded that none of the above outcomes would occur if the Project were to be approved. In each of the CEQA subject areas, analysis concluded that the proposed sign project would result in either the “Same Impact as Approved Project” or a “New Less Than Significant Impact” from the project. These conclusions were reached for critical CEQA topic areas such as aesthetic, biological impacts, and transportation impacts. The project would further be subject to existing mitigation measures from the Airport Master Plan EIR. Therefore, these conclusions indicate that major revisions of the previous EIR due to new significant environmental effects, substantial increase in the severity of previously identified significant effects, or new information would not occur if the project were to be approved, and no subsequent EIR need be prepared.

The EIR addendum and all relative documents have been reviewed by both PBCE and the Airport Department. Pursuant to CEQA Guidelines Section 1564(c), “an addendum need not be circulated for public review.” However, City staff exceeded legal requirements when PBCE reviewed the EIR addendum and posted a copy for public comment on July 26, 2021.

During public review, the City received comments from the following:

- Federal and State Agencies: Caltrans and University of California, Lick Observatory
- Regional and Local Agencies: Airport Commissioners Connolly, Hendrix, and Pile and the Santa Clara Valley Water District
- Organizations, Businesses, and Individuals: 193 organizations, businesses, or individuals including the No Digital Billboards in San Jose group.

Comments received during public review of the addendum comprised a variety of subjects. These subjects included the location of display faces relative to Caltrans rights of way, light impacts to night skies and to drivers on U.S. 101, the removal of trees from the project site, and concerns over potential impacts to wildlife along the Guadalupe River. The comments did not raise any specific environmental issues or concerns with the adequacy of the analyses in the Addendum. Therefore, recirculation of the addendum was not required.

All questions were responded to in the final addendum document which was posted for public review on November 1, 2021. The addendum and responses in the final addendum are available online at:

<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/us-101-airport-electronic-signs>

## **Concerns Raised by the Community**

During the EIR public commentary period, the City received comments unrelated to the EIR from the public. Some of the concerns and responses are listed as follows, and a detailed list of questions and the responses can be found at the link above:

***Comment 1.*** *The Municipal Code defines freeway facing signs and makes clear that no freeway sign shall have a total sign area in excess of five hundred square feet and no programmable electronic sign shall exceed three hundred seventy-five square feet in area. There are no exceptions to these requirements. Therefore, the proposed 1000 sq. ft. digital billboards are ineligible to be constructed and would not be in compliance with the sign ordinance.*

San José Municipal Code 23.02.1310-B states that “signs erected on City-owned land pursuant to Council Policy 6-4, shall comply with Council Policy 6-4, in lieu of the requirements of this Title.” The proposed billboards for SJC/City property are designed to comply with Council Policy 6-4.

***Comment 2.*** *The proposed Airport billboards are adjacent to a CalTrans designated freeway segment of HWY 101. Being so, State Code prohibits their construction in the locations proposed.<sup>1</sup>*

The use of the billboards will be consistent with what is allowed under state law, including state law requirements about on-site and off-site advertising. Clear Channel had two landscape permits issued by Caltrans that could be used on landscape freeway within California and these permits were transferred to other locations in the State of California in August 2021 to avoid the permits from expiring on August 2. These permits were not able to be used prior to the expiration date at the Airport, due to delays to allow for public commentary on the EIR addendum. Had the permits been able to be used prior to the expiration date, Caltrans would have issued the permits for the two locations at the Airport upon receipt of local entitlements. Following the issuance of local entitlements, Clear Channel will apply for new permits with Caltrans.

***Comment 3.*** *Based on Policy 6-4, we should have seen an agreement with (16) existing billboards in the City of San Jose designated for take down before this project should have even been considered. Yet the Airport has only stated that they will remove two billboards.*

Rules regarding removal of signs can be found in Paragraph 6 of the Sign Approval Process in Council Policy 6-4, which stipulates, “If the City solicits proposals for reduction or elimination of existing Billboards...” The project would not fall under

this mandate. The two billboards for takedown on California landscaped freeways are an arrangement between Clear Channel and Caltrans. The City is not part of that arrangement.

**Comment 4.** *The Municipal code carves out exceptions to the general prohibition of programmable electronic signs including allowing these signs in the Airport Sign Zone. However, 23.02.905 limits programmable signs to display on-site or non-commercial messages. It appears that installation of two electronic billboards with commercial advertising (off premise messages) would violate the existing municipal code*

San José Municipal Code 23.02.1310-B states “that signs erected on City owned land pursuant to Council Policy 6-4, shall comply with Council Policy 6-4, in lieu of the requirements of this Title.” The proposed billboards for SJC/City property are designed to comply with Council Policy 6-4.

**Comment 5.** *What is SJC’s net revenue for existing indoor advertising? Does net revenue figure include associated overhead costs? The 2019 gross revenue is \$5.13M or \$5.02M and increased to \$6.96M out of \$229.9M total revenue. This means current advertising provides approximately 3 cents for every dollar of total Airport revenue.<sup>1</sup> Neither of these reports provide associated expenses, so it is impossible to understand the net revenue and associated gross margin on these products. Similarly, what is the projected gross and net revenue (after associated overhead expenses) for outdoor billboard advertising? According to SJC’s September 2020 ACDBE submission, gross revenue for outdoor advertising is projected at \$13,045,946 for 2021 to 2023.<sup>2</sup> Is there a minimum guarantee for SJC? Will the city receive 55% of gross revenues as per their current deal?<sup>3</sup>*

The City does not get paid on the net revenue. The City receives the greater of a minimum annual guarantee of \$2,101,250 or 55% of Gross Revenue from Clear Channel for the digital program within the terminal. The Project Plan for the outdoor electronic signs includes the greater of 55% of Gross Revenue or a MAG of \$300,000 on the Northern location and \$190,000 for the Southern location on Airport Boulevard for additional guaranteed annual revenue of \$490,000 for both signs.

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<sup>1</sup> SJC’s ACDBE submission to the FAA, suggests \$5.13M, while page 88 of SJC’s 2020 Comprehensive Annual Financial Report suggests \$5.02M revenue for 2019 and \$6.96M for 2020.

<sup>2</sup> See page 5, table 2 <https://www.flysanjose.com/sites/default/files/strategy-and-policy/SJC%20ACDBE%20Goal%20Methodology%20FFY%202021-2023.pdf>

<sup>3</sup> As reported by the Mercury News on October 3rd, 2019 <https://www.mercurynews.com/2019/10/03/high-tech-ads-dazzle-travelers-san-jose-airport-travel-tech-goo-gle/>



**Comment 6.** *To what extent is San Jose and SJC indemnified by potential negative outcomes, such as inappropriate advertising, crashes caused by distracted drivers, or the need to remove the billboards prior to the end of the agreement?*

Clear Channel indemnifies the City as outlined in Section 9 of the Concession Agreement. Document available at:

<http://www3.sanjoseca.gov/clerk/Agenda/060507/060507aa.pdf>

**Comment 7.** *Economic Development and Quality of Life: With greater than 90% strongly or somewhat opposed to digital billboards, according to the City of San Jose's own March 2021 survey, why is the city continuing to pursue a change in billboard policy?<sup>4</sup>*

This project aligns with City Council Policy 6-4, Signs on City-Owned Land, “to generate revenue for the City, including revenue to support City-owned facilities, programs, or services...”. The two signs are located on a portion of Airport land with limited uses while generating large sums of guaranteed revenue to the City in the amount of \$490,000 per year while providing new advertising opportunities to promote new destinations, services, and other initiatives at no cost to the Airport. These advertising opportunities are needed to drive awareness and remain competitive against two neighboring airports that are less than a one-hour drive away from San José.

**Comment 8.** *How much will this cost the city in terms of dealing with permits, enforcement, etc.? Where will those costs show up in terms of budgets (e.g., SJC, City of San Jose, etc.)?*

Clear Channel is responsible for all permits, and all fees associated with the project including costs associated with the day to day management of the program.

**Comment 9.** *How much is being invested by the city, and SJC to launch this project?*

The City has made no capital investment towards this project.

**Comment 10.** *It appears that the city is preventing political or religious advertising on the billboards. Can it Constitutionally do so?<sup>5</sup> Political or religious restrictions are not included in Policy 6-4, effective November 9th, 2018.<sup>6</sup>*

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<sup>4</sup> See page 8 <https://www.sanjoseca.gov/home/showpublisheddocument/70836/637527140641700000>

<sup>5</sup> See page 4 under the “Commercial advertising policy”

<https://drive.google.com/file/d/1oMGfPGcZhGnPnpHj4iLKDDg6zgVDUIFQ/view>

<sup>6</sup> See page 7, Item 1 under Message Limitations

<https://www.sanjoseca.gov/home/showpublisheddocument/50829/637153744794670000>

The restrictions that are currently in the concession agreement regarding the types of advertising the concessionaire will display in the concession areas are consistent with the Constitution.

**Comment 11.** *The aforementioned November 9th, 2018 policy suggested that the “FAA requires City receive fair market value for use of the property.” How has this been assured?*

The Airport issued an RFP for advertising under its concession program, and the contract was awarded by City Council to Clear Channel. This process is what determines fair market value. The structure of the contract incentivizes Clear Channel to maximize revenue, thus maximizing revenue for the City.

**Comment 12.** *Attachment A, List 1 has a footnote referring to 2500 Seaboard Avenue and 2341 Airport Boulevard that states, “State law restricts to on-site commercial speech and large arena sponsorship signage.” Does this mean that off-site commercial speech is not allowed at those sites? Does this mean the sites currently under consideration also can’t have site commercial speech (advertising)?*

Section 4.7 of the Concession Agreements outlines excluded advertising. Document available at:

<http://www3.sanjoseca.gov/clerk/Agenda/060507/060507aa.pdf>

**Comment 13.** *To what extent does implementation of phase 1 (billboards on city/public properties) put the City of San José in legal jeopardy if it decides not to move forward with phase 2? That is, can the city legally allow digital billboards on public properties, while not allowing billboards on private properties?*

Council Policy 6-4 and Title 23 of the San José Municipal Code allow digital billboards on public property.

**Comment 14.** *Does the current proposal adhere to item 6 of the Sign Approval Process outline in policy document 6-4, that requires the removal of 4 existing billboards for each new sign? If not, why not?*

Rules regarding removal of signs, it can be found in Paragraph 6 of the Sign Approval Process in Council Policy 6-4, which stipulates, “If the City solicits proposals for reduction or elimination of existing Billboards...” The project would not fall under this mandate as no solicitation for billboard reduction or elimination is proposed.

**Comment 15.** *If the advertising was 100% SJC-related (i.e., on-premises), would the approval process be the same? That is, would it be considered a billboard, or would it be signage like any other business has? If it is signage, then what would be the limitations (e.g., size, frequency of ads, etc.)?*

The San José Municipal Code and Council Policy 6-4 provide the guidelines that City staff is required to follow.

***Comment 16. How do these billboards improve urban vibrancy?***

“Urban Vibrancy” has different meanings but, in general, it is commonly associated with activity intensity, the diversity of land-use configurations, and the accessibility of a place. As an example, the mission of the non-profit Urban Vibrancy Institute of San Jose is stated as follows: “We are looking to revitalize and support Downtown San Jose through intentional community activity and development. We will use our resources to drive the booming local arts, food, and nightlife sectors that show tremendous opportunity for even more growth.” (Source: [www.urbanvibrancy.institute](http://www.urbanvibrancy.institute)). In addition, “commercial vibrancy” is one of the goals of Council Policy 6-4, which states “to explore opportunities to enhance the commercial vibrancy of the City in selected locations, including the Downtown Sign Zone, while maintaining an aesthetically pleasing environment...”

**CONCLUSION**

Council Policy 6-4 states that a Site Development Permit is not required, and paragraph 2 of the same policy requires that the City follow the noticing requirements that would apply for a Site Development Permit. Consequently, PBCE cannot issue a Site Development Permit for signs in the Airport Influence Area. Therefore, a public hearing of the Project Plan at Council is the only available discretionary action for the required environmental clearance required under CEQA. Adoption of a resolution approving the Addendum to the Amendment to the Norman Y. Mineta San Jose International Airport Master Plan Environmental Impact Report (EIR) (SCH# 2018102020), will allow this project to be constructed.

The two signs are located on a portion of Airport land with limited uses while generating large sums of guaranteed revenue to the City in the amount of \$490,000 per year, while providing new advertising opportunities to promote new destinations, services and other initiatives at no cost to the Airport. These advertising opportunities are needed to drive awareness and remain competitive against two neighboring airports that are less than an hour’s drive away from San Jose.

**EVALUATION AND FOLLOW-UP**

The Director of Aviation shall be responsible for the coordination of the Agreement and shall render overall supervision of its progress and performance.

HONORABLE MAYOR AND CITY COUNCIL

November 15, 2021

**Subject: Addendum to the Amendment to the Norman Y. Mineta San Jose International Airport Master Plan for the EIR Digital Billboards**

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## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **POLICY ALTERNATIVES**

*Alternative #1: Council may choose not to approve the EIR Addendum.*

**Pros: None**

**Cons:** This would suspend the project, and the Airport would lose a potential additional revenue source of a minimum of \$2,450,000 over the next five (5) years and lose the opportunity to promote and market the Airport during a time when flight activity is low and competition with neighboring airports is high.

**Reason for not recommending:** This Project aligns with Council Priority #4 for Electronic Billboards and meets the City's desire to generate revenue and support City services through electronic signs; and aligns with the City's 2021 Enterprise Priorities #6 to invest in the Airport and #7 to expand revenue opportunities to minimize the impact of fee-payers. The loss of potentially \$2.4 million during a time when the Airport has lost significant revenue as a result of the decline in passengers due to the COVID-19 pandemic would require the Airport to seek alternative revenue sources. The additional revenue to the City will help provide a much-needed revenue source while providing the City with additional opportunities to advertise Airport initiatives at no cost to the City.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the November 30, 2021, Council Meeting.

The amendment to the Envision San Jose 2040 General Plan, Revise City Council Policy 6-4, and Update Sections 23.02.870 and 23.02.1310 of Title 23 (The Sign Code) of the Municipal Code to allow signs on city-owned property, including billboards, programmable electronic signs, was coordinated with the Airport Land Use Commission (ALUC). On June 27, 2018, the ALUC conducted a hearing and determined the project to be consistent with the Comprehensive Land Use Plan for San Jose International Airport (CLUP). On September 25, 2018 a public hearing was held to discuss the subject.

The September 25, 2018 and August 6, 2019, Council Meetings regarding Council Policy 6-4 included details to the public on electronic billboards at the Airport.

A copy of the EIR addendum was posted for public comment on July 26, 2021 and ended August 25, 2021. All questions, including those not related to the EIR addendum were responded to and released on November 1, 2021.

Staff went to the Airport Commission on August 9, 2021 to provide an informational update on the project and to solicit public comments for the EIR addendum, which was open to public comments. Staff returned to the Airport Commission on November 8, 2021 to report back to them on the outcome of the EIR responses to public comment and to answer any additional questions they had.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, PBCE, and the City Manager's Budget Office.

## **COMMISSION RECOMMENDATION/INPUT**

This item was presented to the Airport Commission on August 9, 2021 to inform them about the project and the EIR addendum that was currently taking public comments. As staff was soliciting input and comments from the public on this item, no action by the Airport Commission occurred at this meeting. Airport Commission requested an update on the project following the conclusion of the EIR Addendum process and the release of the responses to public comments.

On November 8, 2021, City staff returned to the Airport Commission to provide an update on the project and recommended that the Commission accept the staff report on the EIR Addendum; staff also shared the intent for the City Council to hold a public hearing. The EIR Addendum was distributed to the Airport Commission in advance of the meeting (on November 2, 2021, the same day that it was released to the public).

Staff presented to the Airport Commission that:

- The project followed the scope and process outlined by City Policy 6-4;
- The EIR Addendum found mitigation measures to be sufficient;
- The process was open and transparent, exceeding the legal requirements for posting and inclusion of public comments and input, and that staff addressed public comments that were submitted, even those that were outside the scope of the environmental review;
- The potential for billboards at the Airport had been publicly disclosed at multiple public meetings going back to 2018; and

- The project also follows the City's enterprise priority to expand revenue opportunities and to minimize the financial impact on residents.

Airport Commissioners expressed several concerns about billboards in general, including questioning the current City policy and procedures which allowed these billboards to be advanced. Some Commissioners expressed concern about the process, including that the Airport Commission did not have an opportunity to review City Council Policy 6-4 in 2018 before the City Council adopted it. Another Commissioner had concerns about the business case for the billboards and suggested to explore using the land for solar panels instead. Several Commissioners were concerned that despite the requirements that Clear Channel has comprehensive insurance and would fully indemnify the City, that the City would still be at risk for lawsuits. Another general concern from Commissioners was with the general aesthetics of electronic billboards in San José overall and that if these two electronic billboards were allowed, other electronic billboards would follow. As such, certain Commissioners disagreed with City Council Policy 6-4 that allows for electronic billboards in San José.

On the other side, two Commissioners voiced support for moving forward with the billboards. These Commissioners found that staff followed the directions of the City Council in both City Council Policy 6-4 and in the priorities set forth by the City Council to staff. They stated that the project not only provides economic support to the Airport but more importantly it provides branding opportunities to distinguish San José from the other regional airports. These Commissioners felt that the EIR and indemnity questions had been sufficiently addressed. One Commissioner noted that there already exist nearly identical signs along Highway 101 only a few miles north of the proposed site. It was also noted that the design of the project will meet all the requirements and has the ability to adjust the lighting and brightness should issues arise. These Commissioners stated that all the documents show that this project is consistent with city, state, and federal policies and found no technical issues to prevent the project from moving forward.

The Airport Commission voted (7-2) to reject the staff report and was against moving forward.

### **CEQA**

US 101 Electronic Signs Addendum, File No. ER21-015

/s/  
JOHN AITKEN, A.A.E.  
Director of Aviation

For questions, please contact John Aitken, A.A.E., Director of Aviation at (408) 392-3610.