



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Aitken

SUBJECT: SEE BELOW

DATE: April 8, 2020

Approved

Date

4/10/2020

SUBJECT: TEMPORARY FINANCIAL RELIEF TO NON-AERONAUTICAL CONCESSIONAIRES AND AMENDMENTS TO NON-AERONAUTICAL AGREEMENTS AT THE NORMAN Y. MINETA AIRPORT

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute amendments to concession agreements to provide temporary financial relief to non-aeronautical concessionaires operating on Airport premises effective retroactive to March 1, 2020 through July 31, 2021 to support Airport concession operations that have been directly impacted by Airport passenger declines as a result of the COVID-19 pandemic. Financial relief for Airport concessionaires could include: (a) suspension of concessionaire contributions to the Airport Marketing Fund; (b) suspension or modification of the effective date, timeframe and terms of increases or modifications to the Minimum Annual Guaranteed (MAG) Rent or otherwise applicable increases to concession fees; (c) deferral of MAG Rent or other applicable minimum rent payments, with repayment terms subject to negotiations (d) waive any otherwise applicable late fees or interest related to the deferment of the MAG or other rent payment; (e) suspension of MAG Rent and charge only a negotiated percentage rent or negotiate a modified MAG payment; (f) suspend, defer or modify the Annual Concession Fee Reconciliation (True Up) as a result of any negotiated adjustments to the MAG; and (g) adjust tenant improvement construction schedules.

OUTCOME

Approval by City Council and delegation to negotiate and execute amendments to the City Manager, will alleviate some financial pressure on non-aeronautical concessionaires as we collectively face an uncertain period in fighting the COVID-19 virus outbreak over the coming weeks and months. Current projections of the course of the COVID-19 outbreak and the measures taken to protect public health indicate the impacts will extend beyond the period covered by the "Shelter in Place" directive.

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This is a temporary bridge to a more comprehensive and targeted financial relief policy once City staff has an opportunity to study the impacts of this situation, coordinate policies with federal, state and City governments (as applicable) and identify and apply potential financial aid from the 2020 CARES Act. City staff will monitor Emergency Official Orders and County Health Department Orders and other developments and may supplement this request as needed, and in consultation with City Council.

BACKGROUND

The actions described below are prompted by the remarkably rapid developments in the recognition of and reaction to the COVID-19 pandemic. Some major milestones over the past month include:

- On March 4, 2020, Governor Newsom issued the Proclamation of a State of Emergency (“Governor’s Proclamation”) under Section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to COVID-19.
- On March 9, 2020, County Health Officer Dr. Sara Cody officially announced the issuance of a legal Order requiring cancellation of mass gatherings (public or private) consisting of more than 1,000 persons and published new recommendations to help protect residents from COVID-19.
- On March 11, 2020, President Donald Trump announces the U.S. will suspend travel to European countries effective March 13, 2020.
- On March 13, 2020, County of Santa Clara Public Health Officer Dr. Sara Cody officially announced a new legal order imposing a mandatory countywide moratorium on gatherings of more than 100 persons, and a conditional countywide moratorium on gatherings of between 35-100 persons, to mitigate the spread of COVID-19; and statement on school closure.
- On March 15, 2020, Governor Gavin Newsom recommended home isolation for all seniors 65+ years in age and those with chronic health conditions. He also directed all bars, nightclubs, wineries, and breweries to temporarily close.
- On March 16, 2020, the Health Officer of the County of Santa Clara issued a further Order directing all residents to remain at their place of residence through April 7, except to conduct Essential Activities, Essential Businesses, and to operate Essential Infrastructure (as defined in the Order). The Airport is Essential Infrastructure and an Essential Business, including those businesses operating within the terminal and the rental car companies.

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- On March 25, 2020, Congress approves the CARES Act, providing emergency relief to businesses and government infrastructure impacted by COVID-19.
- On March 29, 2020, the FAA provided guidance to various Airports concerning economic impacts and actions that Airports can take to maintain financial stability.
- On April 4, 2020, the Health Officer of the County of Santa Clara issued further orders which included an extension of the “Shelter in Place” directive to May 3, 2020.

These orders mandating that residents shelter in place and observe social distancing precautions have required many businesses to temporarily close or severely curtail their operations with the effect of greatly reducing economic activity at the Airport. Due to the significant decline in passenger activity, concessionaires at the Airport have had to reduce operating hours, close concessions, layoff staff, and as a result, they have informed Airport staff that they are in a precarious position in maintaining their operations and avoiding defaulting on their various legal agreements and/or insolvency. Airport staff have been contacted by numerous tenants describing the negative impacts and seeking rent relief from the City in its capacity as a landlord. The ability to grant rent relief must be balanced with the Airport’s own financial health and obligations to comply with Federal Aviation Administration (“FAA”) grant assurances that the Airport operate as a self-sustaining enterprise. The Airport’s goal is to create a plan and provide stability to our tenants that are in danger of default during this unprecedented economic slowdown. Any potential financial relief to the airlines is being evaluated as a separate action.

ANALYSIS

Airport staff must weigh the foregone revenues against the potential costs, lost revenues and disruption resulting from a concessionaire’s default and/or bankruptcy. Providing a work plan during a concessionaire’s cash crunch should result in better long term and more stable revenues to the City than strict adherence to the lease terms that would dictate an eviction action and the need to re-lease the concession.

Airport staff is exploring various financial models; therefore, Staff has not made a final determination about the extent of the financial relief that the City should provide to the concessionaires at the Airport. In order to expedite the relief efforts, City is requesting City Council to delegate authority to the City Manager to negotiate and execute amendments to non-aeronautical concession agreements, including but not limited to On-Airport Rental Car Agreements, to provide temporary financial relief from March 1, 2020 through July 31, 2021 using a combination of the options outlined below. Airport staff will coordinate and receive final approval from the City Manager and provide an update to City Council on any such negotiated and executed amendments in an informational memorandum.

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1. Suspend all contributions to the Concession Marketing Fund. Concessionaires currently pay up to .50% of gross revenues earned at the Airport into a Concession Marketing Fund that is used by the Airport to market and promote the concessionaire's operations at the Airport.
2. Suspend or modify the timeframe and terms for any 2020 calendar year Annual Adjustments to the Minimum Annual Guarantee (MAG) or scheduled rent or concession fee increases based upon the consumer price index (CPI) that would otherwise result in an increase in the MAG or any other concession fees. Commencing in calendar year 2021, MAG and CPI adjustments would once again be calculated in accordance with the concession agreements.
3. Defer MAG or other minimum rent payments and waive any otherwise applicable late fees and interest related to the deferment of the MAG or other rent payment. Any such deferred MAG or minimum rent payments would be subject to repayment on terms to be negotiated.
4. Suspend MAG payments and charge only negotiated percentage rent or negotiate a modified MAG payment.
5. Suspend, defer or modify the terms of the Annual Concession Fee Reconciliation (True Up) as a result of any negotiated adjustments to the MAG amount.
6. Modify tenant improvement construction schedules.

CONCLUSION

The City is in a position to assist Airport concessionaires with immediate temporary relief to allow them to keep their businesses operational and their workforce in place for when these extraordinary orders are lifted. The Airport desires to minimize impacts to tenants during these tumultuous times, and provide immediate financial relief. Staff will re-evaluate its actions when the impacts of COVID-19 are better understood.

EVALUATION AND FOLLOW-UP

The Director of Aviation shall be responsible for coordination of any amendments to the Airport Concession Agreements and shall render overall supervision of progress and performance.

CLIMATE SMART SAN JOSE

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

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POLICY ALTERNATIVES

Alternative #1: Council can elect to not provide financial relief and uphold the terms of the agreements.

Pros: The concessionaires would continue to be required to pay in accordance with the terms of their agreement.

Cons: Without the revenue to offset the MAG, many concessionaires are unable to pay their bills, and would therefore be at risk of default.

Reason for not recommending: Providing a work plan during a concessionaire's cash crunch results in better long term and more stable revenues to the City than strict adherence to the concession agreement terms that could result in an eviction action and the need to re-lease the concession.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the April 14, 2020 Council Meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts resulting in no physical changes to the environment.

/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.