



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Aitken

SUBJECT: SEE BELOW

DATE: May 5, 2020

Approved

Date

5/8/20

SUBJECT: APPROVAL TO PROVIDE TEMPORARY FINANCIAL RELIEF TO NON-AERONAUTICAL CONCESSIONAIRES AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT AND DELEGATE AUTHORITY TO THE CITY MANAGER TO NEGOTIATE AND EXECUTE AMENDMENTS FOR ALL NON-AERONAUTICAL AGREEMENTS AT THE 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 June 1, 2020 through June 30, 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 and Customer Service Fund through June 30, 2021;
- (b) Suspension of MAG Rent and charge only percentage rent for June 2020;
- (c) Suspend, defer or modify the Annual Concession Fee Reconciliation (True Up) as a result of any negotiated adjustments to the MAG; and
- (d) Adjust tenant improvement construction schedules.

OUTCOME

Approval by City Council and delegation of authority 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 and begin to prepare for the restoration of both domestic and international air travel. Current travel industry recovery projections indicate that the recovery will extend beyond the period covered by the "Shelter in Place" directive. The Delegation of Authority will allow City Staff to provide immediate relief to concessionaires through the end of the Fiscal Year. Once City staff has had an opportunity to study the impacts of COVID-19 on the travel industry and the Airport, the

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delegated authority will allow City Staff to negotiate and execute amendments to adjust construction schedules that have been impacted by COVID-19.

BACKGROUND

On April 14, 2020, Council delegated authority to the City Manager to provide temporary financial relief to non-aeronautical concessionaires for April and May 2020. Staff had requested the ability to negotiate and execute amendments to the concession agreements retroactive to March 1, 2020 through July 31, 2021 but Council approved limited relief to April and May with direction to Staff to continue engaging conversations between concessionaires and employee representatives with a goal of reaching an agreement on:

- A. Commitments from concessionaires to preserve the health care benefits of their furloughed employees and exploring the idea of additional health care contributions.
- B. Restoration of health coverage immediately upon return to work.
- C. Exploring the possibility of concessionaires contributing to a fund that provides food relief for furloughed airport workers.
- D. Agreements that ensure a safe workplace for concessions workers that include rigorous safety protocols in place at all points of sale for those who are still working and others when they return to work.

Following the Council Meeting, Airport Staff proceeded to offer immediate financial relief to the Airport non-aeronautical concessionaires for the months of April and May 2020 and address Council's direction to facilitate conversations between the concessionaires and employee representatives.

Staff has had discussions with the parties to encourage communication between concessionaires and employee representatives. As of May 1, concessionaires continue to have open dialog with employee representatives, but Airport Staff is not aware of a resolution to extend benefits past the initial 60-day period that was paid in advance by concessionaires as part of their union agreement with Unite Here. This issue requires significant negotiations locally and nationally between the concessionaires and the employee representatives.

Staff has worked with the concessions to coordinate additional safety protocols for all employees at the Airport. Some actions taken by the concessionaires include providing employees with mandatory face masks, sneeze guards at all food and beverage and retail concession locations, and social distancing markers throughout the terminal and the Rental Car Facility. City staff will continue to modify safety protocols based on applicable guidelines from the County of Santa Clara and the City.

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ANALYSIS

The Airport concessionaires continue to see significant losses due to the rapid decline in enplanements and deplanements and to date have not received financial relief from the Federal Government. With sales plummeting, the concessionaires, which includes the rental car companies, have had to decide how to make payroll, pay vendors, and meet their financial obligations to the Airport. As part of their cost saving efforts, concessionaires have turned off utilities, negotiated with distributors about payment terms, furloughed or laid off staff, suspended construction projects, limited menus and product offerings, reduced operating hours and closed concepts. Airport Lounge Development, PRI-San Jose (100% ACDBE operator), and LSG SkyChefs have temporarily ceased operations at the Airport. The Rental Car companies are operating on a reduced schedule, and HMS Host (food and beverage operator) and Hudson (retail operator) operate within the terminal with minimal concession locations and reduced hours of operations. HMS Host and Hudson's agreements include ACDBE partners and local businesses that make up an average of 26% of all food and beverage gross revenue sales and 7% of retail gross revenue sales at the Airport. ACDBE operators of Tres Gringos, Sushi Boat, San Jose Joe's, Einstein, Sip Savvy and Menchies have been financially impacted and left with no viable option but to cease operations at the Airport until passenger levels increase. All current and future construction projects have been put on a hold due the desire from concessionaires to conserve capital until passenger levels are restored.

City Staff continues to monitor enplanements and is closely working with all concessionaires and Airport tenants on a recovery plan. As we continue to prepare and coordinate recovery efforts, Staff is requesting the flexibility to adjust the agreements to modify construction schedules and financial terms, which will help the Airport meet its goal to provide stability to our tenants that are in danger of default during this unprecedented economic slowdown.

City Staff will coordinate and receive final approval from the City Manager for potential changes that could include:

1. Suspend contributions to the Concession Marketing and Customer Service Fund through June 30, 2021. Concessionaires currently pay 0.5% of gross revenues earned at the Airport into a Concession Marketing and Customer Service Fund that is used by the Airport to market and promote the concessionaire's operations at the Airport.
2. Suspend MAG payments and charge only percentage rent for June 2020.
3. 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.
4. Modify tenant improvement construction schedules.

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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.

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 May 12, 2020 Council Meeting.

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office 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.