



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken

**SUBJECT:** SEE BELOW

**DATE:** July 20, 2020

Approved

Date

7/23/20

**SUBJECT: APPROVAL TO PROVIDE CONTINUED 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 TO NON-AERONAUTICAL CONCESSION AGREEMENTS AT THE AIRPORT**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager to negotiate and execute amendments to concession agreements to provide continued financial relief to non-aeronautical concessionaires operating on Airport premises retroactive from July 1, 2020 through December 31, 2020, to support Airport concession operations that have been impacted by Airport passenger declines as a result of the COVID-19 pandemic. Financial relief for Airport concessionaires could include: (a) continued suspension of Minimum Annual Guarantee (MAG) Rent, and charge only percentage rent retroactive from July 1, 2020 through December 31, 2020; and (b) allow Airport concessionaires to charge higher prices by allowing a higher percentage markup over street prices, retroactive from July 1, 2020 through December 31, 2020.

## **OUTCOME**

Approval by City Council and delegation of authority to negotiate and execute amendments to the City Manager, will alleviate some prolonged financial pressure on non-aeronautical concessionaires as the industry faces an uncertain period resulting from the impacts of the COVID-19 pandemic and the beginning of restoration of both domestic and international air travel. Current passenger projections indicate that the recovery will extend beyond calendar year 2021. The Amendments allow sustained relief to concessionaires through the end of the calendar year 2020.

## **BACKGROUND**

On April 14, 2020, Council approved the delegation of authority to the City Manager to negotiate and execute concession agreement amendments to provide temporary financial relief to non-aeronautical Airport concessionaires for April and May 2020 and asked Staff to return to Council after engaging in further discussions between concessionaires and employee representatives.

On May 12, 2020, Council extended the financial relief through June 2020. Following Council approval, Airport Staff proceeded to offer immediate financial relief to the non-aeronautical concessionaires that included the suspension of the MAG and provided for the payment of percentage rent only for the period of April 2020-June 2020, and the suspension of concessionaire contributions to the Concession Marketing Fund through June 2021.

The Airport concessionaires continue to see significant financial losses due to the continued decline in enplanements and to date, have not received financial assistance from the Federal Government. Passenger traffic and associated gross revenues continue to be severely impacted, and the concessionaires, which include lounge operators, food and beverage concessions, retail concessions, and their ACDBE partners, continue to incur operational costs and must continue to meet their financial obligations to the City. As part of their cost saving efforts, concessionaires have turned off utilities, negotiated payment terms with distributors, furloughed or laid off staff, suspended construction projects, limited menus and product offerings, reduced operating hours and closed locations. Furthermore, some operators have temporarily ceased all operations at the Airport.

## **ANALYSIS**

City Staff continues to monitor Airport traffic and is closely working with concessionaires and Airport tenants on a recovery plan. The FAA recently issued a memo to encourage airport sponsors to use available tools, including temporary rent abatement and minimum annual guarantee waivers, to mitigate adverse impacts on large and small businesses to ensure the airport community emerges from these trying times stronger than ever. As we continue to prepare and coordinate recovery efforts, Staff is requesting the flexibility to adjust concession agreement financial terms, that will help the City meet its goal to provide stability to our tenants that are in danger of default during this unprecedented economic slowdown, share more risk between the City and the Concessionaire and provide support so that the concessionaires are better able to endure the impacts and continue to provide vital services to the traveling public. Current projections indicate that the concessionaires will continue to be financially impacted at least through the end of the calendar year with reduced gross revenues and higher costs to operate locations to comply with health and safety requirements. This includes additional costs to clean locations, reduced capacity within locations to maintain social distancing and increased training for employees.

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

1. Suspend MAG payments and charge only percentage rent from July 1, 2020-December 31, 2020
2. 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.
3. Increase the percentage rent as consideration for any further MAG suspension
4. Provide Airport concessionaires the ability to charge higher prices by allowing a higher percentage markup over street prices to allow for an increased pass through of costs

As consideration for any further MAG suspension and the authorization for the concessionaires to charge higher prices, Airport staff recommends that the City Manager have the authority to negotiate an increase to the percentage rent paid to the City. This increase will provide a higher percentage of revenue to the City in lieu of the guaranteed MAG.

Prior to COVID-19, many of the Concessionaires were in some phase of construction to refresh and/or re-concept existing concessions and to preserve capital, these projects were suspended by the Concessionaires. City Staff desires to complete these projects and is in the process of evaluating concession construction schedules along with passenger demand. As further consideration for any further financial assistance as recommended in this memorandum, the proposed amendments may include liquidated damages for any delays on the part of the Concessionaire to complete construction projects within the City's approved timeframe, to better ensure that the projects are completed when needed to meet passenger needs.

## **CONCLUSION**

In the FY21 budget, use of CARES Act Funding to provide financial relief for some of the concessionaires was contemplated and built into the budget that was approved by the City Council. The City is able to assist Airport concessionaires with ongoing relief to allow them to keep their businesses operational and their workforce in place for when airline travel conditions have improved. Staff desires to minimize impacts to the concessionaires during these tumultuous times and to provide immediate financial relief, which will allow these companies to continue operating at the Airport and to provide essential services to the traveling public.

## **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 including evaluation of the travel industry and the outlook for calendar year 2021.

## **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 August 4, 2020 Council Meeting.

## **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.

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**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.