

AGENDA REPORT

Ordinance: Adoption of an Ordinance Approving *Amendment No. 2 To Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports To Correct and Resolve Rental Calculation Issues Identified by the Office of Audit Services; There Will Be No Change in Compensation for Advertising Located Throughout the Terminal Complex. **(Aviation)**

MEETING DATE: 10/12/2017

AMOUNT: No Monetary Consideration

PARTIES INVOLVED: Clear Channel Outdoor dba Clear Channel Airports
Gene Leehan, EVP Senior Regional President

SUBMITTED BY: Bryant L. Francis, CM, Director of Aviation

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This action recommends approval of *Amendment No. 2 to Space/Use Permit For Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor d/b/a Clear Channel Airports ("*Amendment No. 2*") to correct and resolve rental calculation issues identified by an internal audit.

Amendment No. 2 provides clarification to the definition of gross receipts to permit an exclusion for "overriding" (that is, for allowing advertisements to continue to be displayed at no charge after the expiration of a particular advertising agreement) if certain conditions are met.

BACKGROUND

At its meeting of June 3, 2008, the Board adopted Port Ordinance No. 4060 approving a *Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* (the "*SUP*") privilege with Clear Channel Outdoor dba Clear Channel Airports ("Clear Channel"). The *SUP* has a term of 10 years (commencing July 1, 2008), at an initial rental of the higher of a minimum annual guarantee of \$850,000 vs. 50% of Gross Receipts. The *SUP* was amended in October 2009 to modify certain terms regarding the rent structure.

In 2016, the Port's Office of Audit Services commenced an audit of the gross receipts reported by Clear Channel for the period from January 1, 2012 through December 31, 2014. The audit found that Clear Channel under reported its gross receipts and therefore did not pay the full percentage rent due for CY2013. This under reporting in part was the result of certain

advertisements remaining on display after the expiration of the advertising agreement; i.e., “overriding”*. The *SUP* provides that such advertisements must be removed within 30 days after the expiration of the advertising contract, unless directed otherwise by the Director of Aviation.

ANALYSIS

Clear Channel has approximately 75 advertising locations in the Terminal Complex. Some of these are digital displays with multiple advertisers. Individual advertising contracts run for varying amounts of time, from as little as 30 days to several years. The amount of administrative time required to respond to Clear Channel every time a contract expires without a replacement contract in effect is onerous and unreasonable. The *SUP* language was intended to give the Port a remedy in the event of circumstances that went beyond an acceptable standard, not to create a continual reporting/approval process. It is in the best interest of the Port to better utilize staff time and remove the burden of constant acknowledgment and approval of allowing an advertisement to remain in place beyond the expiration of the contract.

Further, when an advertisement is removed, “something” must be placed in the location on an interim basis until the location is sold again by Clear Channel. The *SUP* requires Clear Channel to utilize any unsold locations for Airport-related advertising; there is sometimes a lag due to ad copy production issues. The result is not satisfactory, as illustrated in the photo showing an empty advertising frame without paid or Airport-related advertising.



The audit identified a potential discrepancy in the *SUP* between what is written vs. the intent of the parties and what is practical from a business standpoint. The proposed *Amendment No. 2* provides clarification to the definition of gross receipts to permit an exclusion for overriding if certain conditions are met. More specifically, the amendment provides that overriding needs to be removed within 30 days after being directed by the Director of Aviation, instead of automatically 30 days after the end of the advertising contract.

BUDGET & STAFFING

The approval of this *Amendment No. 2* will have no impact to the adopted FY2017-18 Operating Budget. There is no staffing impact.

* “Overriding” occurs when Clear Channel decides to permit advertisements to continue to be displayed at no charge after the expiration of a particular advertising agreement.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

Construction work undertaken by Clear Channel pursuant to this *SUP* would be within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA). This *Amendment No. 2* does not include additional construction type work beyond what was authorized in June 2008 by Ordinance No. 4060. If the MAPLA is in effect for tenants when Port Permits are requested by Clear Channel for future construction type work under the *SUP*, MAPLA's provisions will apply to that work only.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan

<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>

Goal B: Maintain and Aggressively Grow Core Businesses

- Goal B: Objective 5: Enhance customer services (i.e., market intelligence, technical knowledge, strategic advice and problem solving).

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement as the tenant does not employ 21 or more employees working on Port-related work. However, the tenant will be required to certify that should living wage obligations become applicable, the tenant shall comply with the Living Wage Regulations.

ENVIRONMENTAL

CEQA Determination: *Amendment No. 2* and the *SUP* are categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. No changes to the premises or use are proposed.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

1. Adopt an ordinance to approve *Amendment No. 2 to the Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports to correct and resolve rental calculation issues identified in the audit findings as described in the Agenda Report. This is the recommended action.
2. Reject the proposed *Amendment No. 2 to Space/Use Permit* with Clear Channel Outdoor dba Clear Channel Airports and maintain the current language in the *SUP*, which will burden staff time to constantly acknowledge and approve allowing an advertisement to remain in place beyond the expiration of the contract.

RECOMMENDATION

It is recommended that the Board adopt an ordinance approving the proposed *Amendment No. 2 to Space/Use Permit* with Clear Channel Outdoor dba Clear Channel Airports to correct and resolve rental calculation issues identified in audit findings as described in the Agenda Report, subject to the Port Attorney's review and approval as to form and legality.