

## AGENDA REPORT

**Ordinance:** Authorization to (i) Approve Amendment No. 4 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession with Clear Channel Outdoor dba Clear Channel Airports with Guaranteed Monthly Revenue of \$10,000; (ii) Waive the Restriction in Resolution No. 16-144 – Resolution Approving a Restatement, Affirmation and Update to the Board’s Policy for Awarding Concession and Customer Service Privileges at the Terminal Complex at Oakland International Airport; (iii) Consent to a Corporate Restructuring of Clear Channel; and, (iv) Authorize the Executive Director to Enter into Amendment No. 4 and any Other Necessary Agreements with Clear Channel. (1 Airport Drive) **(Aviation)**

**MEETING DATE:** 4/25/2019

**AMOUNT:** \$10,000 (per month) Revenue *Choose an item.*

**PARTIES INVOLVED:** Clear Channel Outdoor d/b/a Clear Channel Airports,  
Chicago, IL  
Gene Leeham, EVP Senior Regional President

**SUBMITTED BY:** Bryant L. Francis C.M., Director of Aviation

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Ordinance

### **EXECUTIVE SUMMARY**

The existing *Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports expired on March 31, 2019 (“*SUP*”). Staff believes it would be prudent to extend the *SUP* through June 30, 2020, and during the extended term, significantly reduce the inventory of spaces available for advertising while construction is underway for the new Food & Beverage Concessions Program; the elimination of advertising locations would be accompanied by reducing the minimum monthly payment from \$35,000 to \$10,000. Such an extension will require the Board to waive the restriction in its Concessions Policy that generally does not permit concessions agreements to be extended or renewed absent a competitive process. Finally, Staff requests the Board’s consent to a change in corporate control of Clear Channel. These changes are incorporated in the proposed *Amendment No. 4*.

### **BACKGROUND**

At its meeting of June 3, 2008, the Board adopted Port Ordinance No. 4060 approving the *SUP* with Clear Channel Outdoor dba Clear Channel Airports (“Clear Channel”). The *SUP* has a term of 10 years, commencing July 1, 2008 and terminating June 30, 2018. The initial rental of

the SUP provided for the higher of a Minimum Annual Guarantee (“MAG”) of \$9.1 Million vs. 50% of Gross Receipts.

On September 28, 2009, in light of significant downturn in advertising across all markets as a result of the recession, *Amendment No. 1* to the SUP was approved allowing for: (i) a downward adjustment of the MAG from \$9.1 Million to \$8.6 Million offset by an upward adjustment of the Gross Receipts percentage from 50% to 60%; and (ii) amending and removing the restriction previously limiting members of its “sales blitz” team to direct employees of Clear Channel to include employees from Clear Channel Interspace, a subsidiary company, thus broadening its ability to reach a wider audience of potential advertisers.

On February 23, 2017, *Amendment No. 2* to the SUP was approved to correct and resolve rental calculation issues identified following the Port’s Office of Audit Services’ audit of Clear Channel for the period from January 1, 2012 through December 31, 2014. Other than the rental calculation issues found in 2013 which was resolved through a settlement agreement, the report found that Clear Channel’s annual payments to the City in 2012 and 2014 were correctly remitted based on the MAG. Further, a review by Port staff of Clear Channel’s annual payments for all other years show Clear Channel as having paid their annual rent based on the MAG.

Finally, in June 2018, the Board adopted Ordinance No. 4477 approving *Amendment No. 3* to the SUP to: (i) extend on a month-to-month basis the existing agreement to no later than March 31, 2019 at a new/reduced MAG of \$35,000/month, and (ii) require Clear Channel to remove the two antiquated and underutilized hotel/motel information boards located in baggage claim areas of Terminal 1 and Terminal 2. Justification for reducing the MAG was Clear Channel’s documented failure to meet original sales projections, and its ongoing and sustained losses of some \$2.0 million (during the initial ten-year term), attributable to the requirement to pay the Port MAG on non-existent advertising revenue.

Following award in 2008, Clear Channel substantively fulfilled the terms of the SUP which, in addition to rental payments, have included a \$1 Million capital investment towards the installation of 65 advertising locations and 6 concession directories throughout the Terminal Complex, as well as the above-mentioned – subsequently removed – hotel/motel information boards. Unfortunately, despite recovery in the economy leading to substantial increased passenger traffic at OAK and notwithstanding Clear Channel’s competitive advantage in having also been awarded the advertising agreements at San Francisco International Airport and Mineta San José International Airport, Clear Channel’s annual gross receipts have consistently underperformed resulting in percentage rents significantly lower than the MAG.

| Fiscal Year | Gross Receipts | Percentage Rents | MAG          |
|-------------|----------------|------------------|--------------|
| 2008-09     | \$378,097.67   | \$189,048.84     | \$850,000.00 |
| 2009-10     | 474,662.53     | 262,387.38       | 850,000.00   |
| 2010-11     | 573,400.26     | 344,040.16       | 850,000.00   |
| 2011-12     | 572,569.90     | 343,541.94       | 850,000.00   |
| 2012-13     | 839,248.18     | 503,548.91       | 850,000.00   |
| 2013-14     | 878,416.55     | 527,049.93       | 850,000.00   |
| 2014-15     | 683,843.42     | 410,306.05       | 850,000.00   |

| Fiscal Year           | Gross Receipts          | Percentage Rents        | MAG                     |
|-----------------------|-------------------------|-------------------------|-------------------------|
| 2015-16               | 743,616.65              | 446,169.99              | 850,000.00              |
| 2016-17               | 627,620.67              | 376,572.40              | 900,000.00              |
| 2017-18               | 758,966.00              | 455,379.60              | 900,000.00              |
| 2018-19               | 340,325.42 <sup>A</sup> | 204,195.25 <sup>A</sup> | 210,000.00 <sup>B</sup> |
| <b>10 Year Totals</b> | <b>\$6,870,767.25</b>   | <b>\$4,062,240.45</b>   | <b>\$8,810,000.00</b>   |

<sup>A</sup>Reported Receipts/Rents for July 2018 - December 2018

<sup>B</sup>*Amendment No. 3* changed the MAG from \$900,000 per year to \$35,000 per month

With the drastic reduction in MAG incorporated into *Amendment No. 3*, Clear Channel continues to lose money – almost breaking even – on its OAK operations, but it neither generates substantial revenues nor pays significant rents to the Port.

## **ANALYSIS**

With passenger traffic approaching an all-time high, the terminal concourses and gate holdrooms are over-crowded and cluttered with trash receptacles, payphone trees, Clear Channel's free-standing monument signs, individual concessions signs, etc. In addition, the redevelopment of the Food & Beverage Concession Program will require all restaurants, bars and cafés to close for several months on a rotating basis for construction. These issues negatively impact the in-terminal advertising program and contribute to Staff's recommendation to once again amend the *SUP* by significantly reducing the number of sign locations and further extending the term as described below:

**A. Combo Signs:** As part of its advertising program, and in coordination with the Port's trash segregation and recycling goals, Clear Channel developed two-sided, back-lit monument "diorama" signs that combine advertising with separate "slots" for trash, recycling and food waste. While attractive, these Combo Signs take up valuable holdroom space, the trash/recycling slots proved to be confusing to passengers, the waste bins are too small to accommodate the amount of trash/recycling deposited and they are difficult to empty by the Port's custodians. Staff is recommending that all eight Combo Signs (16 faces) be removed throughout the terminals.

**B. Removal of T2X Moving Walkway:** Commencing spring 2019, both sets of moving walkways are scheduled to be permanently taken out of service and removed. Demolition and reconstruction will require installation of a construction wall encircling the areas. For the Terminal 2 Extension (between Gates 25 and 26) moving walkway demolition, two large-format tension fabric displays must be removed permanently. After this moving walkway has



been demolished, this area will be activated to include two new restaurants (District and Subway as part of the Food & Beverage Concessions Program redevelopment). Clear Channel's two large-format tension fabric displays cannot be replaced.

**C. F&B Redevelopment:** The recently completed Food & Beverage Concessions Opportunities RFP selection and award process will impact other existing Clear Channel locations:

1. As the Food & Beverage Concessions Program redevelopment commences, some of the Food & Beverage Concession Units will close for reconstruction and open temporary units at interim locations nearby in the holdrooms; at least two signs – in the Gates 10/12 Holdroom and in the concourse between Gates 25 and 26 – will be impacted and will need to be removed temporarily.
2. Enlarged Food & Beverage concession units will require the permanent removal of at least three signs: District near Gate 26, Peet's at Gate 26, and Southie at Gate 30.

**D. Removal Requirement:** Clear Channel currently has 65 sign locations throughout the Terminal Complex; staff is recommending that 13 of these (21 faces) be permanently removed from inventory. In addition, at least two other sign locations may need to be temporarily removed. To maintain future flexibility for other issues that may arise with existing sign locations, it is requested that the Board delegate to the Director of Aviation the authority to delete up to five additional sign locations. Clear Channel will be provided with a 30-day period to remove the signs and improvements after notice is served by the Director.

**E. Exception to Board's Policy on Extension of Concession Agreements:**

On December 15, 2016 the Board adopted Resolution No. 16-144: "Resolution Approving a Restatement, Affirmation and Update to the Board's Policy for Awarding Concession and Customer Service Privileges at the Terminal Complex at Oakland International Airport", with the goal of this "Concession Policy" to assure the highest level of both public benefit and revenue generation consistent with the level of service desired and the Port's policy of encouraging the participation of local businesses.

Rather than release a Request for Proposals for In-Terminal Advertising Concession with sign location inventory in flux and with the Food & Beverage Concessions Program under construction, Staff believes it to be in the Port's best interest to extend the Clear Channel *SUP* until after the redevelopment of the Food & Beverage Concessions Program is well underway and after it can be determined the remaining space inventory that will be available to include in the RFP. Staff requests the Board's waiver of the Concession Policy's Section F.4:

**4. Negotiations for Renewals or Extensions with an Existing Operator**

It is the policy of the Board than, in general, there will be no extensions or renewals to any concession agreement. Negotiations with an existing Concessionaire for extension of the terms will be used only when, upon anticipated expiration of the full term of the Concession agreement, it is determined by the Board to be in the best interests of the Airport to negotiate a new agreement with the current Concessionaire for continued operation of the given concession, or, alternatively,

during any interim period when the Port is accepting Bids or proposals for such Concession. Such negotiation will be initiated only at the option of the Board, and in no instance will such negotiations commence prior to one year before the expiration of the existing Concession agreement.

**F. Financial Considerations:** There is little doubt that Port rental revenue from airport advertising never reached the level promised by Clear Channel; however, there could be justification for the shortfall. Specifically, trends in advertising indicate that advertisers have less interest in fixed “signage” vs. “saturation” campaigns, more-subtle “partnership” arrangements, and very focused “digital solutions”. Also, it should be noted that in addition to the Clear Channel rental revenue detailed in the table, Security Point Media has paid approximately \$120,000 in rental revenue (CY 2018) to the Port for the Kaiser Permanente Terminal 2 Security Checkpoint Sponsorship plus advertising in the checkpoint bins. Finally, except for a recent “Pandora” saturation campaign, much of Clear Channel’s advertising inventory consists of OAK “filler” because Clear Channel has been unable to sell the spaces. Rather than generate rental revenue for the Port, we must pay for production of such filler. The elimination of at least 21 sign faces requires a reduction in the minimum monthly payment. Staff is recommending \$10,000 per month from \$35,000 with percentage of gross sales remaining at 60%.

**G. Consent to Change in Corporate Control:** The Port has received notice that Clear Channel’s indirect parent – IHeartMedia, Inc. (“IHeart”) – is engaging in restructuring transactions whereby Clear Channel and its affiliates will be separating from IHeart. In connection with this separation of the businesses, Clear Channel and its affiliates will be undergoing an internal reorganization. As part of the internal reorganization, Clear Channel’s direct parent – Clear Channel Outdoor Holdings, Inc. – will merge with and into Clear Channel Holdings, Inc., an indirect parent of Clear Channel.

Clear Channel alleges that the closing of this transaction will not affect the existing legal and corporate status of Clear Channel, which will remain the party bound under the *SUP* and will continue to perform its obligations.

Section 14 of the *SUP* covers “Assignment and Licensing” and details the information and documents that must be provided by Clear Channel to the Port when an assignment is contemplated, including a payment of a processing fee of not less than \$2,500. As a simple corporate restructuring, and given the short-term, lower-revenue nature of the *SUP*, Staff does not believe it would be productive for Clear Channel to submit the required documents or for Staff to invest the time to review. For this reason, Staff is recommending that the Board approve a waiver document production requirement and the processing fee.

**H. Conclusion:** The inventory of spaces available for advertising will be reduced and compromised with the upcoming Food & Beverage Concessions Program redevelopment and moving walkway removal projects. In addition, the terminals are crowded and suffer from design limitations of low ceiling and limited wall space. For the shorter term, Staff has negotiated the best deal with Clear Channel and will spend the balance of 2019 focusing efforts on preparing and drafting an In-Terminal

Advertising Concession RFP to be released later in the year. The proposed *Amendment No. 4* will:

- ➔ Extend the existing *SUP* with Clear Channel for a fixed term expiring on June 30, 2020 (a fifteen-month extension), including Clear Channel's subtenancy agreement with CNN Airports Network to continue providing video entertainment in the holdrooms;
- ➔ Reduce the minimum monthly payment from \$35,000 per month to \$10,000 per month to reflect the significantly reduced inventory of sign locations and the reality of reduced advertising revenues generated by Clear Channel; and,
- ➔ Provide the Board's consent to a corporate restructuring and waive the contractual requirement for Clear Channel to produce significant transactional documentation and pay a \$2,500 processing fee.

To effect the extension of the *SUP*, the Board will need to find it will be in the best interest of the Airport for Staff to negotiate the terms and conditions of *Amendment No. 4* with Clear Channel and exempt the proposed fifteen-month extension term from the prohibition in Resolution No. 16-144 that there be no extensions to any concession agreement.

### **BUDGET & STAFFING**

The approval of *Amendment No. 4* will result in Clear Channel paying the higher of either \$10,000 or 60% Gross Receipts on a monthly basis. The FY2018-19 Operating Budget anticipated in-terminal advertising revenue of \$400,000, which will not be achieved. Entering into *Amendment No. 4* will result in a revenue shortfall of approximately \$55,000 (assuming no percentage of gross revenue is paid) due to the reduced amount of the minimum monthly payment for the balance of FY2018-19. There is no staffing impact.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

This Amendment No. 4 to the *SUP* does not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

### **STRATEGIC PLAN**

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

<https://www.portofoakland.com/strategic-business-plan-2018-2022/>.

- Goal A: Grow Net Revenue.
- Goal B: Improve Customer Service.

### **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.

## **SUSTAINABILITY**

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.

## **ENVIRONMENTAL**

CEQA Determination: This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port's CEQA Guidelines. Per its CEQA Guidelines, Port Ordinance No. 2581, Modification (9), the Port has added Subsection (p) to CEQA Guidelines Section 15301. This subsection states that the Port has determined that renewals, extensions or amendments to leases or to license and concession agreements, or the execution of leases or license and concession agreements, where the premises or licensed activity was previously leased or licensed to the same or another person and involving negligible or no expansion of use beyond that previously existing, are categorically exempt from CEQA. Therefore, this action is not subject to CEQA and no environmental review is required.

## **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 an *Amendment No. 4 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports to:
  - A. Extend the existing *Space/Use Permit* for a fixed term expiring on June 30, 2020 (15-month extension), including Clear Channel's subtenancy agreement with CNN Airport Network to provide video entertainment in the holdrooms;
  - B. Reduce the minimum monthly payment from \$35,000 to \$10,000 while maintaining the requirement that Clear Channel pay 60% of gross revenues;
  - C. Require Clear Channel to remove approximately 13 existing sign locations and improvements including all in-holdroom Combo Signs throughout the terminal complex and delegate authority to the Director of Aviation to require, on 30-days written notice, the removal of up to five additional signs as identified by the Port and as may be necessary during the extended term;



- D. Exempt the proposed fifteen-month extended term from the prohibition in Resolution No. 16-144 that there be no extensions to any concession agreement and confirm that the Board finds it will be in the best interest of the Airport to negotiate the terms and conditions of *Amendment No. 4* with Clear Channel; and,
- E. Provide the Board's consent to the corporate restructuring of Clear Channel involving IHeartMedia, Inc., Clear Channel Outdoor Holdings, Inc. and Clear Channel Holdings, Inc., and waive the document production requirements and the \$2,500 processing fee as specified in the *Space/Use Permit*.

This is the recommended action.

- 2. Do not approve an *Amendment No. 4 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* Clear Channel Outdoor dba Clear Channel Airports and allow the *SUP* to expire on its terms, which would result in a loss of at \$30,000 in revenue for the balance of FY2018-19 and no in-terminal advertising program.
- 3. Do not approve an *Amendment No. 4 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* Clear Channel Outdoor dba Clear Channel Airports and allow the *SUP* to expire on its terms, and instruct Staff to immediately prepare and release a Request for Proposals for In-Terminal Advertising Concession so that a new program may be operating as quickly as possible despite the uncertainty of future sign locations and disruptions caused by the Food & Beverage Concessions Program redevelopment and construction project.
- 4. Do not approve an *Amendment No. 4 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* Clear Channel Outdoor dba Clear Channel Airports and provide instruction to Staff to negotiate an alternative amendment under terms and conditions dictated by the Board.

## **RECOMMENDATION**

Adopt an ordinance approving an *Amendment No. 4 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports to:

- Extend the existing *Space/Use Permit* for a fixed term expiring on June 30, 2020 (15-month extension), including Clear Channel's subtenancy agreement with CNN Airport Network to provide video entertainment in the holdrooms;
- Reduce the minimum monthly payment from \$35,000 to \$10,000 while maintaining the requirement that Clear Channel pay 60% of gross revenues;
- Require Clear Channel to remove approximately 13 existing sign locations and improvements including all in-holdroom Combo Signs throughout the terminal complex and delegate authority to the Director of Aviation to require, on 30-days written notice, the removal of up to five additional signs as identified by the Port and as may be necessary during the extended term;
- Exempt the proposed extended fifteen-month term from the prohibition in Resolution No. 16-144 that there be no extensions to any concession agreement and confirm that



the Board finds it will be in the best interest of the Airport to negotiate the terms and conditions of *Amendment No. 4* with Clear Channel;

- Provide the Board's consent to the corporate restructuring of Clear Channel involving IHeartMedia, Inc., Clear Channel Outdoor Holdings, Inc. and Clear Channel Holdings, Inc., and waive the document production requirements and the \$2,500 processing fee as specified in the *Space/Use Permit*; and,

subject to approval as to form and legality by the Port Attorney.