



City Council Report

City Council Meeting: June 24, 2014

Agenda Item: 8-A

To: Mayor and City Council
From: Marsha Jones Moutrie, City Attorney
Subject: Proposed City Council Initiative That Would Empower Voters to Decide Future of Santa Monica Airport and Meanwhile Preserve the City's Ability to Manage The Airport and Mitigate Its Impacts While Airport's Future Is Decided

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Recommended Action

Staff recommends that the City Council direct preparation of the resolutions necessary to place an initiative on the November ballot that would empower the voters to decide the future of the Santa Monica Airport ("Airport") and in the meantime preserve the City's authority to manage the Airport and mitigate its adverse impacts.

Executive Summary

At its meeting of [May 13, 2014](#), Council directed staff to formulate a proposed ballot measure relating to the future of the Santa Monica Airport which could, if necessary, provide voters with an alternative to the initiative measure presently proposed by aviation interests. The content of that proposed measure is summarized in the City Attorney's ballot title and summary, which are attached as Attachment 1. Basically, the measure would require a vote of the people to close the Airport or to change the use of the Airport land, and it would prohibit the City from imposing additional restrictions on Airport tenants and users prior to such a vote. Thus, the measure would preserve the status quo for the benefit of the aviation community and deprive the City Council of its authority to, for instance, set leasing policy for the Airport and thereby address adverse impacts of Airport operations on surrounding neighborhoods. Proponents of the measure contend that it is necessary because, among other things, they assert that closure of the Airport would inevitably lead to overdevelopment of the property that would contribute to traffic congestion.

Council rejected this contention and directed staff to formulate a counter measure that would address concerns about the future of the Airport and future use of the Airport land but also preserve Council's ability to manage the Airport in order to protect neighbors and other Santa Monica residents from adverse impacts of Airport operations to the extent that the law allows.

This report recommends preparation of a measure that would give voters the right to vote on Airport closure without depriving Council of its authority to act to protect residents from adverse Airport, impacts or otherwise to properly manage the Airport.

Background

On June 30, 2015, the City's 1984 Settlement Agreement with the Federal Aviation Administration ("FAA") will expire, as will all of the existing Airport leases. In addition, the City's grant agreements with the FAA will expire either this year (as the City contends) or in 2023 (as the FAA contends). These contractual agreements have limited the City's options as to operation of the Airport and use of the Airport land for many years. The City believes that their expiration will yield new opportunities for use of the Airport land. The federal government disputes that, claiming that the City must operate the Airport in perpetuity because of obligations flowing from the Instrument of Transfer, which returned control of the Airport to the City after the federal government's war-time lease expired.

The City has begun the process of identifying options for the future of the Airport and the future use of the Airport land. In 2010, the City began the Airport Visioning Process. It was lengthy and all-inclusive. Hundreds of residents, neighbors, members of the aviation community and experts participated, sharing their thoughts about possible alternatives ranging from closure to maintenance of the status quo.

On [April 30, 2013](#), Council considered the report on the Visioning Process and conducted a large public hearing on the Airport's future. At the conclusion of the hearing, individual Council members expressed their views about closing all or part of the Airport if impacts could not be severely diminished. And, Council directed staff to continue to explore with the FAA any alternatives for reducing adverse Airport impacts. Staff did so. The FAA representatives were respectful and willing to consider the City's concerns, but they communicated the agency's continuing opposition to City-imposed restrictions on Airport operations.

Last September, a catastrophic crash at the Airport killed four people, including a well-known community member and his son. This sad event increased community demands to explore all possibilities for closing all or part of the Airport or somehow drastically reducing its impacts and enhancing safety. Many residents organized to advocate for closure of the Airport and reuse of the Airport land as a large, regional park.

Faced with these demands from the community, the City filed a quiet title action and other claims in federal court to ascertain its rights, as Airport proprietor and land owner. The District Court dismissed the suit on procedural grounds; the City appealed, and that case is pending in the Ninth Circuit Court of Appeal.

On [March 25, 2014](#), Council conducted a well-attended public hearing on the future of the Santa Monica Airport. Staff made various recommendations including actions intended to reduce adverse Airport impacts through changes in leasing policy and the exercise of the City's zoning authority. Dozens of members of the public spoke in support of these recommendations and against them. After hearing from staff and the public, and discussing the matter, Council directed staff to take several actions. These included, but were not limited to, completing contingency planning for the Airport's future, working on a conceptual plan based on possible future low-intensity use, and formulating proposed leasing guidelines and recommendations for zoning designations that would better protect Airport neighbors from adverse impacts. An amendment to the main motion, which was incorporated into the direction, specifically required staff to evaluate options relating to fuel sales at the Airport that could reduce air pollution and its adverse effects.

Two days after Council gave this direction, on March 27, 2014, members of the aviation community filed a proposed initiative measure. The proponents titled it: "Voter Approval Required Before City Can Redevelop Airport Land". The measure would amend the City Charter to require voter approval to close or partially close the Airport or to change the use of any of the land currently used for the Airport from a aviation-related services to non-aviation purposes. The measure also provides that, unless the voters have approved closure of the Airport and that decision has become "effective", the City shall continue to operate the Airport "in a manner that supports its aviation purposes," and "shall not impose additional restrictions on providers of aviation support services ... that inhibit the sale of fuel or the full use of aviation facilities."

The proposed measure also contains a provision on retroactivity. It purports to nullify any City decision made after filing the Notice of Intent to Circulate, which would require voter approval under the measure, unless and until the voters approve the decision. Additionally, the measure contains a clause giving any interested person the right to go to court to enforce the measure's provisions, a severance clause providing that if any section of the initiative is struck down by a court, the remaining sections will remain in effect, and a provision specifying that, if a competing measure is on the ballot, the measure with the most votes will control as to conflicting provisions only.

Finally, the measure is accompanied by findings. They assert that the City has taken actions to harm local aviation businesses, has undertaken costly litigation relating to the Airport, and has disregarded the wishes of the entire community with respect to the Airport. The findings also assert that the Airport is a low-density use, that the City has approved high-density developments, and

that staff has previously noted that, if the Airport were closed, it might be redeveloped to greater density than the present Airport use.

A ballot title and summary were prepared pursuant to requirements of state law and were transmitted to the City Clerk ("Clerk") on April 2nd. A copy is attached. Thereafter, proponents of the measure began circulating petitions, using paid signature gatherers.

At its meeting of May 13, 2014, with the petitions circulating, Council discussed the possibility of placing a competing measure on the ballot and directed staff to return with a recommendation for such a measure. In the course of this discussion, Council reiterated its commitment to low-density use of the Airport land, which had been part of the direction given on March 25th.

The petitions were submitted to the Clerk on June 10, 2014. The Clerk has transmitted the petitions to the County Registrar, and the verification process is ongoing.

Discussion

The Airport's future is presently unknown and will remain so at least until the City's legal authority to control the use of its land is clarified by the courts – a process which will likely take years. For now, the City remains obligated to operate the Airport in conformity with the law and its contractual obligations. Council has decided that it is essential during this time -- however, long it may be -- to do whatever can be done to reduce adverse Airport impacts on residents and neighbors and to continue with contingency planning for the Airport's future.

The measure proposed by the aviation community would attempt to limit the Council's authority to achieve the first of these short-term goals. The measure purports to prohibit any change in the use of land now used for "aviation services" without voter approval. It also purports to require that voters approve the Airport closure and that the closure decision become "effective" before Council could "impose additional restrictions on providers of aviation support services to tenants and airport users that inhibit the sale of fuel or the full use of aviation facilities." Thus, while the presently proposed measure may well have appeal to voters because it would allow them to cast their vote on a singularly important land use matter, it would also protect vested interests at the Santa Monica Airport by shielding them against Council action.

The proposed initiative's express prohibition against regulating fuel sales is the clearest example. At the meeting of March 25, 2014, staff reported on promising advances in the area of aircraft fuel,

which will alleviate air pollution. And, Council directed staff to evaluate options for regulating fuel sales in order to control air pollution from aircraft exhaust. Staff is fulfilling that directive and will return to Council later this summer. However, the aviation community's initiative seeks to prohibit "additional restrictions on providers of aviation support services ... that inhibit the sale of fuel" unless the voters have approved the closure of the airport. So, if that measure passed and became effective, Council could be deprived of its authority to address fuel sales through leasing policies. A competing measure could preserve the Council's ability to negotiate leases with aviation service providers that would, for instance, require the provision of unleaded fuel.

Moreover, the prohibition against regulating fuel sales is not the only restriction that the proposed measure attempts to impose upon the City. The measure could, for instance, erode or eliminate the City's ability to reduce noise impacts. As reported on March 25th, advances in aviation technology provide new possibilities for reducing noise. Light aircraft technology may provide an option for much quieter flight training. And, even if it does not, the City's testing has shown that noise impacts are reduced when training aircraft are equipped with mufflers. However, the proposed initiative could prohibit requiring the utilization of such technology at the Airport because such a requirement might be characterized as an "additional restriction on providers of aviation support services "that will inhibit ... the full use of aviation facilities." And, given the breadth of the quoted language, any restriction on lessees' activities that the City attempts to put in place to protect residents and neighbors might be challenged as an inhibition upon aviation services.

Thus, it is clear that the proposed initiative goes much farther than giving the voters the right to decide the Airport's future. It attempts to also deprive the Council of its power as land owner to regulate the use of leaseholds and of its police power to protect the health, safety and welfare of residents and neighbors unless and until the voters decide to close the Airport and "such decision has become effective."

And, that would likely be years from now. Experience makes very clear that if the question of whether to close the Airport were placed on the ballot, and the voters chose closure, their decision would likely be immediately challenged in court. And, the ensuing litigation would last for years as each side fully exhausted all possible appeals. During all that time, the proposed initiative would purportedly prevent modifying lease terms to minimize adverse impacts.

Therefore, staff recommends that Council consider a competing measure which would give residents the right to decide the Airport's future but would also preserve the Council's ability to

manage the Airport and its impacts in the meanwhile. Such a measure could include the requirement that voters approve closure of the Airport. In this one regard it would be similar to the presently proposed initiative. However, it would differ substantially in that it would not restrict the Council's authority while the Airport remains open. Such a measure would preserve the Council's authority to manage the Airport and control use of the Airport land while the Airport remains open. Thus, Council would retain its current authority to minimize adverse impacts through lease provisions.

A competing measure is also recommended to address the retroactivity provision of the proposed measure. That provision specifies that "[a]ny City decision that would require voter approval under this Charter Amendment and that is made on or after the date of the filing with the City Clerk of the Notice of Intent to Circulate ... shall have no effect until such decision receives voter approval ...". Thus the proposed measure purports to lock in the status quo at the Airport as of the date the petitioners first filed with the City, which was March 27, 2014. This was two days after Council gave staff directions for the formulation of new leasing and land use policies, among other things. This provision may not be enforceable. However, like the substantive provisions of the measure, the retroactivity clause is clearly intended to preserve the status quo at the Airport for the benefit of Airport businesses and Airport users, even to the point of eliminating follow through on Council directions already given to staff. A competing measure could include a provision to counter this retroactivity clause.

Thus, in summary, staff proposes to prepare a competing measure that would: (a) empower the voters to decide whether the Airport should be completely or partially closed and the City's land dedicated to another use; (b) preserve the Council's authority as proprietor and governing body to manage the Airport and mitigate its impacts while the Airport remains open; and (c) override the provisions of the proposed initiative that would lock in the status quo at the Airport.

Alternatives

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As an alternative, Council could determine that it is unnecessary or inadvisable to sponsor a competing measure. The initiative proposed by Aviation interests may not qualify for the ballot. However, whether it has qualified will not be known until mid or late July at which point it might be difficult to prepare a competing measure and place it on the November ballot. Or, the proposed initiative may qualify for the ballot but be rejected by the voters. However, given the risks attendant upon possible passage of the proposed measure and the possible detriment to the community, staff recommends against this alternative.

Council also has alternatives as to the substance of a competing measure. For instance, Council could direct staff to prepare a measure that would dictate a particular future use of the Airport land if the Airport were closed. Or, a measure could establish specific parameters or standards for possible future use of the land. However, staff recommends against such alternatives in order to preserve the community's ability to engage in a robust, thorough and inclusive community process for making crucial decisions about the future use of the Airport land.

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Next Steps

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If Council directs staff to prepare a competing measure it will be brought to Council within the next month, likely along with other ballot measures.

Financial Impacts & Budget Actions

No direct financial impacts would arise from the recommended action. Adding a measure to the ballot would slightly increase election costs. Information about those costs will be presented when the ballot measures are brought to Council.

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Approved:

Forwarded to Council:

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Attachments:

- A) [Ballot and Title Summary](#)