



City Council Report

City Council Meeting: July 8, 2014

Agenda Item: 8-A

To: Mayor and City Council
From: Marsha Jones Moutrie, City Attorney
Subject: Proposed City Council Initiative That Would Amend The City Charter To Explicitly Preserve the City's Authority To Manage Or Close The Santa Monica Airport, Restrict Development At The Airport Unless And Until Adoption And Implementation Of A Specific Plan For The Reuse Of Airport Land, And Compete Directly With the Initiative Proposed By Aviation Interests.

Recommended Action

Staff recommends that the City Council direct preparation of the resolutions necessary to place on the November ballot an initiative that would: (1) preserve the City Council's authority to manage the Santa Monica Airport ("Airport") for however long it remains open and its authority to close all or part of the Airport to aviation use, subject to applicable legal restrictions; (2) prohibit or restrict new development at the Airport until the City adopts and implements a specific plan governing reuse of the Airport land that ensures compatibility with surrounding neighborhoods and uses; and (3) compete with the Airport initiative proposed by aviation interests.

Executive Summary

This report implements Council's directions of [June 24, 2014](#) regarding a City ballot measure intended to compete with the initiative measure that has been circulated by the aviation interests. Their measure would require voter approval to close the Airport, even in part, and further would limit the Council's authority to manage Airport leaseholds and otherwise to reduce adverse impacts for however long the Airport remains open.

Council previously directed preparation of a competing City Charter amendment to be considered for placement on the November ballot, and staff reported back to Council on possible content of the measure.

On June 24th, Council directed staff to undertake additional work. Council explained that it wants to strike the best possible balance between allaying residents' concerns about the possibility of future over-development of the Airport land and preserving Council's authority to meet changing needs and circumstances. Council asked to be given alternative options to consider.

This staff report provides alternatives that would retain Council's existing authority as to Airport management and closure, protect against future over development of the Airport land while preserving flexibility as to future uses, and establish that the City's initiative is intended to compete with and prevail over the aviation interests' initiative and that only one of the two may be adopted. Information about the initiative process is also included in this report.

Background

The history of the Airport controversy is described in the June 24th staff report and is also summarized in the

findings of the staff's proposed ballot measure, which is attached.

Basically, the Airport is owned and operated by the City and is one of the oldest and busiest General Aviation airfields in the country. It was acquired and constructed long before the development of the residential neighborhoods that now surround it, long before the development of jet aircraft, and long before the proliferation of business travel by private, corporate jets -- developments which brought groundswells of complaints about Airport noise, air pollution and safety risks and fostered waves of litigation.

For decades, the City has operated the Airport pursuant to contractual agreements. However, some or all of the agreements are expiring. Next year, the 1984 Settlement Agreement with the federal government will expire by its own terms; and all Airport leases will have expired. Additionally, federal grant conditions governing Airport operation expire this year or in 2023. And, in the next few years, currently pending litigation may resolve whether the post-World War II Instrument of Transfer obligates the City to continue operating the Airport.

With contractual obligations expiring and legal control of the 227 acres currently used for the Airport in dispute, the City has worked to minimize adverse impacts and to envision the future of the Airport and the land it now occupies. Community members have expressed their views about the Airport's future, and Airport neighbors have increasingly demanded that the Airport be closed. Many City residents have proposed rededicating the land to park or other community-serving usage.

Faced with uncertainty about the Airport's future, aviation interests have proposed and circulated a ballot measure that would require voter approval to close the Airport and that would preserve the status quo for Airport businesses unless and until voters approve Airport closure. The measure has been touted as protecting residents against over development of the Airport land. The actual, direct effect of the measure would be to immediately deprive the Council of its authority to manage the Airport so as to mitigate adverse impacts and to prevent the Council from exercising its authority to close the Airport when that becomes legally possible. Therefore, although it is not yet known whether the aviation interests' measure will qualify for the ballot, Council directed preparation of a competing City initiative to countermand and override it.

At its June 24th meeting, Council considered staff's recommendation for preparation of a competing measure that would: (a) empower the voters to decide whether the Airport should be completely or partially closed and the land dedicated to another use; (b) preserve the Council's authority to manage the Airport and mitigate its impacts while it remains open; and (c) override the provisions of the aviation community's initiative.

After considering staff's recommendations and hearing public testimony, Council directed staff to continue its work on the competing measure and shift the emphasis away from closure and toward protection against future over-development. Council expressed its desire to find the "sweet spot" between allaying residents' concerns about over development and preserving Council's ability to promote public health, safety and

welfare amid changing circumstances and needs.

Discussion

As Council discussed at the meeting of June 24th, the proposed measure must meet several goals. First, the measure must be formulated to successfully compete for voter approval. Thus, the Council's proposed measure must both appeal to voters and be drafted to ensure that it would override the aviation interests' initiative if both receive a majority of the votes cast.

As to voter appeal, the aviation community's initiative offers City residents the right to vote on Airport closure and on proposed changes to the use of Airport land. And, the measure has been promoted as necessary in order to avert over-development of the Airport land.

To compete effectively, the City's measure must reassure voters that the Airport land will not be over-developed. At its June 24th meeting, Council noted that, for many community members, future use of the Airport land is a greater concern than Airport closure. (This is so because many community members simply assume that the Airport should and will be closed; but they fear that, once it closes, land value and development pressure will drive over-development.) Thus, Council directed staff to provide alternatives that would reassure voters that the Airport land will not be over-developed if and when the Airport is closed.

Such reassurance can be provided both in the findings of the City's measure and in its substantive provisions. Members of the community have questioned the validity of the statements made in the preamble to the aviation community's measure and urged that they are purposefully misleading. Accordingly, staff recommends that the City's measure contain findings accurately describing the Airport, its history, the present controversy, and the purpose of the City's proposed measure. Recommended findings are included on Attachment A, which provides the full text of staff's proposed measure. The recommended findings include (further) assurances of the Council's commitment to avoid over-development of the Airport land.

As to the substantive provisions of the City's measure, staff recommends prohibiting new development at the Airport until after the adoption of a specific plan formulated to ensure compatibility with surrounding uses and protect residents' quality of life. Until that time, new development could be prohibited or strictly limited. Staff recommends the following language to defer development of the Airport land until after adoption of a specific plan:

"If and when all or part of the Airport land is permanently closed to aviation use, no new development of that land shall be allowed unless and until a Specific Plan for its use is formulated and adopted by the City Council, in accordance with applicable law and through an inclusive public process, to ensure compatibility with surrounding uses and the protection of residents' quality of life."

This approach would be consistent with the City's existing land-use law and policy. The Land Use and

Circulation Element of the General Plan (LUCE) lists the Airport and Airport Business Park as a district, acknowledges the legal issues, and envisions that a specific plan will be formulated "at the appropriate time." Section 2.6, page 61. Since the LUCE already provides for the formulation and adoption of a specific plan, the City's proposed Charter amendment could: (1) emphasize that the specific plan must be adopted to ensure compatibility with surrounding uses; and (2) strictly limit the amount and/or type of development that may occur prior to adoption and implementation of the specific plan that protects local quality of life.

Basic limitations on interim development could be specified in the measure itself or the measure could require Council to adopt interim limitations. Assuming Council wishes to specify basic limits in the measure in order to reassure residents, there are various alternatives. To list a few, if the Airport were closed but a plan not yet adopted, the measure could: (1) prohibit any new development at the Airport; (2) prohibit development exceeding specified standards or zoning designations; or (3) allow for the maintenance and replacement of existing structures only. Moreover, the language could state that existing arts and educational uses should be protected.

Staff recommends language substantially as follows to limit interim uses:

"Until the adoption of a Specific Plan for the future use of the Airport land, the prohibition contained in this section shall not preclude the City Council from acting in accordance with applicable law to approve the following on Airport land that has been permanently closed to aviation use: the development of parks, public open spaces, and public recreational facilities; the maintenance and replacement to their present size of existing permanent structures; and the continuation of existing cultural, arts and education uses."

Staff notes that in considering what, if any, development the measure should allow prior to adoption of a specific plan, Council should bear in mind that City land-use initiatives are subject to CEQA requirements. And, the time available for fulfilling those requirements is limited.

The City has already complied with CEQA as to requiring preparation of a specific plan. The LUCE imposes that requirement, and the certified LUCE EIR is adequate. The proposed exception to the prohibition against development until after approval of a specific plan, which would allow for possible interim approval of parks, public open spaces and public recreational facilities, does not, in itself, constitute a CEQA project. That is because the exception does not authorize the undertaking of any such development or use. Any future park or other recreational facility that might be proposed will require separate approvals, after compliance with CEQA and applicable other applicable laws. Finally, the continuation and replacement of existing uses and structures, as well as the other provisions of the initiative measure, are exempt from CEQA review as these activities do not have the potential for causing a significant effect on the environment. See CEQA Guidelines Section 15061(b)(3).

As to ensuring that the City's measure would override the aviation interests' initiative, the law provides guidance. In the case of competing measures, the California Constitution establishes that "If provisions of

two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." Article II, section 10(b). The California Supreme Court has explained that this rule applies to the measure as a whole and not to individual provisions within a measure. So, if two ballot measures are clearly intended to be competing, and both are approved by the voters, the courts cannot harmonize them by preserving one or more specific provisions of the measure receiving fewer votes, even if that particular provision does not conflict with a particular provision in the measure receiving more votes. Taxpayers to Limit Campaign Spending v. FPPC, 51 Cal.3d 744 (1991). In contrast, if two measures on the same ballot are intended to be complementary or supplementary, the courts may preserve particular provisions in the measure receiving fewer votes, which are not in conflict with particular language of the other measure. Yoshisato v. Superior Court, 2 Cal.4th 978 (1992).

Council has expressed its intent to place a fully competing measure on the ballot so that the voters may make an "all or nothing" choice between the two measures. And, both the record and the language of the measure should and will reflect that intent. Thus, if the City's measure and the aviation community's measure both pass, and the City receives more votes, no provision of the other measure would become effective.

To ensure this result, staff recommends that the findings include information on the Council's intent and the substantive provisions include the following language:

"This measure is intended to compete with, prevail over, and nullify all provisions of any other charter amendment placed on the same ballot that relates to the Santa Monica Airport, including the measure proposed by Lauren McCollum, Nikos Kokotakis, and Flora Yin, who requested a ballot title and summary on March 26, 2014 for a proposed initiative which they stated would require voter approval before the City could redevelop Airport land."

In addition to offering the voters a measure that will successfully compete with and prevail over the aviation interests' measure, Council wishes to preserve, to the full extent allowed by law, its authority to manage and to close, or partially close the Airport, so that adverse impacts may be minimized. And, staff agrees that retention of this authority is essential to the community's welfare. This authority enables the Council to act, consistent with applicable law and agreements, to protect Airport neighbors from adverse impacts through leasing policy and, to a lesser extent, through regulatory measures. And, it enables the Council to shield the City from liability for adverse impacts to the full extent allowed by law. Requiring voter approval for changes in leasing policy, as proposed in the aviation interests' initiative, would frustrate efforts to protect Airport neighbors' health, safety and welfare and would thereby exacerbate the City's liability risks. Thus, the aviation interests' measure would protect the benefits that flow to aviation interests from the status quo at the Airport to the detriment of the community.

As to closure, the federal government and aviation interests dispute Council's authority to close all or part of the Airport. And, that dispute will likely eventually be resolved in court. However, whatever the extent of Council's authority may be, it must be preserved to give Council the broadest possible range of options for

protecting community welfare.

Based on these considerations, staff recommends including the following express language in the measure to achieve the goal of offering voters a measure that would preserve Council's authority to protect their welfare:

"Subject only to limitations imposed by law, the City Council shall have full authority, without voter approval, to regulate use of the Santa Monica Airport, manage leaseholds, condition leases and close all or part of the Airport."

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Alternatives

At least in theory, there are many alternatives for the City's competing measure. If the Council wishes to incorporate additional language to allay residents' concerns about possible overdevelopment of the Airport land, the language requiring adoption of a specific plan in advance of development could be buttressed with additional procedural steps. For example, development could be prohibited or limited until after such a plan is both adopted and implemented through the zoning process. Staff has no significant legal concern about this alternative and merely notes that the zoning process can be quite lengthy. Possible alternative language is supplied on Attachment B.

And, if Council wishes to provide additional assurance that the Airport land will not be overdeveloped in the future, it could add to the competing measure language requiring voter approval of a framework for the specific plan. Thus, at or near the time when Council can legally decide on closure of all or part of the Airport, Council could place a measure before the voters that would guide preparation of the specific plan for use of the Airport land. Such a measure could, for instance, supply guidance as to the principal land uses to be provided for in the plan. Possible alternative language is supplied on Attachment B.

In contrast, staff recommends against adding to the competing measure a requirement for voter approval of the specific plan. The planning process necessarily involves a thorough and painstaking identification, elucidation and balancing of competing concerns. Once such a balance is finally struck, a simple yes or no vote on the entire plan does not afford guidance as to revisions. To the contrary, a "no" vote might require starting the entire process over, from its very beginning.

Likewise, staff recommends against proposing a competing measure that would narrowly specify what types of improvements would be allowed on the Airport land. For instance, at least in theory, the measure could prohibit or require voter approval for, among other things: any project on the Airport land exceeding a particular size or height; any use other than a use or uses specified in the measure; development more intense than a specified zoning density; development exceeding total presently developed square footage at the Airport; or development more dense than surrounding neighborhoods. However, as previously noted, this approach would require CEQA analysis. And, most important, it would deprive the community of the planning process and eliminate flexibility. Therefore, given the multitude of competing considerations, the

attendant complexity of the endeavor, and the constant evolution of circumstances and community needs, staff strongly recommends following the course set in the LUCE and utilizing the planning process to formulate a specific plan with safeguards to restrict development until the plan is approved. That is the process which best elucidates and balances competing considerations and protects flexibility for contingencies and collateral consequences that cannot be foreseen.

Other potential alternatives involve adding to the list of types of improvements or development that would be allowed in advance of adoption and implementation of a specific plan for use of the Airport land. For example, theoretically, the City's measure could allow for types of development that comport with City priorities, such as affordable housing. However, this approach, which would also expand potential future uses of Airport land through the ballot measure, would also require some level of environmental review.

Procedural Issues

In conjunction with discussions of the aviation interests' measure, questions have arisen about the effective date of its provisions. By its own terms, the measure would be effective as of the date that it was first filed with the City Clerk, which was in May. Community members have argued that the measure would, instead, become effective when the measure was placed on the ballot, which would be at the end of July, if the measure qualifies. Their argument is based on the general provision of the Elections Code which fixes the effective date of ballot measures that do not contain retroactivity provisions. That section establishes a general rule that ballot measures become effective upon adoption unless the measure specifies otherwise. Because the aviation interests' measure specifies a different effective date, the Elections Code provision does not control.

Questions have also arisen as to whether, if the aviation interests' measure qualifies for the ballot, Council has alternatives to placing that measure on the November ballot. For instance, staff has been asked whether the Council could direct staff to study the impacts of the measure and report back to Council. The Elections Code provides this alternative for initiatives amending the municipal code so that Council can determine whether or not to itself adopt the measure, rather than sending it to the voters. However, the aviation community's measure would amend the City Charter, not the municipal code. Therefore, the Council could not adopt the measure; and the Elections Code consequently does not authorize a delay for a study to inform the Council's decision.

Staff has also been asked whether the measure could be delayed to a later election. Staff recommends against this option as legally risky given the staunch protection that the courts afford to the initiative process.

Next Steps

Staff will return at the July 22nd meeting with ballot language and the resolutions necessary to place the City's competing measure on the ballot. The County Registrar must complete its signature verification process by July 23rd. If the results of that process are unknown on the 22nd, Council may wish to continue its regular meeting and reconvene the next evening to make its final decision about placing the measure on

the ballot.

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 resolutions to place the measure on the ballot are brought to Council.

Prepared by: Marsha Jones Moutrie, City Attorney

Approved: _____

Forwarded to Council: _____

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Attachments:

- A. [Proposed Charter Amendment](#)
- B. [Alternative Language For Proposed Charter Amendment](#)