



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Ed Shikada

**SUBJECT:** SEE BELOW

**DATE:** 10-29-10

**COUNCIL DISTRICT:** Citywide

**RE: FOURTH AMENDMENT TO AMENDED AND RESTATED MANAGEMENT AGREEMENT WITH ARENA MANAGEMENT**

## **RECOMMENDATION**

Adoption of a resolution authorizing the City Manager to negotiate and execute a Fourth Amendment to the Amended and Restated Management Agreement with Arena Management by and between the City and San Jose Arena Management, regarding the removal of certain restrictions on the advertising of alcohol in public areas of the HP Pavilion.

## **OUTCOME**

Expand advertising policies at HP Pavilion to allow hard liquor advertising consistent with industry standards and the Advertising Plan for the Arena, and provide for the sharing of revenues from such advertising.

## **BACKGROUND**

There are a number of conditions included in the Amended and Restated San Jose Arena Management Agreement relating to the advertising policies for alcoholic beverages in HP Pavilion at San Jose. These conditions were negotiated and agreed to in the original 1991 Agreement with San Jose Arena Management. At that time it was acknowledged that while in most respects the Arena was to be operated in a manner comparable to other major arenas in the San Francisco Bay Area (the "Applicable Standard") there were certain areas, related to primarily to the use and advertising of alcohol and tobacco products, that were exempted from the Applicable Standard definition and are required to be consistent with what the Agreement refers to as "Contemporary Community Standards." At the time these provisions were negotiated, neither the NHL or the NBA permitted advertising of spirits in their venues and therefore it was not common in the indoor arenas at the time.

In 2008, the NHL released distilled beverages (distilled spirits) advertising guidelines. These guidelines were established for the following reasons: (1) to address the expansion of advertising and promotional opportunities which would allow teams to execute promotions

within arenas; and (2) to sell line of sight signage under the distilled spirits category. (Please note that line of sight signage refers to signage placed in the arena event seating area and that the NHL has approval rights with all line of sight distilled spirits advertising.) Additionally, per NHL guidelines, distilled spirits advertising may feature only the beverage brand name and/or logo with no call-to-action consumption messaging (“Pick up a bottle of XYZ spirits tonight”) or product images. With that in mind, the NHL will not approve advertising or promotions that include the following: (1) encourages the general consumption of alcohol; (2) depicts the actual consumption of alcohol; (3) portrays activity attractive primarily to persons under the legal drinking age; (4) promotes the irresponsible or illegal use of alcohol; (5) associates alcohol with social or personal achievement; and (6) associates alcohol with motor vehicles or activities requiring significant skills or care.

In 2009, the NBA released distilled spirits advertising guidelines that allows teams to accept advertising from and make promotional arrangements with spirits brands. Line of sight signage is subject to NBA approval and the ability to deliver a socially responsible message (“Don’t drink and drive”). Similar to the NHL, the NBA will not approve a call-to-action message for distilled spirits.

These league actions have come about, in part, to attempt to generate revenue during the economic downturn. HP Pavilion Management has approached the City to amend the Amended and Restated San Jose Arena Management Agreement to consider the expansion of advertising policies relating to the advertising of hard liquor (distilled spirits) in HP Pavilion at San Jose. If approved, HP Pavilion Management and the City would share in revenue generated from the sale of distilled spirits advertising within interior public areas in HP Pavilion at San Jose.

## **ANALYSIS**

### **Existing Agreement**

The existing Management Agreement provides the following with regard to advertising of certain products within the on the Arena site:

***Section 4.13. Compliance with Contemporary Community Standards*** of the Amended and Restated Arena Management Agreement provides that the Manager shall have the right to advertise alcohol products while complying with the Applicable Standard. The Management Agreement defines the Applicable Standard as *a standard of performance, operation and maintenance equal to or exceeding those generally applicable to contemporary comparable major arenas in the United States at which National Basketball Association (NBA) and/or National Hockey League (NHL) games are played. With respect to regulations of the advertising and serving of alcoholic beverages, the standard shall be equal to comparable major arenas and stadiums located in the San Francisco Bay Area.* Section 4.13 also contains exceptions to this definition of Applicable Standard for certain uses related to tobacco, alcohol and entertainment in the Club area as specified in Attachment 11 to the Management Agreement.

**Attachment 11** of the **Arena Management Agreement** (attached) includes specific advertising policies, which states that beer and wine products are permitted to be displayed in public areas of the arena and hard liquor (distilled spirits) advertising may be affixed only to the scoreboard. HP Pavilion Management has advised the City that currently, the majority of NHL and NBA arenas in California are advertising distilled spirits in the facilities' interior public areas. These arenas include the Honda Center (Anaheim), Arco Arena (Sacramento), Staples Center (Los Angeles), and Oracle Arena (Oakland). For reference, during the 2009-10 NHL season, 24 out of 30 NHL clubs had distilled spirits partners/agreements.

### **Proposed Revisions to Existing Agreement**

The proposed amendment to the Amended and Restated Management Agreement will update Attachment 11 to allow the advertising of distilled spirits (spirits) throughout the building provided that HP Pavilion Management adheres to the following provisions:

1. The number of distilled spirits advertisers shall not exceed six (6) at any one time.
2. Advertising signage must be consistent with the approved HP Pavilion Advertising Plan.
3. On exterior of arena, no fixed or permanent advertising of tobacco or distilled spirits is permitted.
4. Distilled spirits advertising is not permitted on Arena Management and/or Sharks owned or operated vehicles, including but not limited to, service/parking attendant carts, team mascot promotional vehicles, and ice resurfacing machines.
5. Spirit advertising adheres to applicable NHL guidelines and delivers a social responsibility message (i.e., don't drink and drive) or feature only the beverage brand name and/or logo with no call-to-action consumption messaging or product images.

In addition to the above proposed revisions to the Agreement, the City will request that the Arena Authority Board review the advertising after the first year to provide community feedback to the City.

In revising the Management Agreement to reflect the changes above, the Administration also recommends updating ***Attachment 11*** clarify that smoking is prohibited throughout the building.

### **HP Pavilion Advertising Plan**

Under the existing terms of the Arena Management Agreement, HP Pavilion Management must submit an updated Advertising Plan for approval by the City every two years. The Advertising Plan describes the number and the location of signs that are permitted for advertising at the Arena. The proposed Amendment would allow the City to restrict the locations for the advertising of distilled spirits as part of the biennial review of the Advertising Plan based on future review of the advertising and community feedback.

### **Revenue Sharing from Advertising**

Unlike the City's three Naming Rights Agreements whereby the City and HP Pavilion Management equally (50/50) share revenues generated from agreements, HP Pavilion

Management is not currently obligated to share revenues with the City that are generated from advertising. The proposed Fourth amendment would require the Manager to share a portion of annual net revenues generated from distilled spirits advertising with the City, as negotiated on a transaction by transaction basis. The Amendment would also authorize the City Manager to enter into those revenue sharing agreements.

Under the initial Revenue Sharing Agreement, HP Pavilion Management will provide a lump sum payment to the City for the first spirit advertiser in the amount of \$20,000. Due to the uncertainty of the revenue generation potential, the Administration recommends delegating authority to the City Manager to negotiate agreements with spirit advertisers to adjust the revenue sharing formula as deemed appropriate. HP Pavilion Management and the Administration will evaluate the costs incurred in advertising and the revenue generated from the first distilled spirits advertiser, and on a case-by-case basis thereafter, and negotiate revenue sharing for future agreements. Funds generated from the selling of distilled spirits advertising shall be directed to the City's General Fund.

### **EVALUATION AND FOLLOW-UP**

The Administration is negotiating the terms of this proposed Fourth Amendment to provide an opportunity to evaluate: 1) community feedback of advertising distilled spirits at HP Pavilion and 2) revenue potential. Revenue sharing from future spirit advertisers will be negotiated based on the realistic understanding of what the market will sustain. The Arena Authority Board will review distilled spirits advertising after the first year of the program to provide community feedback to the City. Per the terms of the Arena Management Agreement, HP Pavilion Management is required to provide an advertising plan at least every two years to the City for approval. The Arena Authority Board subsequently reviews the advertising plan as well as any potential modifications submitted for consideration by HP Pavilion Management. Based on community feedback modifications may be made to the Advertising Plan during this review. The Arena Authority will also provide updates from time to time on program components as appropriate.

### **PUBLIC OUTREACH**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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On October 20, 2010, the Arena Authority held a special meeting to seek the Board's feedback on revising the Management Agreement to allow distilled spirits advertising and suggested amendment language. The Arena Authority Board of Directors approved an amendment to the Management Agreement that expands the advertising policies for distilled spirits advertising within the interior public areas of the Pavilion. Additionally, the Arena Authority Board recommended that no spirit advertising be allowed on the Zamboni ice making machines due to the attraction that those vehicles hold for children. Some concerns were expressed about advertising distilled spirits at children's shows and drinking and driving, and the appropriateness of advertising spirits on motor vehicles. HP Pavilion Management noted typically, promoters for children shows request non-alcohol events. For such events, within the arena, dasher boards are covered and electronic and scoreboard signage is not illuminated. However, the permanent signs in the Concourse would not be able to be changed.

### **COORDINATION**

This memorandum was coordinated with the City Manager's Office, the City Attorney's Office and the Arena Authority.

### **CEQA**

Not a Project, File No. PP10-066 (e), Services that involve no physical changes to the environment.



ED SHIKADA  
Assistant City Manager

For questions please contact Sheila Tucker, Senior Executive Analyst at (408) 535-8115.

## ATTACHMENT NO. 11

I. Smoking.

- A. Within Arena - not permitted.
- B. Within Concourse - permitted only in limited areas designated jointly by Manager and City.
- C. Private Suites - permitted at discretion of suite holder.
- D. Club, restaurant - permitted within areas designated by Manager only, subject to general City ordinances.
- E. Offices (private) - not permitted.
- F. Enforcement/signage - active employees education training program and an effective signing policy to be developed and carried out by Manager.
- G. No distribution of tobacco products or samples outside of the club.

II. Serving Alcohol.

- A. Beer, wine and hard liquor may be served in Club, restaurant, concourse area, private offices, private suites and Arena club seats. Service to other Arena seats will be limited to beer and wine only.
- B. Specific limitations may be imposed by Manager on sales depending on event, such as:
  - 1. Purchase limits.

2. Sales cut-offs late in an event, subject to general City ordinances.
3. No vending in seats.
4. Limiting sizes.
5. Third party requests for no-alcohol event, i.e., childrens shows, religious gatherings, etc.

C. Manager will develop and implement an education and training program to educate and train employees (parking lot attendants, vendors, ticket takers, security, management and anyone else working at the facility) to promote responsible alcohol use at an event.

### III. Advertising Policies.

#### A.

1. Manager will not display ads for tobacco products anywhere in the Arena Facilities. Beer and wine products will be permitted to be so advertised and displayed. Hard liquor advertising shall be affixed only to the scoreboard.
2. Within the concourse, no display affixed to walls of ads for hard liquor products.
3. On exterior of Arena, no displays of tobacco or hard alcohol products.

4. On the reader board and temporary signs during events only, event related displays of tobacco products sold by event sponsors.

5. In other interior portions of the Arena (i.e., Club, restaurant, etc.), no restrictions on alcohol advertising.

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B. In addition, Manager will refrain from advertising products in the concourse and other public areas of the Arena which because of their nature may be inappropriate for general public viewing.

IV. Club Entertainment.

A. Subject to general City ordinances, City may regulate entertainment (including employee costumes) when minors are permitted access to the Club, and nudity at all times.

B. Except as provided above, all entertainment (including employee costumes) in the Club shall be permitted, subject to general City ordinances and state laws proscribing criminal behavior.

C. Dancing by customers is permitted subject to general City ordinances.