

Please note: This document is subject to the review and approval of the Airport Commission at their meeting this Monday, April 5, 2004.

**NORMAN Y. MINETA**  
**SAN JOSÉ INTERNATIONAL AIRPORT**  
**COMMISSION MEETING**  
Minutes of March 1, 2004

1. **CALL TO ORDER AND ROLL CALL**

Chair Carl Honaker called the meeting of the Airport Commission to order at 6:02 PM in the sixth floor Conference Room of the Norman Y. Mineta San José International Airport Office, 1732 North First Street, San Jose, California. Commissioners present: Carl Honaker, Daniel Biesterveld, Don Simpson, Noel Tebo, Steve Tedesco and Catherine M. Tompkinson-Graham. Commissioner Rolayne Edwards was absent.

2. **ORDERS OF THE DAY**

3. **CEREMONIAL MATTERS**

4. **CONSENT CALENDAR**

**NOTICE TO THE PUBLIC**

The Consent Calendar is acted upon at this point in the agenda. There will be no separate discussion of items listed under this Section as these items are considered to be routine and will be adopted by one motion. If a member of the Airport Commission, Staff or Public requests discussion, that item will be removed from the Consent Calendar and considered separately.

- a. For approval: Minutes of February 2, 2004 Regular and Special Commission Meetings
- b. Items filed for Public Record and Correspondence.
- c. Noise Complaint and Curfew Summary for January 2004.
- d. Upcoming Airport Commission Dates:
  - Rules Committee Meeting, Thursday, March 18, 2004
  - Monthly Commission Meeting, Monday, April 5, 2004
  - Rules Committee Meeting, Thursday, April 15, 2004
  - Monthly Commission Meeting, Monday, May 3, 2004
  - Rules Committee Meeting, Thursday, May 27, 2004
  - Monthly Commission Meeting, Monday, June 7, 2004

Chair Honaker directed Commissioners' attention to two documents provided to each Commissioner at the table: the minutes of the February 2, 2004 regular Commission Meeting, and a replacement memo for Item 5d, with a non-substantive revision to correct a typographical error. He allowed a few minutes for Council Members to review the materials. He also requested that anyone of the public present who wished to speak at the meeting please complete a blue speaker form. Motion by Commissioner Tedesco, seconded by Commissioner Biesterveld, to approve the consent calendar was passed unanimously; absent Commissioner Edwards.

## 5. GENERAL BUSINESS

- a. Recommendation urging Council support for finding of completion of ASTRA requirements upon sale by State of California of GARVEE bonds - ACTION

Following a motion by Commissioner Tebo, seconded by Commissioner Tedesco, to support the recommendation, Chair Honaker called for discussion. Director of Aviation Ralph Tonseth commented that he expects the item to be presented on either the 3/16/04 or 3/23/04 Council agenda, depending on the date of close of sale for the GARVEE bonds. Commissioner Tompkison-Graham called for the question, which passed unanimously, absent Commissioner Edwards.

- b. Moffett Field Update

Chair Honaker provided a comprehensive overview of the history of the Moffett Field Air Base, including ownership, development, past and present usage, and some of the political considerations that have impacted its evolution over the years. Honaker explained that there is reasonable cause for concern for the future of the airfield. He urged the Commission to keep informed and to continue discussions regarding this asset because of the role the City may play in preserving the airfield as an asset for regional air service needs. The City of San José has adopted two resolutions, one in 1991 and one in 1996 or 1997, pledging that the City will step into the arena to help preserve the airfield as an asset for regional air service needs if no other agency assumes that responsibility.

Discussion following Chair Honaker's presentation noted that the County Airport Commission will likely be addressing this concern in the near future. Director Tonseth commented that the Moffett facility is so unique and the constraints on airports in this area so great, it would be a crime to let it go away. Positing the facility as ideal for air cargo, he explained that between the hours of 11:00 PM and 7:00 AM winds are typically calm enough that virtually any aircraft can land on an opposite approach, with no landing required over anyone's home 97% of the time. Additional discussion noted that the City could save \$250 MM - \$350 MM on its Airport Capital program if it were relieved of the need to build air cargo facilities at Mineta.

- c. Curfew Update

A PowerPoint presentation by Airport Noise Abatement Manager Jaime Locquiao on 'Curfew Reporting and Administrative Procedures,' explained the curfew process from time of curfew intrusion through the appeal hearing. The Curfew Timeline flow chart was key to addressing a number of timing questions Commissioners had raised during the February appeal hearing. Also key to the Commission's process concerns was the hand-delivery method Airport staff employed for notice of the first intrusion following the adoption of the curfew ordinance. Locquiao reported that staff has since adopted a policy of fax transmission, followed by US Mail delivery of the notice. This change has been well received by the airlines, and there have been no instances of non-receipt of notices since this policy has been in place.

- d. Support of staff recommendation for award of Food & Beverage RFP – ACTION

Airport Property Management Administrative Officer Roberta Notrangelo opened her presentation with a narrative that closely followed the memo provided for Commission members, which

recommended approval of a recommendation to San José City Council for award of a Food and Beverage Concession Agreement for Terminal A to Host Int'l, Inc. Following the memo's content, Notrangelo:

- outlined background regarding the previous contract held by McDonald's,
- noted a number of City policy requirements included in the RFP;
- noted certain requirements, minimum qualifications and terms and conditions stipulated in the RFP;
- noted that the biddable item was the percentage of gross revenue proposed to be paid to the City;
- outlined the RFP review process, which includes a Technical Committee of staff members and a RFP Panel comprised of volunteers outside the Airport Staff;
- reported that staff had sent 50 letters of interest to parties who had expressed interest in bidding on this concession, and that 13 individuals representing 8 different firms had attended the mandatory pre-proposal conference and tour;
- reported that two proposals had been received, one from Host Int'l Inc., and one from McDonald's, both of which were deemed to meet the required minimum qualifications;
- reported that the McDonald's proposal was deemed non-responsive due to provisions incorporated within their proposal that directly conflicted with the basic requirements of the RFP and the exemplar document;
- reported that the Host proposal met all requirements;
- noted a number of items included in the Host proposal that demonstrate compliance with both RFP requirements and the exemplar concession agreement.

In opening discussion, Chair Honaker asked Notrangelo to identify the provisions in the McDonald's proposal that were in direct conflict with the RFP.

Notrangelo replied that McDonald's had attached a six-page document to their proposal as an exhibit. The document listed 26 items that McDonald's protested or required changed and specified that 'the following provisions are a material portion of McDonald's proposal to enter into an agreement with the City.' It further specified that 'it is necessary to include these provisions in the agreement. In the event of a conflict with these provisions with the agreement, these provisions shall prevail.' Notrangelo then outlined six key provisions staff had identified as material conflicts to the City's requirements under the RFP:

- McDonald's shall not be obligated to accept existing employees.
- McDonald's requires the ability to operate in accordance with its standard policies and procedures regarding the management of its restaurant facility and relating to all personnel decisions, including the selection, management, discipline and compensation and training of its operator staff.
- McDonald's cannot grant the Director approval rights over its employees.
- The Director shall have no right to approve McDonald's managers or otherwise exert control over its employees.
- McDonald's rewrote the non-discrimination provision, essentially eliminating any reference to sexual orientation and perceived gender identity.
- McDonald's specified that 'unless otherwise required by law McDonald's requires the right to set the level of payment benefits provided to its employees.'

Ensuing Commission discussion elucidated the following points:

- The new requirements differ from the current contract with McDonald's in that the current contract does not require payment of a living wage;
- The new requirements also include any changes that have occurred to City policies since the original contract was accepted;
- The RFP is not materially different than other contracts within the City or most California airports;
- The RFP process stipulates that the City cannot return to proposers to ask why they have made exemptions;
- The process stipulates that the City cannot accept any change to their proposal after submission;
- The pre-proposal conference is designed specifically to address this issue;
- The items in questions were presented and read aloud at the pre-proposal conference, at which time McDonald's posed no questions or concerns;
- The process provides for a time period following the pre-proposal meeting for interested parties to submit in writing their questions or concerns, and to receive response to those questions from Airport staff; McDonald's did not avail itself of this opportunity.

Having exhausted the first round of questions from Commissioners, Chair Honaker opened the floor to five members of the public who had requested to speak.

Ron Gomes identified himself as the developer for HMS Host responsible for the San José Airport requested Commission support in the proposed Burger King opportunity in Terminal A. He noted that:

- they have been successfully operating under their current contract since 1999;
- despite the softness of the economy, they have increased revenue every year;
- they attribute their success to the quality of the products, brands and people they involve in their concessions;
- have introduced a number of new brands to the Airport, including Gordon Biersch, California Pizza, Max's Deli, and Starbucks;
- two years ago they won the 'Coveted Industry Award' for the Expedia.Com concession at SJC;
- Host enjoys labor peace, and has a collective bargaining agreement with Local Union 19;
- he anticipates no difficulty meeting all the terms of the RFP and exemplar agreement, with no exceptions.

Richard Buxton, Development Director for McDonald's Corporation provided copies of his comments to Commission members. Buxton stated that:

- McDonald's is disappointed and disagrees with the City's determination that the McDonald's proposal was 'non-responsive;'
- McDonald's has been operating at SJC for 14 years;
- their sales have ranged from \$2.2 MM to \$2.6 MM, and they have contributed more than \$1 M in rent to the City over the past four years;
- they have a history of positive employee relations;
- they send a signal of 'welcome' that no other brand can;
- McDonald's feels their proposal was timely, complete, met all the criteria;
- McDonald's accepts all the RFP requirements as a matter of fact;

- the clarifications submitted with their proposal usually become a point of discussion, but that when it appeared that they would not be a point of discussion, McDonald's submitted a letter of retraction;
- the City could have chosen to reject all the clarifications under item 1.12 of the RFP;
- by choosing not to reject the clarifications the City had defaulted to a non-competitive single bid process;
- performance data demonstrates average sales differential of almost \$0.8 M between McDonald's and Burger King free standing stores in the greater San Francisco area;
- when McDonald's replaced Burger King at LAX, sales increased from \$2.3 MM to \$3.2 MM;
- higher sales means greater revenue to the City, and shorter down time for required capital improvements;
- Dania and Cosme Fagundo have 22 years as McDonald's operators, own numerous McDonald's restaurants in the San José area, have operated the restaurant at SJC for 14 years, are Cuban political refugees and qualified dbe operators;
- HMS Host is a multi-billion dollar corporation based in Bethesda and owned by a foreign conglomerate.

Dania Fagundo noted that:

- they have operated the restaurant at SJC for the past 14 years, and have operated in the San José community for 22 years;
- buying a McDonald's restaurant is the American dream;
- they raised their family in San José;
- they have excellent employee relations, pay good wages, treat their employees with respect, and their employees are part of their family;
- they pay substantial taxes;
- they contribute to numerous community organizations.

Richard Buxton stated that in addition to the local charities Dania mentioned, the Fagundos contribute to Ronald McDonald House Charities. He provided statistics regarding the contributions RMHC Corporation makes statewide and in the operation of two local Ronald McDonald Houses – one in Palo Alto and one in San Francisco. Buxton stated that “in summation, our proposal is a local minority-ownership proposal vs. a large multi- foreign-owned corporation.”

Enrique Fernandez said that he would like to address the Commission wearing two different hats: as a citizen of San José, and also as a representative of Local 19, the union that represents the workers at all the food vending locations at the airport, with the exception of McDonald's. He noted that:

- he is also a political refugee, but from Uruguay not Cuba;
- he believes the Airport staff made a correct determination;
- he is happy that the McDonald's employees will have the opportunity to be retained by Host Int'l;
- the union has an outstanding relationship with Host;
- it is important that local companies not only provide to charities in need, but also provide a good living for their employees so that they need not rely on the charities for their well being.

Darwin Walker identified himself as an employee of Expedia.Com Café at the airport, and as a member of Local 19. He stated that:

- he has complete medical care for himself;
- when he retires he will get a monthly pension check;
- he has a voice on the job;
- he thinks staff has made a great recommendation;
- he thanks the airport for supporting San José's standards for providing quality jobs;
- he looks forward to joining with the current (McDonald's) workers.

Noting the end of public comment, Chair Honaker again opened the item to Commission discussion. This exchange included comments from Buxton, Fagundo, and Airport and City staff. Questions considered by the Commission include:

- **Why cannot staff accept McDonald's retraction?**

Deputy City Attorney Kevin Fisher read from the RFP that 'after receipt of a proposal by the City, no request for modification of the proposal and no claim for adjustment of any provision of the RFP shall be honored regardless of any claim by the proposer that it was not fully informed,' noting that this section had been both underlined and highlighted in the documents issued to proposers.

- **Could the City have extracted the clarifications under Section 1.12 of the RFP?**

Mr. Fisher replied Section 1.12 says that the City can reject a proposal for any reason; that section talks about rejection of the proposal.

Given the way in which the RFP is structured, staff cannot accept modifications to a proposal.

The only way to accept a modified proposal from McDonald's would be to redo the RFP. The City can reject all proposals for any reason.

- **What changes in requirements would result in the exclusion of a vendor who has had a successful relationship with the City for 14 years?**

Director Tonseth explained that in those 14 years, the City has adopted a number of policies, including a prevailing wage policy, a living wage policy, a sexual harassment policy, gender policies, and employee retention policies;

Because bids are based on proformas, new requirements that might change that proforma cannot be introduced during the term of that contract and so these policies had not been incorporated in the McDonald's contract.

- **Could the City have had a competitive bid if they had accepted McDonald's retraction?**

Tonseth responded that: conditions and terms of an RFP cannot be negotiated after proposals have been submitted;

RFPs are designed very specifically, to elicit a very specific response because too much time and money is involved to try to negotiate issues already adopted and approved by the City whenever a contract is issued;

Having seen the numbers from both proposals, he would not conclude that just because there is only one player left standing that this is not a competitive bid; it is very competitive.

- **Does Host have a "weighted advantage" because they hold the other food and beverage concessions in the airport; does this "build into" the new terminal a monopoly?**

This issue should appropriately be considered when, in three years, the Airport issues RFPs for the North Concourse and all the Food and Beverage concessions, which terminate in 4.5 years.

- **Why did McDonald's give the City the opportunity to reject their proposal? Why did they submit a non-compliant proposal? Why did they not bring forward their issues in the specified time frame?**

Mr. Buxton replied that what seems to him to be an anomaly is the very strict adherence to the RFP and the seeming intransigence to have any discussion. According to McDonald's interpretation of Section 1.12, the City does have the ability to reject any portion of the bid.

Commissioner Tedesco testified that he had attended the pre-proposal meeting and that it was very clear that any questions should be submitted before submitting a proposal, and should not be included in the proposal.

An unidentified member of the audience attested to also attending the pre-proposal meeting, and said "It was clear: you will do what's in this document or your bid is not going to be taken."

- **Does the City have underlying policies that create unreasonable conditions that result in a too-restrictive bidding field?**

Director Tonseth responded that he does not think this is the case; he does not remember ever having had the field narrowed to a single responsive bid in the past.

Other points made during the discussion included:

- Clarification that the RFP process is not a negotiation.
- The Host Int'l portfolio also includes minority-owned businesses, including at least two in the San José community.

- The Fagundos have employees who have been working for them for more than 15 years; they treat their employees very well. This issue is the result of a technicality and it is affecting their family.
- A number of Commission members expressed their belief that staff conducted itself properly and had correctly followed all procedures in issuing the RFP and in reaching their recommendation for award.

Commissioner Biesterveld made a motion to concur with staff recommendation for award of the Food and Beverage RFP, which was seconded by Commissioner Tedesco. Commissioner Tebo expressed concern over the lack of a competitive bid. Commissioner Biesterveld asserted that there was a competitive bid. Commissioner Tompkison-Graham expressed that she was uncomfortable with a single bidder, and asked if there is a reason the RFP cannot be re-issued. Tonseth replied that Council direction was that the current contract not be extended beyond June 30. Commissioner Tedesco offered the opinion that it will be difficult for single-operators to engage in opportunities at the airport, and that Host seems to be assuming a role of a master-contractor, and that that is an issue the City Council needs to understand: that the only way a single-operator will be able to come into the airport is if they are aligned with Host. Commissioner Tedesco acknowledged that that may be the way the airport should be run, but that it is now being done by default rather than by direct decision-making. Staff read for confirmation the motion on the table. Commissioner Tebo expressed concern that the motion did not convey any of the concerns voiced at the table. Council Member Reed advised the Commission that they could follow this motion with any additional motions or recommendations they would like to put forward, expressing the Council's desire to hear from the Commissioners. The motion failed 2-4, absent Commissioner Edwards, with Commissioners Honaker, Simpson, Tebo and Tompkison-Graham dissenting.

Director Tonseth concluded the item, advising the Commission that staff would be taking the recommendation to Council, but that staff would try to accurately convey to Council the concerns expressed by the Commissioners.

e. Report and Discussion re: Ground Transportation

Deferred to 4/5/04

**6. STANDING ITEMS**

a. Security Update

- General Aviation Badging

Commissioners Noel Tebo and Don Simpson requested a motion to extend the six badge holders "until a complete security plan has been developed and accepted by the Airport and the City Of San José, the six will be integrated back into the existing list; these individuals will be considered part of the existing access badge list for the GA side for their continuance and it is at the discretion of the base lease holder and the City." Discussion clarified that this inclusion would be continuing, the intent was to establish those six badge holders as part of the existing

list. Commissioner Simpson clarified that no fault had been found with the staff's proposed badging process, except for the initial exclusion of these six. It is the subcommittee's intention that with this action, they can set aside the issue of badging, and can go on to consider the more comprehensive issue of GA Security. Commissioner Simpson made the motion by reference. Seconded by Commissioner Tedesco, the motion passed unanimously, absent Commissioner Edwards.

b. Master Plan Project

Director Tonseth reported that staff had brought to Council the same update regarding the North Concourse and transitional architecture report that had been presented to the Commission in February. He reported that the presentation had drawn a diverse reaction that resulted in a lively discussion that elicited a range of feedback the Airport had hoped to achieve, and which resulted in the direction to have a Council workshop in the airport offices to present a more thorough understanding of the development of the airport architecture, bringing together the factors of 'look and feel' and 'how it operates.' Commissioner Tedesco offered the observation that Council seemed less concerned over the art of the architecture than its functionality/customer-service/usability. Tonseth noted that it is the responsibility of staff to bring Council's level of awareness and familiarity with the Airport development closer to that of the Commission. Council Member Reed observed that two issues that were perhaps the most problematic were the 'Front Door' concept and the parking garage. Carl Honaker referenced the Community Meetings, and acknowledged that the parking garage had been brought up at Nora Campos's recent meeting. Discussion noted that the 'next step' was the continuation of community outreach, with the art program integrated in those programs. Meanwhile, staff will work to identify a date in April for the Council workshop, with the intent to offer an informational Council session or workshop every month thereafter.

c. Status Report Concerning Regional Aviation Issues

None

d. Airport Environmental Issues

Staff announced that the Commission has received a request for two curfew citation hearings from United, to be scheduled April 5. Commission members agreed to schedule the hearings at their regular Rules Committee meeting on March 18, 2004.

Commissioner Edwards will report on ANAC at the April 5, 2004 Commission Meeting.

e. Commission Liaison Reports

The next Art Steering Committee meeting is scheduled for Thursday, March 4, 2004.

The Chamber's Aviation Committee will be meeting later this month.

*As indicated below, Airport Commissioners may give status reports of their activities and meetings as assigned liaisons under item (1) below but may not engage in discussions of specific matters unless a specific topic is agendaized under item (2) below.*

1. *Liaison Reports on activities and meetings with community and private organizations, public entities and officials, and other interested parties as assigned.*
2. *Specific Reports and Topics for Discussion.*

## **7. ANNOUNCEMENTS**

Commission member discussed the Commission vacancy postings, with the application period having closed the previous Friday, February 29. Staff reported that the Clerk's office indicated there had been a large number of applications received for the two open positions.

## **8. PUBLIC COMMENT**

Doug Rice, a member of the SJC General Aviation community raised the issue of space constraints in the new terminal, which had been discussed briefly at a previous meeting, and Commission had considered putting on a future agenda. Director Tonseth expressed his opinion that this issue is not yet timely. Relaying that there is a Council Direction to return to Council when the Central Terminal design is undertaken, with any new considerations they may need to address regarding space. In the meantime, design of the North Concourse will go forward, with the intent of providing space for all current and anticipated needs, including space reserved for an automated people mover and all necessary area for TSA baggage screening.

## **9. ADJOURNMENT**

Motion by Commissioner Tompkison-Graham, seconded by Commissioner Simpson, to adjourn passed by unanimous vote, absent Commissioner Edwards. Meeting adjourned at 8:19 PM.