

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a

ACTION ITEM

REVISED

Date of Meeting February 14, 2012

DATE: February 10, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Mary Gin Kennedy, Director, Commission Services

SUBJECT: Commission Motion concerning Seattle-Tacoma International Airport's Concession Program

ACTION REQUESTED:

Request the Port of Seattle Commission to adopt a motion giving policy direction to the Chief Executive Officer (CEO) as the staff creates a "Concession Master Plan" to guide the successful re-development of the Seattle-Tacoma International Airport ("Airport") concessions program in 2015 through 2017.

SYNOPSIS:

The Commission has consulted with outside legal counsel and developed Concessions Programs Goals for the Airport concessions program. The motion reflects the Commission's recognition of the many compelling interests that need to be addressed as the concessions program is re-developed over the next few years. This memorandum outlines the Commission's efforts to balance the diverse values in implementing a policy governing current and future concession leases and provides a chronology of these efforts.

BACKGROUND:

With this motion, the Commission addresses a matter that has warranted considerable deliberation since the fall of 2010 among Commissioners, Port executive and management staff, and our many partners associated with the Airport concessions program.

Here is the documented chronology of the Commission's efforts to articulate a worker retention policy for the Airport concessions program:

- On November 10, 2010, the Port's General Counsel provided a legally privileged memorandum to the CEO under the subject heading of "Worker retention policy and LAWA [Los Angeles World Airports] resolution." The memo was prepared in response to a proposal from UNITE HERE Local 8 and United Food and Commercial Workers Local 21 requesting that the Port adopt labor harmony and worker retention requirements for the

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Airport concessions program. The memorandum addressed the Port's legal constraints and risks if the Port were to implement these requirements, which are similar to the requirements imposed on concessionaires at LAWA, and analyzed them in the context of the *CityIce v. Port of Seattle (CityIce)* and *Flying Eagle Espresso, Inc. v. Host International Inc. (Flying Eagle)* lawsuits. In *CityIce*, the Port was permanently enjoined in November 2000 by U.S. District Judge Barbara J. Rothstein from "any conduct that interferes, either by the Port's actions or inactions, with the exercise of the federally protected rights of CityIce, fishing vessel owners or operators, or other third parties using Port facilities to assign work to their own employees. Without limitation, this injunction prohibits the Port from entering into any future agreement or adopting any future tariff, policy or other requirement that interferes with those federally protected rights."

- The General Counsel also provided a copy of the memorandum to the Commissioners on November 10, 2010.
- Since January 2011, public testimony has been given at seven Commission meetings on this issue with a total of 62 people testifying. At five of the meetings, the issue was not an agenda item.
- At the July 26, 2011, Commission meeting, the Port Commission discussed worker retention practices nationally and examined a proposed directive to govern the Airport concessions program during the 2015 to 2017 period. Thirteen people provided written and oral testimony, and a petition was submitted for the record signed by 35 Airport concessions workers requesting the adoption of a worker retention policy.
- On July 29, 2011, the Port's General Counsel provided a legally privileged memorandum to the Commission entitled "Liability if *CityIce* Injunction is violated," which was drafted in response to a Commissioner's request.
- On December 13, 2011, Airport staff briefed the Commission in public meeting on the results of the stakeholder meetings conducted between June and November 2011. Twenty-four people provided written and oral testimony during this meeting.
- Also on December 13, 2011, the Commission passed a motion to retain outside legal counsel to review a worker retention policy for the Airport concessions program. The motion stated: "The Port of Seattle Commission shall retain its own outside legal counsel to provide an independent review and analysis of the legal basis for a worker retention policy and any related issues as determined by the Commission." The Commission was seeking an approach that addressed concerns of job security for workers currently employed at the Airport while providing meaningful business opportunities for Airport Concessions Disadvantaged Business Enterprises (ACDBE) and other small concessionaires. A copy of this motion is attached to this memorandum.

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- On December 29, 2011, the Port's General Counsel provided a legally privileged addendum to update the November 10, 2010, memorandum by analyzing the effect of two out-of-state court decisions decided in 2011 on the Port's situation.
- On January 10, 2012, the Commission President announced that Mark Hutcheson had been selected as outside counsel as provided by the December 13, 2011, motion.
- On January 23, 2012, the Commission President, on behalf of the Port of Seattle Commission, sent a letter to members of the state legislature on the subject of "The Concessions Program at Seattle-Tacoma International Airport," which stated, *inter alia*: "The Commission must shape its policy around earlier litigation with our tenants which may have an impact on the Port's ability to regulate certain lease terms with our airport concessionaires....Contingent upon legal advice from outside counsel, the Port of Seattle will endeavor to maximize continued employment opportunities and job security for those qualified workers wishing to continue working in the concessions program in the event their employer does not remain an airport lessee." A copy of this letter is attached to this memorandum.
- At the January 24, 2012, Commission meeting, the Commission President reported that the Commission had sent a letter to members of the State legislature (as referenced above) and that outside legal counsel had provided preliminary recommendations that the Commission could use in directing the development of an Airport concessions policy protecting concessions workers within the constraints of the *CityIce* permanent injunction. Nine people testified in favor of worker retention at the meeting.

As is apparent from the above chronology, the Commission has examined various options for pursuing a worker retention policy for the Airport concessions program for nearly 16 months.

- Additionally, we explored the approaches taken at San Diego International Airport, Denver International Airport, and Los Angeles World Airport.
- We questioned internal and external legal counsel about the scope and applicability of the *CityIce* permanent injunction issued in November 2000 by Judge Rothstein.
- We reviewed the September 2005 order by U.S. District Judge Marsha J. Pechman on the *Flying Eagle* case, which was settled out of court by the Port and Host International for \$1.2 million.

CONCLUSION:

The Commission has taken into account diverse perspectives as well as a complex legal environment that constrains our policy options. We seek to balance these issues while creating a path that helps this highly successful Airport concessions program continue to be a nationally recognized leader in the concessions field.

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Therefore, the Port of Seattle Commission has developed Concessions Program Goals, as outlined in the motion, as the basis for the Airport concessions program. We are committed to a program that protects workers' rights; encourages job security; provides good jobs at fair wages for our citizens; attracts national and local companies as concessionaires; provides meaningful opportunities for ACDBEs and other small businesses; expands employment opportunities for hundreds of people in the years ahead; offers a superior travel experience to visitors to the Airport; generates significant non-airline revenue for the Airport; and strengthens the Seattle and Pacific Northwest sense of place.

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Motion of the Port of Seattle Commission concerning the Concessions Program at Seattle-Tacoma International Airport.
- January 23, 2012, letter sent to state legislators about the Airport concessions program.
- Motion of the Port of Seattle Commission to retain outside counsel adopted on December 13, 2011.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- On December 13, 2011, the Commission was briefed on the results of the concessions program stakeholder meetings conducted between June and November 2011. The Commission also passed a motion to retain outside counsel to provide an independent review and analysis of the legal basis for a worker retention policy and assist the Commission in finding an approach that addresses the concerns of job security for workers currently employed at the Airport while providing meaningful business opportunities for Airport Concessions Disadvantaged Business Enterprises and other small concessionaires.
- On July 26, 2011, the Commission discussed worker retention practices and examined a proposed directive to govern the concessions program during the 2015 to 2017 re-development period.