

February 9th, 2024

Dear San Jose Airport Commissioners,

During my eight years (six of which as chair) on the San Jose Airport Commission (2015-2023) we dealt with many issues. As such, I wanted to make you aware of the two major issues (Digital Billboards and Downtown Building Heights) that came before our commission during that time, one of which was recently in the news. The other will have long lasting impacts on SJC. **Some of the newly appointed Airport Commissioners already received this correspondence, however the links to files were deleted. The “links” have all been restored and reactivated.**

Today, Commissioner Hendrix is the only one left of our original team that did extensive research on both of these subjects. As such, I thought I would send you a little background on these issues, just so you have some historical perspective.

Clear Channel Billboard Issue 2021 & 2022:

The most recent issue was SJC's contract with Clear Channel, and the airport staff's recommendation to San Jose City Council to award two digital billboards to that company. As there are very recent developments on this topic, including a court judgement against the City of San Jose, I thought I should provide you with extensive information on this topic.

In this case the Clear Channel contract dated back to approximately 2007, and was amended I believe about six times. The original contract clearly prohibited outdoor billboards. Changes to the San Jose City Council Policy (6-4) in 2018 eliminated a more than 46+year ban on billboards on city-owned property in San Jose. However, that policy change required: "The City will solicit proposals for Signs to be approved pursuant to this Policy. City Council direction will be obtained prior to the commencement of any solicitation process." (This issue was brought up in our airport commission meetings regarding this subject).

The Clear Channel Billboard Project first appeared on our Airport Commission agenda on May 10, 2021, and was deferred to our August 9, 2021 meeting at the recommendation of staff. Prior to the Airport Commission meeting, Commissioner's Pyle, Hendrix and Connolly submitted questions regard this agenda item. These questions were also submitted to the Airport Commission public comment for the meeting, as well as during the 30-day review for the US 101 Airport Electronic Signs Final Initial Study period ending August 25, 2021, (See link below)

Commissioner's Pyle, Hendrix and Connolly Questions, August 9th, 2021

<https://www.dropbox.com/scl/fi/p2l4xppmipj7lvr3lz99y/210809-Airport-Commission-Meeting-Connolly-Hendrix-Pyle-Submission-Regarding-Agenda-Item-VIIIA-08-09-21.pdf?rlkey=9j3nq9qntfpdur9v6lkgkeq7u&dl=0>

The commission approved the following motion (8-0-1 absent) on August 9th, 2021: "To hold a special meeting at least two weeks prior to council (SJ City Council) or include Clear Channel Electronic Billboards (on the agenda) at the November meeting, whichever comes first, so commission can provide a recommendation."

US 101 Airport Electronic Signs Final Initial Study/Addendum Response to Comments - October 2021 - "Airport Commissioner Comments and Answers - Page 13":

<https://www.dropbox.com/scl/fi/tgyeik1enxln411kd2esg/ER21015-ISAddendum-Response-Oct-2021.pdf?rlkey=0fkjb00rb7yytlvkyl72rcein&dl=0>

At the November 8th, 2021 meeting of the commission, airport staff provided a report that would be moved forward to SJ City Council on the Clear Channel Project. After hearing public discussion and the commission discussing the issue, **a motion was made to "Reject the Staff Report". The motion to reject the staff report passed (7-2-0 absent.)**

The issue was presented to San Jose City Council on November 30th, 2021, and upon a motion and vote of council members, the issue was returned to the San Jose Airport Commission for further consideration.

On January 26th, 2022, the San Jose Airport Commission held a "Special Study Session" on the topic of the Clear Channel Electronic Billboards, where the following entities and individuals were allowed to speak. This was set up by me to be more of a public hearing on the topic, so as to allow all concerned parties to provide input, prior to a "Special Meeting of the San Jose Airport Commission," which would occur immediately following the "Special Study Session". Presenting parties were San Jose International Airport staff report, Clear Channel, No Digital Billboards, Outfront Media, JD Powers & Associates, comments from the public as well as a presentation from Commissioner's Connolly, Pyle, Hendrix (see link below).

Commissioner's Connolly, Pyle & Hendrix presentation, January 26th, 2022

<https://www.flysanjose.com/sites/default/files/commission/Connolly%20-%20Hendrix%20-%20Pyle%20-%20Questions%20for%20220126%20Meeting.pdf>

The Airport Commission discussed what they heard in the study session and offered their individual opinions and the following recommendations:

Motion: To accept the Amendment to the to the Norman Y. Mineta San Jose International **Master plan Environmental Impact Report** (SCH #2018102020)

Action: Upon motion by Commissioner Hencken, seconded by Commissioner Head, **the motion passes. (5-2-0 with 2 absent)**

Motion: To proceed with the two billboards as presented by staff.

Action: Upon motion by Commissioner Hencken, **the motion fails for lack of a second.**

Motion: To not proceed with the two billboards at the Norman Y. Mineta San Jose International Airport.

Action: Upon motion by Commissioner Head, seconded by Vice Chair Pyle, **the motion passes. (5-1-0 with 3 absent)**

Motion: Airport Commission requests that the San Jose City Council re-evaluate Council Policy 6-4 and Title 23 of the San Jose Municipal Code in view public opposition to billboards in San Jose and San Jose's Climate and Vision Zero Policies.

Action: Upon motion by Vice Chair Pyle, seconded by Commissioner Hendrix, **the motion passes. (5-1-0 with 3 absent)**

Motion: **Airport Commission makes the following recommendation to the San Jose City Council:**

- Airport should study multiple way to generate unencumbered revenue beyond digital billboards
(e.g. solar farms, property development, etc.)
- The city should be enforcing illegally constructed digital billboards (e.g. Highway 87, and 101/880) as well as those billboards that are blighted,
- **If the city proceeds with the digital billboard proposal then**
 - o Green power mitigation above and beyond San Jose Clean Energy
 - o Billboard illumination and operation times should be coordinated with Lick Observatory for both digital & traditional billboards. Dark hours between midnight and 6 AM, minimum.
 - o **The city should closely examine the RFP process for future billboards.**

Action: Upon motion by Commissioner Patel, seconded by Commissioner Hendrix, **the motion passes. (5-1-0 with 3 absent)**

The Clear Channel Billboard Project was returned to San Jose City Council, with the San Jose Airport Commission's recommendation:

Not to proceed with the two billboards at the Norman Y. Mineta San Jose International Airport.

On February 15, 2022, The SJ City Council voted 9-2, to approve Clear Channel Outdoor to build two large electronic billboards at San Jose International Airport, near Hwy 101 & Hwy 87. Council members that dissented were Mahan and Peralez.

SJ Mercury News article: February 16, 2022

<https://www.mercurynews.com/2022/02/15/we-did-open-the-floodgates-san-jose-oks-new-digital-billboards/?clearUserState=true>

or

<https://www.dropbox.com/scl/fi/5girc4rdn6yudl5j1xhka/San-Jose-New-digital-billboards-at-airport-ends-longtime-ban.pdf?rlkey=aycb98kzrw6oacntdv5jhgbdu&dl=0>

On December 20th, 2023, the Superior Court of California entered judgement AGAINST the City of San Jose, San Jose City Council, SJ Airport Department, Director of Aviation John Aitken, and DOES 1 through 20, Inclusive. The entire Order Re: Writ of Mandamus; JUDGEMENT, is in the link below. (Note: Page 8 mentions the Airport Commission)

Superior Court of California, County of Santa Clara - Judgement: December 20, 2023

<https://www.dropbox.com/scl/fi/xx4lfk6mgoz7itf0i8tpk/Order-Writ-of-Mandamus-Judgement-23-12-20.pdf?rlkey=aqng04xr7jell03xi5jss9hyh&dl=0>

San Jose Spotlight story: January 6, 2023

<https://sanjosespotlight.com/billboard-giant-outfront-media-wins-lawsuit-against-san-jose/>

Summary on this issue:

The San Jose Airport Commission took our task seriously and worked hard to delve into the issues and concerns surrounding the award of this billboard contract. The majority were concerned whether or not the airport and the City of San Jose really had the legal authority to make the contract award, based upon the information we reviewed. Some Airport Commissioners never believed the Airport or the City legally had the authority to simply make an award, without going to a competitive bidding process. Of course, there were other factors that also went into our decision, including public opinion, environmental impacts, energy consumption, as well as other issues of concern.

In the end, based upon the current Superior Court Order: The San Jose Airport Commission was correct in our assessment and decision, **NOT to support the airport staff recommendation to San Jose City Council**, to award the digital billboard contract to Clear Channel.

Downtown Airspace and Development Capacity Study, 2018 to Present

In 2019, the San Jose Airport Commission was heavily involved in doing research on this issue. In simple terms, the City of San Jose wanted to raise building heights both downtown, and in the San Jose Diridon Station (Train station) area. The challenge is O.E.I. (One Engine Inoperative). Every commercial airplane must account for an emergency involving the loss of an engine on takeoff. They must ensure that their overall weight is low enough, so that if an engine failure occurs, the airplane can still take off and clear any obstacles. (Obstacles in this case would be buildings in downtown San Jose.) This is not an issue in north flow (taking off toward the Bay).

I won't go into all the details, but will provide you the San Jose Airport Commissions recommendation to San Jose City Council: January 28, 2019

<https://www.dropbox.com/scl/fi/117mpr8bjfn5nc9p4iyfr/Recommendation-FINAL-10B-Approved-by-Airport-Commission-STAMPED-01-24-19.pdf?rlkey=5t478etdk5po0rfndchy0kv2d&dl=0>

The SJ City Council did not accept our recommendation and instead approved airport staff recommendation for an increase to the maximum building heights allowed under T.E.R.P.S. both in downtown San Jose and throughout the Diridon Station area.

It will still be several years until we know the full impact of this decision. However, we have already seen numerous airlines pull out of San Jose since 2018, when this hard push began. In fact, we have lost most of our long-haul foreign airlines:

- ANA (All Nippon Airways)
- Air China
- Air Canada
- Aero Mexico
- British Airways
- Hainan Airlines
- Lufthansa

Since 2018, only one international airline that remains, Volaris. SJC added an additional international airline, Zip Air (Japan's low-cost airline), in the summer of 2022.

It is my understanding that challenges are being felt on some of our Hawaii flights and some East Coast flights as well, when we are in South Flow (while taking off over and flying over downtown San Jose). These are all longer-haul flights where you need maximum fuel capacity and can only reduce weight by removing passengers and/or cargo in order to meet your takeoff OEI weight limitations.

The former Aviation Director Kim Becker, her staff and the City of San Jose, invested millions of dollars and, worked so hard to develop San Jose into viable international airport. Today, SJC is at risk of losing this status and being relegated as simply another regional airport, due to the decision, in my opinion, that allowed for an increase in downtown building heights.

What does this all have to do with you? As a San Jose Airport Commissioner, I want to encourage you to ask questions and conduct your own research, when it is appropriate to do so. In keeping with the tradition of the airport commission, please continue to promote SJC and do what is in the best interest of the citizens of San Jose, and the patrons that utilize our airport.

Good luck to you in your journey on the San Jose Airport Commission. If I can ever be of assistance, or answer any questions, please don't hesitate to reach out to me at 408/499-3843 or via email at acsarmored@aol.com.

Sincerely,

Dan L. Connolly

Dan L. Connolly, SJ Airport Commissioner 2015-2023
855 Civic Center Dr #8
Santa Clara, CA 95050-3962
408/241-0910 Office
408/241-2060 fax
408/499-3843 mobile
acsarmored@aol.com