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# CITY OF POMONA

## JOINT MEETING

## STAFF REPORT

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May 1, 2019

To: Honorable Mayor and Members of the City Council and  
Chair and Members of the Planning Commission

From: Linda Lowry, City Manager

Submitted By: Anita D. Gutierrez, AICP, Development Services Director  
Christi Hogin, Interim City Attorney

**SUBJECT: STUDY SESSION ON CONCEPT OF SPECIFIC PLAN FOR FAIRPLEX  
IN LEIU OF F-ZONE AMENDMENTS**

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### **RECOMMENDATION:**

Receive and file report

### **EXECUTIVE SUMMARY:**

The purpose of the study session is to provide an overview of the process of developing and adopting a specific plan for the Fairplex. Future public hearings will consider proposed regulations and content of the specific plan, including any potential environmental impacts of the proposals. The study session is to introduce the concept of specific plans as a mechanism for land use regulation.

**FISCAL IMPACT:** There is no significant cost to the City to consider a specific plan application. The applicant bears the cost of preparing and processing a specific plan, including any environmental review.

### **BACKGROUND & RELEVANT LEGAL CONCEPTS**

**1. Planning and Permitting.** The City regulates the use of private property to promote the common good. Land development control has two aspects. Through the *planning* process the City sets community goals and establishes the policies to advance those goals. The City's planning tools include the General Plan (including the 2014 Comprehensive General Plan Update); the Zoning Ordinance; the Corridors Specific Plan focusing on the four major arterial streets of Holt, Mission, Garey, and Foothill Boulevards; and the several other specific and area plans previously adopted.<sup>1</sup>

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<sup>1</sup>The City's specific and area plans include the Downtown Pomona Specific Plan, Kellogg Plaza Specific Plan, Mission 71 Business Park Specific Plan, Pomona Corridors Specific Plan, Pomona North Metro Link Station Area Plan, Pomona Valley Hospital Medical Center Specific Plan,

Together, these documents designate zones for all property in the city, establish the permissible uses of land in each zone, and set forth the development standards applicable to property in each zone.

Through *permitting* the City evaluates individual applications of the general rules to specific properties. If the City approves a project application, it may impose conditions on that approval. The conditions either must (1) be related to making the use of the property compatible with surrounding uses or (2) mitigate impacts that otherwise will be caused by the development. The existing circumstances are the responsibility of the public generally to deal with. The potential adverse impacts of new development are the responsibility of the property owner proposing the development.

As discussed below, specific plans are a planning tool but also may be as detailed as a development permit review. In this way, a specific plan offers an excellent mechanism for addressing land use challenges with detailed responses that are tailored to the particular area. Because the specific plan is an ordinance, the City has fewer restraints on the types of restrictions it can impose to improve a neighborhood than the City does through permits and conditions.

**2. *Private Property Rights and Due Process.*** The federal and the state constitutions protect private property rights. Both planning and permitting decisions require a mindful balance of the common good promoted through regulation on the one hand and, on the other hand, the individual right to economically viable use of property.<sup>2</sup> Land use regulations must be reasonably related to a legitimate government purpose. This means that the provisions of any City ordinance must be related to its purpose (and its purpose must serve the public health, safety or welfare). The City's rules cannot require a private property owner to disproportionately or unfairly shoulder a burden that, in all fairness, should be borne by the public.

The constitution does not protect private property owners from every economic loss or diminution in value. There are good reasons for this. For example, processing development applications and analyzing the potential environmental impacts of proposed projects takes time. During the permitting process, a property owner may suffer economic loss, unable to develop or use the property without government permission. The courts have recognized value in a city's careful deliberation and the need to avoid rushed government decisions. Therefore, the law accepts reasonable delay, resulting from a thorough application review made in good faith, even if use of the property is affected during the consideration of the application.

In summary, the City may undertake a planning process with public hearings that will develop uses and development standards that will better implement the General Plan in a particular area. Property owners should expect that the planning process will take time but not take forever (that

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Mountain Meadows Specific Plan , Phillips Ranch Specific Plan and University Corporate Center Specific Plan

<sup>2</sup>The Fairplex organization is the Los Angeles County Fair Association. LACFA is a private, non-profit mutual benefit 501(c)(5), self-funding organization that is not governed by the city, the county or the state. LACFA receives no government subsidies for daily business operations. The County owns 421 acres of the fairgrounds but LACFA has a long-term ground lease in that Fairplex fairground property. LACFA also owns an additional 66 acres in the area.

is it won't cause unreasonable delay). Property owners should expect that all identified impacts of their projects will have to be mitigated, if possible, but that they will not be responsible for existing conditions that they did not cause.

## **SPECIFIC PLANS**

State law requires the City to adopt a General Plan that includes seven mandated elements (Land Use, Circulation and Infrastructure, Housing, Conservation, Open Space and Recreation, Noise, and Safety and Health).

A specific plan is a tool to implement the General Plan in a particular area. The zoning code identifies five purposes of specific plans:

1. To promote and protect the public health, safety and welfare;
2. To minimize the intrusion of new development into environmentally sensitive areas;
3. To ensure the timely provision of essential public services and facilities consistent with the demand for such services;
4. To promote a harmonious variety of housing choices and commercial and industrial activities; to attain a desirable balance of residential and employment opportunities, a high level of urban amenities, and preservation of natural and scenic qualities of open space; and
5. To facilitate quality development within the city by permitting greater flexibility and encouraging more creative and aesthetically pleasing designs for major urban development projects subject to large scale community planning.

A specific plan may be as general as setting forth broad policy concepts or as detailed as providing direction to every facet of development. A specific plan can specify the type, location, and intensity of uses, the design of structures, and the capacity of infrastructure for an specific area. A specific plan generally replaces the zoning and applicable development standards in the zoning code.

Pomona City Code Section .584 establishes the procedures for the preparation, processing, adoption and amendment of specific plans. The City will consider a specific plan for areas that are at least 15 acres. The specific plan also includes the land use regulations, site development regulations, and performance standards designed to govern each use identified by the land use plan, which can include the following provisions:

1. A listing of allowable uses within each use area, including such qualifying descriptions or definitions and requirements for conditional use permits, as may be applicable;
2. Regulations governing residential density, site coverage, lot size and dimensions, yard requirements, usable open space, landscaping and performance standards;
3. Required yards, landscaping or other site development regulations applicable to adjacent other zoning districts at the perimeter of the specific plan and boundaries;

4. Supplemental illustrations establishing the basic community architectural character, environmental character and environmental design qualities to be attained throughout the specific plan and within particular portions of the district;
5. A discussion of the architectural, landscaping, streetscape and other urban design features for development within the specific plan. The discussion of standards and concepts shall be specific in nature. Streetscape design concepts shall include, but not be limited to, plant palette, landscaped lots and medians, fence and wall material and placement, lighting, street furniture and equipment screening; and
6. For properties having natural slope areas prior to grading of fifteen percent or more, and which propose development in these areas, hillside development standards shall be prepared and included in the document. The standards shall include, but not be limited to, measures to minimize grading impacts, erosion control landscaping, modified street standards, drainage structures compatible with the land form, fencing details, and maximum height or percent of slope in yard areas.

The Planning Commission will hold a noticed public hearing to consider a proposed specific plan and make a recommendation to the City Council as to whether the City should approve, modify, or disapprove the specific plan. The City Council considers whether to approve, approve with modifications, or disapprove a proposed specific plan based on these findings: I.

1. The proposed plan systematically implements and is consistent with the general plan;
2. The proposed plan will not be detrimental to the public interest, health, safety, convenience, or welfare of the city;
3. The subject property is physically suitable for the requested land use designation(s) and the anticipated land use development(s);
4. The plan provides for the development of a comprehensively planned project that is superior to development otherwise allowed under conventional zoning classifications; and
5. The proposed plan will contribute to a balance of land uses so that local residents may work and shop in the community in which they live.

The City may charge the project applicant the cost of preparing a specific plan for adoption, amendment, or repeal. Gov't Code §65456.

## **CEQA**

Before approving a specific plan, the City must identify any potential significant environmental impacts that may result from the proposal and consider how those impacts can be mitigated to a level that is less than significant. This is required by California Environmental Quality Act (CEQA), which two basic goals:

- (1) to provide decision-makers with information regarding the potential adverse environmental impacts of a proposed action; and
- (2) to require that the City impose all feasible conditions that would lessen the adverse environmental impacts of a project.

For a project of the scope of a specific plan, it is likely that a full environmental impact report (EIR) will be required. An EIR is required if an initial study of the project identifies evidence that supports a fair argument that the project may result in significant adverse environmental impacts. The standard to trigger the need for an EIR is very low because the state policy favors studying potential impacts, even where it is later determined that the impacts can be mitigated to a level that is less than significant. In this way, California promotes informed decision-making and encourages development that is designed to be compatible with the City's neighborhoods and environment.

An EIR must contain a description of the physical environmental conditions at the project site and in the project vicinity as they exist at the time the environmental analysis is commenced. This environmental setting is the "baseline" physical condition from which the City measures whether an impact is significant.

The state CEQA Guidelines set forth in detail the required contents of an EIR. Generally, an EIR must (1) accurately describe the proposed project; (2) identify and analyze each significant environmental impact expected to result from the proposed project; (3) identify mitigation measures to reduce those impacts to the extent feasible; (4) evaluate a range of reasonable alternatives to the proposed project; and (5) include a statement briefly indicating the reasons for determining that any effects on the environment are not significant and, thus, have not been discussed in detail.

Additionally, an EIR must describe in a separate section any significant effects on the environment that cannot be avoided if the project were implemented and any significant effects on the environment that would be irreversible if the project were implemented.

A draft EIR is prepared and circulated to the public and affected public agencies for review and comments for a specified period of time (usually 30-45 days). Once all the comments are received, the City prepares written responses to the comments. The response to comments must provide reasoned, good faith analysis regarding all significant environmental issues raised in EIR comments. The final EIR consists of the draft EIR plus the responses to comments.

An adequate EIR facilitates informed decision-making which takes into account the environmental consequences of a project. An EIR should reflect a good faith effort at full disclosure. The City must certify that the final EIR was completed in compliance with CEQA. The City must also certify that the EIR was reviewed and considered by the decision-making body before project approval and that the EIR reflects the independent judgment of the City.

The City must also address each significant impact identified in the EIR and the impact of the project as a whole. For each significant environmental impact identified in the EIR, the City must find that the evidence supports one of three conclusions: (1) the impact has been mitigated to a

level of insignificance; (2) mitigation measures are the exclusive responsibility of another public agency which has adopted or will adopt them; or (3) specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

The City also must find, based on substantial evidence, one of the following: (1) the project will not have a significant effect on the environment; or (2) the significant effects of the project have been eliminated or substantially lessened when feasible and the remaining significant environmental effects are acceptable because the benefits of the project outweigh its unavoidable adverse environmental impacts. This second finding is commonly known as a "statement of overriding considerations" and is necessary to approve a project when the EIR demonstrates the project will create adverse environmental impacts which cannot be mitigated to a level of insignificance.

If mitigation measures are required to reduce an otherwise significant impact to a less-than-significant level, whether through an EIR or a mitigated negative declaration, the City must adopt a reporting or monitoring program to ensure compliance with those mitigation measures. The mitigation measures must be enforceable through permit conditions, agreements, or other mechanisms.

CEQA is a demanding public process that benefits the public, the property owner, and the City by providing information about how to modify development to avoid adverse impacts.

## **WHAT TO EXPECT**

Land use activities at the Fairplex are currently governed by the zoning code, in which the area is designated in the F-zone. The Fairplex organization has been involved in long-range planning and has approached the City in response to the City's concerns that the current regulations are inadequate to create harmony between the Fairplex and its residential neighbors. The City was poised to consider amendments to the F-zone, which the City may do (subject only to the constitutional consideration discussed briefly above). The Fairplex requested that the City instead undertake the more comprehensive and more collaborative approach of developing and considering a specific plan for the Fairplex.

The City Council has not yet taken action on that request. This workshop was a prerequisite to taking action; however, staff has negotiated a proposal in which the Fairplex would not host any raves or cannabis-related events and Fairplex would obtain permits for any music events, which would be conditioned to minimize noise, traffic and other impacts of the events.

If approved, the City would not otherwise amend the F-zone regulations as long as the Fairplex abides the restrictions and diligently pursues the specific plan. One of the benefits of this approach is that the specific plan will give the affected neighbors a chance to participate in developing comprehensive solutions to create more compatible land uses.

At this workshop, Fairplex will present the results of its internal long-range planning and describe its proposal for a specific plan. At an upcoming Council meeting, the City Council will consider

whether to approve a letter agreement that commits the Fairplex to certain restrictions while the City processes a specific plan instead of amendments to the F-zone. If approved, the Fairplex would initiate an application for a specific plan, which would include environmental review. Ultimately, a noticed public hearing would be held before the Planning Commission and the Planning Commission would make a written recommendation to the City Council. Thereafter, the City Council would also hold a public hearing and take action.



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# CITY OF POMONA

## CITY COUNCIL

## STAFF REPORT

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December 21, 2020

To: Honorable Mayor and Members of the City Council

From: James Makshanoff, City Manager

Submitted By: Anita D. Gutierrez, AICP, Development Services Director

**SUBJECT: Amendment to Interim Use Agreement with Fairplex Regarding  
Processing of Specific Plan Application and Interim Use of Property**

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### **RECOMMENDATION:**

It is recommended that the City Council approve an Amendment (Attachment No. 1) to the Interim Use of Fairplex Agreement and authorize the Mayor to execute on behalf of City.

### **EXECUTIVE SUMMARY:**

The City Council will consider a request to amend the Interim Use of Fairplex Agreement to extend the term by one year to August 20, 2023 (Attachment No. 2). The Agreement between the Fairplex and the City, outlined Fairplex's commitment to apply for a specific plan and the City's commitment to process Fairplex's application for a specific plan, including preparation of an environmental impact report and the extensive public review process, in lieu of pursuing unilateral changes to the F-zone.

### **FISCAL IMPACT:**

There is no significant cost to the City to consider a specific plan application. The applicant bears the cost of preparing and processing a specific plan, including the preparation of any environmental review. The agreement established a mitigation fund to fund certain public safety measures and infrastructure around the Fairplex venue in order to address immediate impacts from music and continued, historical year-round events that will be held during the Specific Plan planning period. The Amendment includes a provision to continue depositing funds into the mitigation fund for a period of four (4) years following the Effective Date by implementing the revenue generating measures set forth in this Section 7(e) of the agreement. The current fund balance is \$418,821. In addition, the Fairplex submitted a letter (Attachment No. 3) outlining their financial contribution to the City this year and emphasizing their desire for continued partnership.



## **PREVIOUS RELATED ACTION:**

On July 29, 2019, City Council approved the Interim Use of Fairplex Agreement and the agreement was executed and became effective on August 20, 2019 (Attachment No. 4). The full staff report outlining the terms of the agreement as agreed to in 2019 is included as Attachment No. 5 to this staff report.

## **DISCUSSION:**

The item before the City Council tonight is an amendment to the Interim Use of Fairplex<sup>1</sup> Agreement. The purpose of the agreement was twofold. First, it memorialized an express intent to proceed with a specific plan to plan and impose regulations on the Fairplex that will enhance the venue and make it more compatible with its neighborhood. The agreement anticipated that it would take about three years to complete this process. It was the shared understanding of the City and Fairplex that the Specific Plan planning process would be comprehensive and entail robust, interactive and largely in-person community engagement. In February of this year, pursuant to the terms of the Agreement, the Fairplex filed its Specific Plan application with the City and began meeting with staff to develop the project schedule and community outreach plan. However, due to the COVID-19 pandemic shelter-in place orders beginning in March of this year, the Fairplex and the City have been unable to proceed with the community outreach as contemplated. The full scope, duration and impact of the COVID-19 pandemic could not have been predicted at the onset of the agreement and has posed significant challenges in meeting the previously agreed upon timelines. Most significantly as it relates to the specific plan process, the COVID-19 pandemic has severely impacted the what in which the Fairplex and the City contemplated rolling out a meaningful and broad based community outreach effort. Thus, the Fairplex is requesting a one year extension on the term of the agreement to allow for additional time for planning and engagement of the much anticipated specific plan.

Secondly, the agreement established limits on certain types of events that it may host on site (no raves, no cannabis-related events) and limited the number of large-scale music events that it would hold for the duration of the agreement. The agreement also established a revenue source to be set aside for improvements meant to mitigate impacts of the music and continued, historical year-round events, such as impacts to traffic and public safety. That fund and the required advisory committee has been established. The first meeting of the Fairplex Mitigation Fund Committee was held on October 21, 2020. This amendment also extends the term in which the Fairplex would contribute to the Mitigation Fund.

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Prepared by:

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Anita D. Gutierrez  
Development Services Director

ATTACHMENTS:

Attachment No. 1 - Proposed Amendment  
Attachment No. 2 - Extension Request  
Attachment No. 3 – Letter to Mayor from Fairplex  
Attachment No. 4 - Executed Interim Use of Fairplex Agreement  
Attachment No. 5 - July 29, 2019 Council Staff Report