



CITY OF POMONA

CITY COUNCIL

STAFF REPORT

July 29, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

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

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

RECOMMENDATION:

Approve agreement and authorize Mayor to execute on behalf of City.

EXECUTIVE SUMMARY:

The City Council will consider an agreement (Attachment No. 1) with the Fairplex in which the City agrees 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. Unless terminated by either party, the proposed agreement would last three years (and may be extended) and includes the following key provisions:

1. The Fairplex will not host any raves or cannabis-related events during the term of the proposed agreement.
2. Subject to the City's administrative temporary use permit (TUP), the Fairplex could hold up to 6 music events with 10,000 – 40,000 attendees during the next three years. These events could be two-day events but could not go past 11:00 p.m. The proposed agreement imposes specific limitations on noise levels of 75 dBA over 15-minute period measured from neighboring properties.
3. While the proposed agreement is in effect, Fairplex will contribute to a mitigation fund to construct public safety measures and related sidewalk and street improvements at and around the property. The City will create a 9-member Advisory Committee that will meet publicly and recommend to the Council uses for the funds. The source of the funds will be generated from an increase in parking revenue, surcharge on tickets for major music events, and surcharge on adult fair tickets.

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. If approved, the proposed agreement creates 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 estimated annual contribution of new revenue by Fairplex to the fund is between \$320,000 and \$710,000 with an estimated three year accumulated amount of \$1.5M.

PREVIOUS RELATED ACTION: This proposed Agreement and course of action is the culmination of years-long efforts by neighborhood residents, the City, and the Fairplex management to develop standards for the fairgrounds' operations to be compatible with the residential neighborhood that surrounds it. On May 1, 2019, the City Council and the Planning Commission held a joint meeting at which staff presented a summary of the process for developing a specific plan. At its June 3, 2019, meeting, the City Council heard further community input and considered a draft letter agreement. The City Council referred the matter back to staff for further refinement. This item responds to the June 3, 2019, City Council direction.

SPECIAL MEETING: The City has taken time to solicit and understand concerns raised by the neighbors and consider the issues raised by Councilmember Torres and others at the City Council meeting. The City has negotiated with the Fairplex representatives and produced a new proposal. The Council's next regular meeting is August 5, 2019. However, the Fairplex is scheduled to print fair tickets during the first week of August. In order not to preclude the possibility of imposing the updated programming and parking requirements at this year's fair, the Mayor requested a special meeting sufficiently in advance of the ticket-printing schedule.

DISCUSSION:

The item before the City Council tonight is a proposed agreement with the Fairplex¹. Land use activities at the Fairplex fairgrounds are currently governed by the Pomona Zoning Code; the Fairplex is in the F-zone. Over the past several years, the City and neighbors have had concerns that the current F-zone regulations are inadequate to create harmony between the Fairplex and its residential neighbors. The City was poised to consider amendments to the F-zone to address some of the specific noise, parking, and traffic circulation issues arising from current and recent operations. However, the Fairplex approached the City suggesting the alternative approach of developing and enacting a specific plan to govern land use of the area. The Fairplex organization has been involved in long-range planning and is interested in developing a more comprehensive and more collaborative approach of identifying regulations for the Fairplex to make it compatible with the surrounding neighborhood.

¹The 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.

The purpose of the proposed agreement is twofold. First, it memorializes 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 proposed agreement anticipates that it will take about three years to complete this process. Either the City or the Fairplex may terminate the proposed agreement at any time.

Second, for as long as the proposed agreement is in effect, the Fairplex will accept certain limits on the types of events that it may host on site (no raves, no cannabis-related events) and will limit the number of large-scale music events that it holds. To mitigate the impacts of those events while the specific planning is underway, the Fairplex will create a revenue source that will 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. The fund will be administered by an advisory committee that will hold open and public meetings. The structure is intended to create transparent and accountable use of the mitigation funds and to include the neighbors in determining the fund's best use.

WALK-THROUGH OF THE PROPOSED AGREEMENT

Here is a summary and analysis of the proposed agreement, including a discussion of changes from the prior version.

1. Form. The proposed agreement is in the form of a two-party agreement. Previously, it had been in the form of a "letter agreement" proposed by the Fairplex. This is not a substantive change.
2. Recitals. The six recitals (A through F) set out the factual basis for the proposed agreement. Basically, memorializing the facts that the Fairplex's land use operations require better and more comprehensive planning to eliminate or at least lessen neighborhood impacts. Thus, the City and the Fairplex are committing to undertake the environmental and planning review for a specific plan. In the meantime, agreement regulates large-scale music events and develops a means for funding interim mitigation measures.
3. Term & termination. These provisions are on paragraphs 1 and 12. Unless terminated by the City or the Fairplex, the proposed agreement lasts for three years from the date fully approved. The Fairplex and the City can also agree to extend the agreement for up to another three years. Remember, the purpose of the proposed agreement is to regulate the large-scale music events at the Fairplex until a specific plan can be adopted. Three years is a reasonably good estimate of the length of time that the environmental review and public planning process would take to complete a specific plan.

The City or the Fairplex may terminate the agreement at any time. The point of the proposed agreement is to develop a collaboration among the public/neighbors, the Fairplex, and the City. As long as this agreement contributes to that goal, it is to everyone's advantage to work within its structure. If at some point the agreement is no longer beneficial, it can be terminated. If the City terminates, the unencumbered "Mitigation Funds" are returned to the Fairplex. If the Fairplex terminates, the City keeps the Mitigation Funds to complete mitigation projects that benefit the neighborhood.

4. Preparation of a Specific Plan. This provision is in paragraph 2. Within 180 days, the Fairplex must submit an application for a specific plan. This application will get the ball rolling and it will define the project for the purposes of starting the environmental impact report (EIR). The Fairplex pays the full cost of the EIR and processing of the specific plan application.

In response to comments from Councilmember Torres, the County's approval of the specific plan application is not a requirement that extends the deadline for the Fairplex to submit its application. As is the case with any property owner, the Fairplex will have to gain the County's permission for its undertaking; but that interaction is left as between the Fairplex and the County. The City is not involved and the proposed agreement does not specially accommodate that.

One of the concerns raised by a neighbor was that the agreement would shortcut the public review process. The parties to the proposed agreement did not intend that. To provide assurance, the last sentence was added to paragraph 2 which says "Note that this paragraph shall not be construed to alter in any way the requirements for a specific plan application or its preparation."

5. EIR/CEQA review. This provision is in paragraph 3. A specific plan is a project subject to the California Environmental Quality Act (CEQA) and significant projects, such as a specific plan for the Fairplex, require preparation of an EIR, which is the highest level of CEQA review. The Fairplex must bear all costs of the EIR. The City is in full control of the preparation of the EIR for the specific plan.
6. Agree to process specific plan in lieu of amendments to F-Zone. This provision is in paragraph 4. As long as Fairplex is proceeding in good faith toward developing a specific plan, the City will not amend the provisions of the F-Zone.
7. City retains full authority to approve, deny, or condition specific plan. This provision is in paragraph 5. The proposed agreement does not commit the City to approving the application. The point of the proposed agreement is that Fairplex will prepare and apply for approval. The City will process the application in accordance with the City Code (including a Planning Commission hearing and a subsequent City Council hearing).
8. Music Events. This provision is in paragraph 6. The Code currently allows music events pursuant to a TUP. The City may impose conditions on those TUPs to avoid or mitigate impacts of the events, including noise. The ordinary noise standards of the Code do not apply to special events. Section 18-305 exempts "[o]ccasional outdoor gatherings, public dances, shows, and sporting and entertainment events" from the general noise ordinance. The proposed agreement sets a number of limits on the Fairplex with respect to big (10,000 to 40,000 persons/day) "Music Events":
 - (a) no more than six in three year term of agreement,
 - (b) no raves or cannabis-related events,
 - (c) subject to TUPs,
 - (d) no longer than two days per event,
 - (e) limit to 75 dBA,
 - (f) sound measured from neighboring residential property line, and

(g) notice to neighbors well in advance of events

Obviously, noise from Music Events is a central concern to the City and the neighborhood. In response to a concern raised by neighbors, the measurement of sound is no longer “in the public right of way at least 500 feet from Fairplex property line,” as was originally proposed by Fairplex.

75 dBA is within the range of permitted sound levels for the zone. More importantly, Fairplex contends that it is a level that will be manageable for the neighborhood (not too disruptive for the occasional and limited special events). In order to test that contention, the City will issue an initial TUP and the proposed agreement provides for a post-event evaluation of the efficacy of the conditions. This process was also added in response to a concern raised by the neighbors that the City would lose the ability to improve the conditions if all permits were approved at once. This process directly responds to that concern and creates the obligation to evaluate whether the TUP conditions were effective.

Fairplex has proposed that the agreement provide that the 75 dBA level not be altered. Candidly, the proposed agreement may be amended by the parties at any time. If 75 dBA proves to be intolerable, the choice will be between terminating the agreement or modifying the agreement. Staff has considered carefully the proposed sound levels and believes they will prove acceptable. The proposed agreement is ultimately a cooperation pact; so the 75 dBA standard will have to meet the goal of reasonable and tolerable interim uses.

9. Mitigation Fund. This provision is in paragraph 7. The Fairplex is obligated to contribute to the Mitigation Fund if it is allowed to host Music Events, which makes sense because the purpose of the Mitigation Fund is to mitigate the impacts of the large-scale Music Events, as well as the continued year-round events historically held on the Fairplex site.
 - (a) funds are to be used for public safety measures and services to benefit the neighborhoods surrounding Fairplex
 - (b) advisory committee comprised of 9 members to recommend use of funds
 - (c) advisory committee has open and public meetings (subject to Brown Act)
 - (d) each Councilmember and the Mayor appoint one member who is a resident of mitigation area;* Fairplex and County each appoint one member
 - (e) City Council approves bylaws for advisory committee
 - (f) City Council ultimate authority on which mitigation projects to fund
 - (g) Fairplex will increase the 2% parking revenues currently paid to the City to 3% at outset of agreement, to 4% in 12 months, and to 5% in 24 months. The extra over 2% is for the Mitigation Fund.
 - (h) \$3 surcharge per ticket for tickets priced below \$75.00 for Music Events for Mitigation Fund
 - (i) \$5 surcharge per ticket for tickets priced \$75.00 and above for Music Events for Mitigation Fund
 - (j) \$1.50 per full price adult fair ticket for Mitigation Fund

In response to Councilmember Torres’s concern about preselected options for uses of mitigation funds (attached as an exhibit to Fairplex’s proposed letter agreement of May 28, 2019), that list and the exhibits have been eliminated from the proposed agreement. The

advisory committee is free to propose any mitigation measure directed at an impact from the Music Events.

Also in response to a concern raised by Councilmember Torres, the role of the committee has significantly changed. The City Council now has the final say of the use of the Mitigation Fund, subject to the terms of the agreement and informed by the recommendation of the advisory committee.

In response to issue raised by residents, the proposed agreement requires a surcharge of \$3 for all tickets priced under \$75.00 and a surcharge of \$5 for all tickets priced \$75.00 and above.

*The inclusion of the appointments of residents within the mitigation area boundaries by the Mayor and Councilmembers was included in response to requests by the neighbors. Fairplex representatives want the Council to know that Fairplex has no opinion on the manner in which the City's seven advisory committee members are selected.

10. Reporting and Audit. This provision is in paragraph 8. The proposed agreement requires an annual review of compliance and a report. In addition, the proposed agreement also allows for an audit on three days written notice.

In response to concerns raised by residents, the right to audit the records that demonstrate compliance with the agreement was added to the proposed agreement.

11. Standard clauses. The provisions contained in paragraphs 9 through 11 and 13 through 22 consist of self-explanatory standard provisions. Specifically, these provisions characterize the action of approving the contract for CEQA purposes; establish to whom notices are to be sent; require opportunity to cure breaches and set remedies for breach;** assure authority to sign agreement; establish the parties to the agreement; prohibit the assignment of the agreement; allow it to be severed; establish LA County as venue and California as governing law; acknowledged the whole agreement is in the document; allows it to be signed in counterparts; acknowledges that it should be construed fairly; emphasizes the importance of deadlines in the agreement; and notes that the City and Fairplex are not partners by virtue of the agreement.

**Notably, in paragraph 11(b), the Fairplex expressly waives any right to sue the City for money damages arising from the agreement or its breach.

If approved by the City Council, the Mayor would sign on the City's behalf.

CONCERNS FROM PROTECT OUR NEIGHBORHOOD

Some of the changes that were raised by the neighbors at the June 3, 2019, Council meeting and subsequently by Protect Our Neighborhood's extensive written comments dated June 19, 2019, have been incorporated into the proposed agreement and are noted above. Below are further responses to issues that have been raised by residents near the Fairplex.

ENVIRONMENT IMPACT REPORT

Protect Our Neighborhood raised two issues with respect to the EIR for the future specific plan.

A. A resident raised a concern that the terms of the agreement might somehow exempt Fairplex from CEQA's EIR requirements or change the baseline by which the noise, traffic, and air pollution impacts for future events are evaluated. The requirement to prepare an EIR is not triggered by the proposed agreement; it is triggered by the proposed specific plan. Because the application for the specific plan has not yet been made, the City does not have enough information to identify the impacts of the proposal. However, it will be evaluated as a whole and nothing in the proposed agreement itself will affect the baseline from which the City measures the significance of a potential environmental impact of the future specific plan.

B. The residents noted that the agreement should provide that Fairplex will pay for the full cost of an EIR. Paragraph 3 of the proposed agreement does that.

DEVELOPMENT

Protect Our Neighborhood noted that, since the reason for the specific plan is to plan for future development, Fairplex should agree not to use the current F-Zone regulations to enlarge or erect new buildings. This is a good point. Generally speaking, while planning the future, it is good sense to maintain the status quo. The City raised the issue with Fairplex and Fairplex was unwilling to further limit its ability to build on its property.

However, the City does have other authority besides the proposed agreement. Any significant development would require discretionary permits from the City. With respect to more minor development, even that requires a building permit, which does not get issued until the Director of Development Services has verified that no discretionary permit is needed. Finally, if the Fairplex proposes new development in the next three years that will undermine the meaningful planning contemplated by the specific plan, the City is authorized to terminate the agreement. The City also has the ability to impose a development moratorium if needed to maintain the status quo while planning is underway. Altogether, staff believes that the City has sufficient checks on new development so that it would not impair the City's ability to plan the area.

SOUND

Protect Our Neighborhood had two categories of comments regarding sound, one regarding the current standards and one regarding future standards to measure sound impacts.

A. The residents expressed concern over the 75 dBA limit. That numerical limit is consistent with the maximum allowed under the current code and has been employed in the past. Fairplex was unwilling to agree to a lesser standard. The proposed agreement also relies on the code requirements as to from where the sound levels are measured. If these current code provisions prove intolerable, the City may impose different and stricter provisions in the specific plan. In that respect, the proposed agreement provides the City an opportunity to gather data by which to establish appropriate regulations for the specific plan.

The residents questioned whether the elevated sound should be allowed on weekdays. The exact conditions for Music Events will be addressed in the conditions for the TUP and assessed following the event.

Protect Our Neighborhood also asked about the monitoring of sound. Within six months of the execution of the proposed agreement, if approved, the Fairplex will submit its specific plan. At that time, the City will begin the environmental review, including retaining sound experts. The consultants will collect data with respect to sound impacts. In addition, the Pomona Police Department has sound measuring equipment that is used to enforce the City's noise ordinance and conditions of TUPs.

B. Protect Our Neighborhood suggests that implementing C weighted measurement of sound may be more effective. That is not the standard that the City currently uses but it is a standard that may be included in the specific plan. Staff has noted that suggestion for the noise experts that will be engaged as part of the EIR.

MITIGATION FUND

Protect Our Neighborhood raised four main issues with respect to the Mitigation Fund.

A. Protect Our Neighborhood asked whether Fairplex would make a deposit into the fund upon signing to show good faith and whether Fairplex would guarantee the \$1.5 million revenue projected to be raised by the revenue-generating mechanisms created by the proposed agreement. Unsurprisingly, Fairplex was not receptive to the proposals and Staff does not recommend them. Fairplex faces its own financial challenges and the proposed agreement is designed to create a mechanism for Fairplex to assist in creating mitigation for impacts that may result in success. The proposed agreement is a good faith effort and, if it proves inadequate, the City retains the same options that it has without the proposed agreement.

B. Residents at the Council meeting and Protect Our Neighborhood pointed out that the May 28 letter agreement said Fairplex would impose "up to" \$5.00; that has been amended to clarify, Fairplex shall add a three-dollar (\$3.00) fee to the ticket price for all tickets priced under \$75.00 and a five-dollar (\$5.00) fee to the ticket price for all tickets priced \$75.00 and above, which is consistent with the original three-year \$1.5 million estimate, which was based on a \$4.00 average. The City did raise and advocate for Protect Our Neighborhood's suggestion that the Mitigation Fund receive \$5.00 for each day of attendance, not \$5.00 for a two-day ticket. In negotiations, Fairplex rejected the proposal on the ground that the increase in the ticket price would adversely affect sales to the extent that might discourage the best promoters from considering the venue.

C. Protect Our Neighborhood took issue with the uses for the Mitigation Fund set forth in Exhibit A to Fairplex's May 28, 2019, letter agreement. As indicated above, that exhibit has been eliminated.

D. Protect Our Neighborhood and residents who addressed the Council at the June 3, 2019 Council meeting requested that the advisory committee be better defined with respect to its composition and role. The proposed agreement does that.

ATTENDANCE

Protect Our Neighborhood indicates that in previous meetings with the residents, Fairplex proposed one event with maximum attendance of 10,000 in first year; two events (10,000 and 20,000 max) in second year; and three events (10,000, 20,000 and 40,000 max) in the third year.

Through the proposed agreement, the City will authorize Fairplex to host three 10,000-attendee music events, two 20,000-attendee music events, and one 40,000-attendee music event. Moreover, Fairplex is hoping to secure a reputable promoter who is experienced in managing this type of venue. Fairplex is of the opinion that a company that can organize a successful event that minimizes off-site impacts would not be as interested in an artificial attendance step-up over a three-year period. In order to accommodate Fairplex's belief that it will be better able to attract the more responsible production company and to reap the most income for mitigation measures, the progressive attendance caps have not been included in the proposed agreement.

OPTIONS:

1. Approve the agreement
2. Direct staff to negotiate specific revisions
3. Decline to enter into the agreement

ATTACHMENTS:

Attachment No. 1 – Proposed Agreement