



## Legislation Details (With Text)

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## REPORT TO STADIUM AUTHORITY BOARD

### SUBJECT

Study Session: Discussion of the Draft 2019 Non-NFL Events Marketing Plan for Levi's® Stadium in accordance with Section 4.10 of the Stadium Management Agreement

### BACKGROUND

Per Section 7.2 of the Amended and Restated Stadium Lease (Lease) by and between the Santa Clara Stadium Authority (Stadium Authority) and Forty Niners SC Stadium Company (StadCo), the Stadium Manager shall be responsible for preparing the Stadium Operation and Maintenance Plan (SOMP), including the Annual Shared Stadium Expense Budget, Annual Public Safety Budget and the Capital Expenditure Plan, which shall be presented annually to the Stadium Authority and StadCo for their consideration and approval. These components of the SOMP are presented to the Stadium Authority Board (Board) as part of the annual Stadium Authority Proposed Operating, Debt Service, and Capital Budget. Prior to March 30 of each year, the Board reviews and provides feedback during a Study Session, and then considers adoption during a Public Hearing. On March 27, 2019, the Board will consider approval of the Fiscal Year 2019/20 Stadium Authority Proposed Operating, Debt Service, and Capital Budget.

Additionally, the Stadium Management Agreement (Management Agreement) between the Stadium Authority and Forty Niners Stadium Management Company, LCC (ManagementCo), requires ManagementCo to develop a Marketing Plan for Non-NFL events for inclusion in the SOMP:

**4.10 Marketing Plan.** Until the exercise of any Non-NFL Event Replacement Right, the Stadium Operation and Maintenance Plan shall include a marketing plan setting forth in reasonable detail the Stadium Manager's plans to develop, implement and monitor marketing, booking, advertising and promotion of Non-NFL Events for the Stadium, ***which marketing plan shall be mutually agreed upon by the Stadium Manager and the Stadium Authority*** (the "Marketing Plan"). If the Stadium Authority exercises the Non-NFL Event Replacement Right, the Stadium Authority

and the Stadium Manager will develop a similar plan with the third-party provider.

In prior years, the Marketing Plan was reviewed in the form of a slide deck presentation at the time the Stadium Authority budget was considered for approval, which provided the Board and ManagementCo little opportunity to discuss and deliberate strategically on its components. When Harvey M. Rose Associates, LLC (Auditor) performed an audit of Stadium operations to ensure compliance with the 2010 voter approved Measure J, they found (Finding 1.L):

The Management Agreement's requirement that "reasonably detailed" annual marketing plans, produced by ManagementCo and setting forth their plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL events for the Stadium, was not met as such plans were not provided to the Stadium Authority for FYs 2014-15 and 2015-16.

The Board agreed with this audit finding and expressed concern for the absence of strategic detail and the need for an improved Marketing Plan. Beginning with the current fiscal year, FY 2018/19 (April 1, 2018 -March 30, 2019), Stadium Authority staff proposed that the Board and ManagementCo review the draft Marketing Plan in a Study Session prior to approving the SOMP at a subsequent Board Meeting.

Stadium Authority staff and ManagementCo mutually agreed and collaboratively presented the draft 2018 Non-NFL Events Marketing & Business Plan (2018 Marketing Plan) to the Board during a Study Session on March 13, 2018. The report to the Board noted the improvements in the draft 2018 Marketing Plan from previous years, and provided data to show how the improved draft Marketing Plan is responsive to the Auditor's recommendation (1.L):

The Stadium Authority Board should direct the Executive Director to notify ManagementCo that previous annual marketing plans were inadequate as they did not set forth reasonably detailed plans to develop, implement, and monitor marketing, booking, advertising, and promotion of non-NFL activities. The Board should further direct the Executive Director to notify ManagementCo that future marketing plans must include such details and be reviewed for sufficient detail by the Executive Director before being presented to the Board.

Various discussions were held between both parties from December 2017 through March 2018 on the above audit recommendation and approaches to mutually approve the Marketing Plan. As a result of those discussions, ManagementCo agreed to draft, and Stadium Authority staff agreed to support the effort to establish, key performance indicators (KPIs) during the first quarter of FY 2018/19 to evaluate the effectiveness of the Marketing Plan, as well as inform the decision making process for the next Marketing Plan. Noting that that the strategic initiatives proposed provide a solid foundation to improve the use of data analytics/metrics for desired performance outcomes, the March 13, 2018 presentation of the draft 2018 Marketing Plan included the intent to provide an informational report updating the Board of the proposed metrics status/completion in the second quarter of FY 2018/19 (July - September 2018). That effort was not completed within the targeted timeline suggested to the Board and both parties spent time working toward the completion of these key performance indicators through December 2018.

During the [Santa Clara Stadium Authority Annual Report to the Board](http://santaclaraca.gov/home/showdocument?id=62194) <<http://santaclaraca.gov/home/showdocument?id=62194>> on November 27, 2018, the Executive Director reported that efforts to work with ManagementCo to develop meaningful, useful and sustainable KPIs had not been completed, as agreed to during the March 13, 2018 Study Session for

advanced review of both the marketing plan and proposed budget approval process. The Annual Report included documentation of Stadium Authority staff efforts throughout the year to advance this work, including providing everything from reporting categories to a reporting template to ManagementCo.

## **DISCUSSION**

ManagementCo provided the draft 2019 Non-NFL Events Marketing Plan (2019 Marketing Plan) on January 29, 2019 (Attachment 1). As Stadium Authority staff began review of the draft 2019 Marketing Plan, it became clear that it does not incorporate the many discussions Stadium Authority staff and ManagementCo had over the past year on this topic, and does not incorporate Board direction from last March 2018 to include KPIs. In fact, none of the KPI templates that were prepared for inclusion are proposed for the 2019 Marketing Plan.

On February 7, 2019, Stadium Authority staff provided this feedback to ManagementCo and asked if they would revise and resubmit their draft 2019 Marketing Plan. On February 8, 2019 ManagementCo replied, "We believe the draft Marketing Plan is in full compliance with the requirements of the Management Agreement".

On February 15, 2019 the Executive Director provided a detailed response to ManagementCo to reasonably demonstrate that the draft 2019 Marketing Plan was missing basic and/or standard information that would be important to include in any marketing plan, as well as missing information that ManagementCo had agreed to complete for the past year. Therefore, staff cannot recommend that the Board approve the 2019 Marketing Plan in its current state; rather, the Board should direct the Stadium Authority staff to work with ManagementCo to complete its commitments from last year and reach mutual agreement on the items raised this year for inclusion in the 2019 Marketing Plan. Stadium Authority staff sent an additional inquiry to ManagementCo on March 12 to understand their position and communicate it to the Board, since this matter has not been resolved timely. On March 13, ManagementCo responded as detailed at the end of the Discussion section of this report.

Stadium Authority staff's issues with the draft Marketing Plan are as follows:

### **Data and Key Performance Indicators**

As it is standard for any strategic marketing plan, and mutually agreed to last year, ManagementCo was to include in each section metrics and supporting data to measure past performance and inform goals for 2019. Following the March 13, 2018 Study Session, Stadium Authority staff had numerous meetings and communications with ManagementCo regarding the development of KPIs, documented in the Executive Directory's October 4, 2018 letter to ManagementCo (see [Santa Clara Stadium Authority Annual Report to the Board <http://santaclaraca.gov/home/showdocument?id=62194>](http://santaclaraca.gov/home/showdocument?id=62194), page 5 and Attachment 5). As recently as December 14, 2018, when Stadium Authority staff and ManagementCo met to discuss KPIs, ManagementCo stated that KPIs would be included in the draft Plan. ManagementCo again repeated and confirmed inclusion of KPIs during the January 17, 2019 Quarterly Status Meeting, attended by staff from both the Stadium Authority and ManagementCo.

While the draft Plan includes some data, the data does not show the outcome of strategic efforts, how success is measured, or how it informs the draft 2019 Marketing Plan activities. The KPI work that was completed is a good start for producing qualitative and quantitative data regarding the marketing and booking activity and the success of it. As an example, there are several sections with no data provided to quantify past or planned efforts:

**Example: page 4, Increased attendance at industry events & participation in strategic partnerships.** The paragraph includes language such as “amplify our brand”, “invest in strategic partnerships that will provide us with additional exposure to local businesses, associations and planners”, “continue to evaluate these partnerships and the ROI based on leads generated from each event and the overall impact to brand awareness,” but there is no data provided to quantify the effort or demonstrate how implementation of strategies are measured, and the failure or success of them. This information is useful for determining financial investment, changes to strategy, and where to focus limited resources for booking non-NFL events at the Stadium.

**Example: page 14, Dynamic Ticket Pricing: Applying dynamic ticket pricing as a common practice to all non-NFL events will help us better price ticketed events while allowing the venue to capture incremental revenue using predictive analytics of the secondary market. We have developed tools and dashboards similar to the following examples, which highlight secondary market activity and current sell-through rates for Stadium events.** The Stadium Authority does not regularly receive reports from these tools or dashboards to meaningfully track trends and make informed decisions. Further, there is no data regularly provided to demonstrate how “applying dynamic ticket pricing” is successful, or what additional revenue has been realized as a result of the practice. The use of dynamic ticketing pricing should be of particular concern to the Board given that ManagementCo is charged with booking, and executing the required contracts, non-NFL events at the Stadium. Since ManagementCo negotiates and executes promoter contracts for these events and, to our understanding, has allowed for the inclusion of a provision that allows for the promoter without limitation to price tickets at \$0, including \$0 for the ticket surcharge, it is reasonable for the Stadium Authority to track and be informed with how this feature results in financial gain or loss to the Stadium Authority. ManagementCo may argue its position that this is a standard practice in the industry and, while the Stadium Authority is fully aware of the practice, it is reasonable for the Stadium Authority to understand the financial impact of this practice for the purpose of informed decision making.

**Example: page 15, Incentivize multi-year agreements: Securing consistent events provides a degree of secured revenue to plan and budget around while providing flexibility to host events with ranging financial incentives. Furthermore, multi-year deals allow our organization to continue improving in our execution of an event, ideally resulting in improved financial performance with reduced costs based on learned efficiencies.** While ManagementCo affirmatively makes this statement, it is reasonable to believe that it is based on some sort of data tied to revenue. The record already has demonstrated that ManagementCo entered into at least one multi-year agreement that did not produce revenue, and in fact came at a multi-million annual loss to the Stadium Authority, so it is reasonable for the Stadium Authority to desire to track this information and be concerned with Marketing Plan strategies that ManagementCo may pursue at a multi-million dollar loss for multiple years. To the extent that that ManagementCo has entered into multi-year revenue generating events, there should be clear data, and a willingness to share it with the Stadium Authority to collaboratively work toward strategies that support these efforts. This presents an example of where additional information about strategic efforts, and financial outcomes, are worthy of tracking data and measurable outcomes.

In sum, ManagementCo needs to include for each section meaningful KPIs that provide enough statistical information to evaluate and measure the effectiveness of the 2018 Marketing Plan and/or inform the decision making process over time and, specifically, for the 2019 marketing activities, as ManagementCo agreed to do this past year.

### **Addressing Required Events under the Naming Rights Agreement**

Since October 2017, ManagementCo has expressed concern that the agreed upon condition regarding event end times (the Development Permit condition aka “curfew”) is impacting the ability to book events, and the risk of not being in compliance with the Naming Rights Agreement between the Stadium Authority and Levi Strauss & Co. (Naming Rights Agreement).

The Naming Rights Agreement requires the Stadium Authority to hold at least 36 “Major Events” (with 25,000+ attendees) every three contract years. As of this report, the current number of large events held at the Stadium during the current three year period is fourteen (14), with one year remaining. If fewer than 36 major events are held in the three-year period, the Naming Rights Sponsor (Levi Strauss & Co.) receives a credit of \$15,000 multiplied by the difference between 36 and the actual number of events held during the three year period. The Second Amendment to the Stadium Management Agreement states that ManagementCo would pay the Stadium Authority as liquidated damages the amount owed by the Stadium Authority to the Naming Rights Sponsor.

Given the threshold metrics in the Naming Rights Agreement, the Stadium Authority is being completely reasonable to request inclusion in the draft 2019 Marketing Plan narrative, at minimum, that includes this basic information:

- How many Major Events need to be held during this period,
- How many events are confirmed to meet this obligation,
- How many Major Events need to be pursued to book the number that need to be held; and
- Specific plans to ensure success.

Considering the financial impact of the Naming Rights Agreement, this should be a major driver/theme of the draft 2019 Marketing Plan; however, the draft Plan was completely silent on this topic.

### **Non-NFL Revenues and Expenses**

The FY 2018/19 non-NFL revenues and expenses submitted by ManagementCo estimate net revenues of \$750,000, or approximately 80% lower than prior projections and production, but the draft 2019 Marketing Plan does not even acknowledge the significant net revenue reduction or address strategies of how such a reduction can be mitigated.

In fact, much of the language in the draft 2019 Marketing Plan refers to a favorable booking and revenue environment. For example, the Executive Summary of the draft 2019 Marketing Plan purports that “Levi’s® Stadium’s non-NFL events business continues to generate revenue for the Stadium Authority while successfully bringing new shows and events to Santa Clara.” It is more important and effective for the draft 2019 Marketing Plan to acknowledge the actual context and remedy the projected net non-NFL revenue reduction, and provide the data to substantiate this trend, rather than include a general statement regarding successes.

### **Free Tickets or other Promotions/Giveaways**

Following inquiries from the Board, Stadium Authority staff and ManagementCo discussed in December and January what ManagementCo refers to as the common practice of “papering the house” with free tickets. Per a December 27, 2018 email from ManagementCo, “comp’ed” tickets are distributed for nearly every event that happens at Levi’s® Stadium and every other entertainment venue in the country. However, there is no mention in the draft 2019 Marketing Plan of how this practice is used and the favorable strategic results it achieves, such as to (1) attract other events, (2) increase Stadium Authority revenue, or (3) how Stadium Authority is compensated for lost revenue and/or increased public safety costs.

It is reasonable for the Stadium Authority to be concerned about the practice of “papering the house” because each of these “comp’ed” tickets represents a direct financial loss to the Stadium Authority. Moreover, the practice results in substantial reduction in revenue for large-attendance at non-NFL events (as was the case for the Taylor Swift concert which was widely covered in the media by inquiries of the public purpose of giving a high number of Oakland officials free tickets and, subsequently, the strategic or financial benefit to Levi’s® Stadium that requires the same expenditures as large events with similar numbers of fully paid tickets), resulting in an overall lower Return on Investment (ROI) for the events. The Board identified this trend in December 2018, when it asked about the 29,000 paid tickets for the Friday concert vs. the nearly 50,000 paid tickets for the Saturday concert, and the public safety costs being near equal for both nights. This was the result of employing this “papering the house” strategy. Separate from this practice, the ManagementCo also gets an allocation of tickets for its targeted distribution at a direct loss to the Stadium Authority. Accordingly, it is reasonable for the Stadium Authority to understand this practice from a marketing strategy and the positive financial outcomes for the Stadium Authority.

There may be other promotions and/or giveaways that are common practice, but Stadium Authority has not been informed of them by ManagementCo. The draft 2019 Marketing Plan should elaborate on giveaways in detail and the strategies being employed to advance favorable revenue conditions and overall success for the Stadium Authority. Over time, with data, the Stadium Authority and ManagementCo have the benefit of tracking the financial consequences and can make informed decisions in the future. The Stadium Authority is reasonable in seeking data about this practice as it has direct financial consequences and, at the core, it is directly related to how the ManagementCo books events and executes the contracts for them.

**Example:** When Stadium Authority staff inquired about a 2018 concert where tickets sold < attendance by ~ 20,000, ManagementCo replied it was common practice. The response did not provide an explanation of how Stadium Authority was compensated for lost ticket surcharge revenue and/or public safety costs. The 2019 Marketing Plan needs to explain and address this practice, and its value to the Stadium Authority, particularly since the Board has specifically asked about its impact on the Stadium Authority revenues. ManagementCo argues that it is not giving away these tickets, rather it is the promoter, but ultimately it is ManagementCo that negotiates and executes these agreements for the non-NFL events and can influence either the limitation of this use or on which events to employ this provision - with giving advanced notice to the Stadium Authority to financially plan for such losses.

When Stadium Authority staff provided feedback on the draft 2019 Marketing Plan to ManagementCo, their February 20, 2019 response stated that Stadium Authority staff appeared to be confused over the appropriate information to be included in the Marketing Plan. ManagementCo further stated they would prioritize the budget work over the Marketing Plan and, in the meantime, will

continue to negotiate and book Non-NFL Events at Levi's® Stadium in accordance with the Management Agreement.

On March 12, 2019, the Stadium Authority staff responded to ManagementCo to further explain its position, and affirm that Stadium Authority staff was not confused about the Marketing Plan's content and details. Stadium Authority staff's position is that the draft 2019 Marketing Plan submitted by ManagementCo does not contain the reasonable detail required by the Stadium Management Agreement and, therefore, Stadium Authority staff does not agree to the 2019 Marketing Plan. When the SOMP is presented to the Board for approval on March 27, the recommendation will include a request to not approve the Marketing Plan, and, if needed, to direct staff to pursue correction action, in accordance with section 3.3.1 of the Stadium Management Agreement to, which states, in part:

**If the Stadium Manager has, in the reasonable judgment of the Stadium Authority, materially failed to implement the provisions of the Marketing Plan so as to materially and adversely affect the marketing, promotion and booking of Non-NFL Events and/or Net Income from Non-NFL Events, the Stadium Authority may provide the Stadium Manager with written notice of such fact, with a copy to StadCo.**

The Management Agreement specifically provides that the marketing plan will include information in reasonable detail, as mutually agreed upon by Stadium Manager and Stadium Authority. ManagementCo's submitted draft was not mutually agreed upon by the Executive Director, given the Board's discussion last year regarding KPIs. Additionally, given the above discussion relative to the Naming Rights Agreement and the Executive Director's request to include reference to the Naming Rights Agreement and strategies to achieve compliance, which were denied during development of the draft, it is the Executive Director's position that the proposed draft Marketing Plan does not include reasonable details that a Marketing Plan should contain, and that were committed to (e.g., KPIs) by ManagementCo last year, to monitor and track activity to book non-NFL events successfully and in accordance with the goals as described in various agreements and documents.

As such, while the Executive Director will recommend approval of other portions of the SOMP during the Study Session on the proposed budget, approval of the draft 2019 Marketing Plan is not recommended given the absence of key information that is pertinent to compliance with existing agreements (e.g., Naming Rights Agreement), commitments (e.g., KPIs), and good faith efforts to achieve mutual agreement. ManagementCo refused to engage in past commitments and areas of interest for the Stadium Authority and, instead, abandoned this work for which it is required to complete in good faith.

Stadium Authority staff sent an email on March 12, 2019 to confirm the position of the ManagementCo so that it could accurately advise the Board. On March 13, ManagementCo responded stating, "We are not refusing to make any changes, nor are we planning to submit a revised draft at this time. Based on Item 5 in your email dated 2/15/19 (below), we are (still) awaiting your: "... separate table or document that lists our other concerns and questions, by page and section." My suggestion is to collect any Board input you deem appropriate on this matter and then please send us your detailed comments on the Marketing Plan, incorporating comments from your Board. Upon receipt, ManCo will consider those comments, and potentially send you a revised draft."

SCSA staff will provide detailed comments to ManagementCo and expects the ManagementCo to incorporate the Board's comments in a revised Marketing Plan.



## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

## **FISCAL IMPACT**

There is no cost to the Stadium Authority other than administrative staff time and expense. The effectiveness of the Marketing Plan to market and book Non-NFL Events at Levi’s® Stadium has a direct impact on the amount of Stadium Authority revenue, and the amount paid to the City’s General Fund.

## **COORDINATION**

This report has been coordinated with the Stadium Authority Counsel’s Office.

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

## **RECOMMENDATION**

Review and provide input on the draft 2019 Non-NFL Events Marketing Plan as prepared by the Forty Niners Stadium Management Company, LCC (ManagementCo).

Reviewed by: Walter C. Rossmann, Chief Operating Officer

Approved by: Deanna J. Santana, Executive Director

## **ATTACHMENTS**

1. Draft 2019 Non-NFL Events Marketing Plan