



## Agenda Report

21-13270

Agenda Date: 11/16/2021

### REPORT TO COUNCIL

#### **SUBJECT**

Council Discussion and Potential Action on Levi's Stadium's Condition of Approval P22(c) Regarding Nighttime Outdoor Non-NFL Events

#### **COUNCIL PILLAR**

Ensure Compliance with Measure J and Manage Levi's Stadium

#### **BACKGROUND**

As part of the City Council's February 1-2, 2021 Goal and Priority Setting Session, a majority of the City Council expressed interest in revisiting the policy on the "Levi's Stadium curfew" to attract more Non-NFL events and generate more revenue. The following options were brought up for future discussion and consideration:

1. Extending the curfew for summer and weekend events only
2. Extending the curfew once or twice a year
3. Increasing the curfew violation fee
4. Presenting the 2018 Community Survey results on noise and the curfew
5. Community engagement about how many times the curfew should be extended
6. Learning more about California's Great America's (Great America) noise curfew
7. Researching other cities' noise curfews for stadiums located in residential areas

The Stadium Management Agreement (Management Agreement) authorizes the Forty Niners Stadium Management Company (Stadium Manager) to manage and operate Levi's Stadium on behalf of the Stadium Authority for non-National Football League (non-NFL) Events, like concerts, sporting events, and non-ticketed events. The Stadium Manager is also responsible for the marketing and booking of Non-NFL Events and other activities at the Stadium, which includes negotiating and executing all contracts, use agreements, licenses and other agreements with persons who desire to hold a Non-NFL event at Levi's Stadium.

This policy topic is presented within a context of the Council/Board already taking action to terminate the Management Agreement because of the Stadium Manager's poor performance with its legal obligations. While the Council can take action to establish parameters for extending the "Levi's Stadium curfew," ultimately the success of the Council's action rests with how the Stadium Manager follows and implements it. Accordingly, the Council should review its actions with consideration of the following:

1. Has the Stadium Manager complied with legal obligations of the Management Agreement and all other Agreements?
2. Has the Stadium Manager demonstrated the ability to mitigate community impacts when Stadium events take place?

3. Has the Stadium Manager demonstrated that it can produce money-making events?
4. Is the Stadium Manager in compliance with all legal requirements for non-NFL events?

The Stadium Manager has a long-standing record of disregard for following the direction of the Council/Board and/or staff and that should also be considered within setting new Council direction.

As background, the “Levi’s Stadium Curfew” is a term commonly used to refer to the formal Conditions of Approval (COA) for the 49ers Santa Clara Stadium Project, which the 49ers agreed to as part of various project approvals. As specified in the November 9, 2010 Resolution, the Council approved rezoning for the 49ers Santa Clara Stadium Project (Stadium Development Permit) which includes restrictions for when events are required to conclude. Specifically, Condition of Approval P22 (c) (COA-P22(c)) provides the following restrictions for outdoor non-NFL events:

***Night outdoor non-NFL events shall be scheduled to end not later than 10:00 PM Sunday through Thursday and 11:00 PM Friday and Saturday, unless otherwise approved by the City Manager or their designee.***

***1. Stadium event field lighting (not including emergency lighting, normal operations lighting, or lighting necessary for post-event cleanup, maintenance, or equipment load-out) shall be doused not later than one hour following the conclusion of the event.***

***2. Speaker sound system shall be operated not more than one-half hour following conclusion of a non-NFL event.***

Any policy discussions regarding noise (including the curfew and the number of events per year) must occur within the parameters of the Stadium Environmental Impact Report (EIR). As explained below, after reviewing the EIR and noise analysis, staff concluded that at least 36 days of large-scale non-NFL events could be conducted without the necessity of additional environmental review, and that an extension of the “curfew” would fall within the scope of the EIR.

### **CEQA Considerations**

The Stadium EIR considered the noise impacts of two professional football teams occupying the stadium, for a total of 22 NFL game days per year. (This included 4 pre-season games and 16 regular season games, plus 2 additional games assuming that one of the two teams made it into the playoffs). The EIR also considered the impacts of approximately 26 days of large-scale non-NFL events, including sporting events, concerts, festivals, and shows. The noise impacts from NFL and non-NFL events were identified as Impacts NOI-4, NOI-5, NOI-6, and NOI-7 in the EIR, and all four were determined to be significant unavoidable impacts.

The list of non-NFL events is set forth in Table 2 of the DEIR:

Possible Non-NFL Events			
Event type	Attendance	Events per year	Days per event
X-Games	50,000	1	4
Moto-Cross	42,500	1	1
International Soccer	40,000	2	1
Concerts	37,500	1	1
College Football	37,500	1	1
Festivals/Antiques Shows	25,000	8	1
College Bowl Game	25,000	1	1
Car Shows (parking lot event)	12,000	2	4
Small Events	50 to 500+	250	250+

Because some types of events occur more than once, and some events occur over multiple days, there are a total of 26 days of non-NFL events (not including small events). These 26 days of non-NFL events, plus the 22 days of NFL games analyzed for two teams occupying the stadium, resulted in significant noise impacts based on assumed 48 large scale events per year.

There are many references to the 26 days of non-NFL events throughout the EIR and appendices. Although some of those references appear inconsistent at first blush, in most cases the inconsistencies are a result of citing to different subsets of events. To clarify, here are the subsets:

- Total Non-NFL Events, 12,000 or more in attendance: 17 events, 26 days
- Total Non-NFL Events, 25,000 or more in attendance: 15 events, 18 days
- Total Non-NFL **Sports**, any size: 6 events, 9 days

The noise analysis (appendix K of the DEIR) uses this same data to reach its conclusions, but clarified that this was an estimate, not a hard limit. (Right before the table showing the 17 non-NFL events, the noise report summarized it by saying “[a]pproximately 20 large non-NFL events are planned per year,” and then explained that beyond those listed in the table, “[a]dditional non-NFL events may be pursued by the Stadium Authority in any given year subject to the availability of parking”.)

The EIR also explained that the list of events in the table above was not meant to be unchanging; instead, the events “have been identified generically,” (DEIR page 222). Because the DEIR predicted that only one concert was likely to occur per year, one of the commenters on the DEIR requested that the project be conditioned to have a firm limit of one concert per year (DEIR Comment J-12.). In response, the City declined to impose such a condition, explaining that the number was an estimate only, and that the actual number was likely to fluctuate. “The actual types and number and number of event types (i.e., concerts, sports, etc.) that will occur during the 26 event days may vary somewhat from year to year.” (FEIR Response J-12.).

One unresolved inconsistency in the DEIR appears under Noise Impact NOI-6, which states that “large non-NFL sporting events would occur six *days* per year.” As explained above, the tables in the DEIR and noise study list six *events* but nine *days* of non-NFL sporting events; this one reference to six instead of nine is likely a simple oversight.

According to the EIR, the anticipated noise impacts from NFL events, non-NFL sporting events, and concerts would be equivalent (at the nearest neighborhood, NFL games would produce 61-66 dBA  $L_{eq}$ ; non-NFL sports would produce 61-66 dBA  $L_{eq}$ ; and concerts would produce 66 dBA  $L_{eq}$  or less). Consequently, from a noise impact standpoint, the three types of events are comparable, except that NFL games have the added impacts of noise resulting from tailgating, which would be uncommon at non-NFL events, and concerts are typically shorter than NFL games. And, as mentioned above, a total of 48 days of large-scale events were analyzed in the EIR, and because only one team ultimately occupied the stadium, a maximum of 12 of those days are utilized by the 49ers, leaving at least 36 days for non-NFL events.

The EIR did not set fixed limits on the permissible hours of operation of the stadium; instead, the impact determinations were made based on average lengths of games and concerts. The only limitation on the hours appears in the COA, which already empowers the City Manager to extend the curfew.

Consequently, no additional CEQA analysis is necessary to gauge the noise impacts for an increased number of concerts and other large Non-NFL Events beyond the numbers cited for Impacts NOI-4 through NOI-7. As a result, the following policy issues can be considered regarding the COA and related curfew restrictions.

### ***Policy Considerations***

Since COA-P22(c) authorizes the City Manager to approve exemptions, and the current restrictions are by Council direction to the City Manager, there is no need to initiate a COA-P22(c) amendment process. **Action for changed direction can be achieved by direction to the City Manager so long as the direction, and the Stadium Manager's implementation of it, does not depart significantly from COA-P22(c) language.** For example, COA-P22(c) contemplates exemptions to the existing provision and provides for how they may be achieved. Council direction within that range of assumptions can be accomplished without changing the COA for the Stadium Development Permit.

As indicated by the Stadium EIR, the noise impacts for large non-NFL events are significant and unavoidable. As such, effective noise monitoring around Levi's Stadium should continue and the Council is requested to provide direction on future noise monitoring reports. Noise monitoring efforts and related reporting for Levi's Stadium will be discussed in this report.

### **DISCUSSION**

This report provides the following information for Items #1-7. The goal of this report is to be responsive to the Council's direction and to receive input on how the Council would like to proceed.

<b>1: Extending the Curfew for Summer and Weekend Events Only 2: Extending the Curfew Once or Twice a Year</b>
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COA-P22(c) allows the City Manager to approve exemptions for events that plan to exceed time limits as established by the City Council. The City Manager may also develop policy guidance for the circumstances under which such exemptions will be provided. In mid-2017, the Council directed the former Acting City Manager to not provide exemptions under COA-P22(c) and, since that time, there have been no changes to that standing direction. As the Council revisits the past Council direction,

the following topics should be considered as part of Council's discussion of the curfew and any potential exemptions, such as: Naming Rights Agreement; noise and other event-related impacts; financial feasibility; and, recent reductions to staffing resources.

**Naming Rights Agreement** - The Naming Rights Agreement between Stadium Authority and Levi's requires the Stadium Manager to hold at least 36 non-NFL "Major Events" with 25,000+ attendees every three contract years. As of the writing of this report, the number of large events held at the Stadium during the current three-year period is 5.

**Noise and Other Event-Related Impacts** - As described in the 2018 Community Survey which will be discussed in more detail under Item #4, Stadium events have had an impact on surrounding neighborhoods, including traffic, parking, and disruptive attendee behavior pre and post event, such as loitering, security/enforcement and noise control. These impacts are not only felt by Santa Clara neighborhoods. On October 5, 2021, the City of San Jose issued a letter regarding Levi's Stadium events' adverse impacts to their neighborhoods (Attachment 1). The letter describes event attendees intruding into neighborhood parking areas in North San Jose, including parking in restricted areas. At the time of this report, staff has reached out to the City of San Jose for more information and has shared this information with the Stadium Manager to discuss additional work efforts to reduce such impacts. The Council should consider the surrounding Santa Clara and San Jose neighborhoods in its discussion of the curfew.

**Financial Feasibility** - Ticketed Events, the focus of this Council discussion, generally fall under two categories: concerts and non-NFL sporting events. Below are charts reflecting the Stadium Authority's net revenue for ticketed events per fiscal year as of March 31, 2021 and the performance of individual events since FY 2014/15. Council discussion should be within the context of this financial performance and the required staffing to support events: the data show that, more often than not, City staff support is utilized for money losing events. In the context of many competing priorities for recently reduced staff capacity, financial feasibility must be heavily considered. *Note: Due to COVID, no Ticketed Events were held in 2020.*

Table 1.

**Levi's Stadium  
Net Revenue for Non-NFL Events  
by Event Type  
As of March 31, 2021**

EVENT TYPE	2014/15		2015/16		2016/17		2017/18		2018/19		2019/20		2020/21	
	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue	No. of Events	Net Revenue
<b>Ticketed Events</b>														
Concerts	0	\$ -	7	\$ 3,791,985	4	\$ 2,424,572	2	\$ 1,819,099	3	\$ 1,438,848	1	\$ 856,583	0	\$ (162)
Sporting events:														
Football (non-NFL)	5	(3,007,907)	4	(2,316,903)	4	(2,946,165)	4	(3,601,827)	4	(3,437,297)	3	(3,170,926)	0	-
Soccer	2	3,948,144	2	891,300	5	2,414,209	3	3,228,754	3	(267,981)	2	(65,295)	0	-
Miscellaneous events	2	2,504,912	4	(149,392)	5	(159,175)	4	76,379	2	(67,502)	2	(458,609)	0	(3,208)
<b>Subtotal Ticketed Events</b>	<b>9</b>	<b>\$ 3,445,149</b>	<b>17</b>	<b>\$ 2,216,989</b>	<b>18</b>	<b>\$ 1,733,441</b>	<b>13</b>	<b>\$ 1,522,405</b>	<b>12</b>	<b>\$ (2,333,932)</b>	<b>8</b>	<b>\$ (2,838,247)</b>	<b>0</b>	<b>\$ (3,370)</b>
<b>Subtotal Ticketed Events - Other Expenses</b>												\$ (167,217)		\$ (24,301)
<b>Subtotal Special Events (weddings, corporate events, etc.)</b>	<b>106</b>	<b>\$ 1,762,404</b>	<b>204</b>	<b>\$ 3,862,027</b>	<b>127</b>	<b>\$ 3,583,453</b>	<b>113</b>	<b>\$ 3,640,924</b>	<b>100</b>	<b>\$ 2,352,523</b>	<b>79</b>	<b>\$ 1,492,331</b>	<b>0</b>	<b>\$ (29,596)</b>
<b>Subtotal Other Operating Expenses</b>												\$ (1,227,881)		\$ (452,382)
<b>Total Non-NFL Net Revenue</b>	<b>195</b>	<b>\$ 5,207,553</b>	<b>221</b>	<b>\$ 6,079,016</b>	<b>145</b>	<b>\$ 5,316,894</b>	<b>126</b>	<b>\$ 5,163,329</b>	<b>112</b>	<b>\$ 18,591</b>	<b>87</b>	<b>\$ (2,741,014)</b>	<b>0</b>	<b>\$ (509,649)</b>
<b>Total Performance Rent paid to the General Fund</b>		<b>\$ 2,513,777</b>		<b>\$ 2,932,008</b>		<b>\$ 2,533,447</b>		<b>\$ 2,439,164</b>		<b>\$ -</b>		<b>\$ -</b>		<b>\$ -</b>

Table 2.

**2018/19 Ticketed Non-NFL Events Revenue and Expenditure Summary**

In Millions \$

<b>Ticketed Events</b>	<b>Revenue</b>	<b>Expenses</b>	<b>Net</b>
Monster Jam	1.4	1.6	(0.2)
Taylor Swift Tour Day 1	5.1	6.9	(1.8)
Taylor Swift Tour Day 2	10.5	7.8	2.7
Stadium Links	0.1	0.0	0.0
Manchester United vs Earthquakes	1.6	1.9	(0.3)
ICC: Barcelona vs AC Milan	4.4	4.0	0.4
High School Football Series	0.1	0.1	0.0
Jay-Z/Beyonce	8.4	7.9	0.5
SJSU vs Army	0.2	0.4	(0.2)
Pac-12	1.3	4.0	(2.7)
Redbox Bowl	4.6	5.2	(0.6)
Mexico vs Paraguay	3.6	4.1	(0.5)
<b>Events to date</b>	<b>41.3</b>	<b>43.9</b>	<b>(2.6)</b>

Table 3.

<b>Levi's® Stadium</b> <b>Ticketed Non-NFL Events Revenue and Expenditure Summary</b> <b>FY 2019/20 Quarter 4</b> In Millions \$			
<b>Ticketed Event</b>	<b>Revenue</b>	<b>Expense</b>	<b>Net</b>
Monster Jam	\$ 1.6	\$ 2.0	\$ (0.4)
Bay Area Wedding Fair	0.0	0.0	0.0
USWNT vs South Africa	0.3	0.1	0.2
ICC: Chivas vs Benfica	1.2	1.5	(0.3)
Rolling Stones: No Filter Tour	11.4	10.5	0.9
High School Football Series	0.1	0.1	0.0
Pac-12 Championship	3.1	5.7	(2.6)
Redbox Bowl	4.6	5.2	(0.6)
<b>Total Ticketed Non-NFL Net Revenue to date</b>	<b>\$ 22.3</b>	<b>\$ 25.1</b>	<b>\$ (2.8)</b>
*Numbers may vary due to rounding			

As with all non-NFL Events, the Stadium Manager is responsible for negotiating terms on behalf of the Stadium Authority, and these negotiations significantly impact how much revenue is generated. Additionally, the Stadium Manager shares Stadium Venue Use Agreements for ticketed Non-NFL Events with Stadium Authority staff, but that is after the negotiations are finalized and the agreement with a promoter is executed. This hampers the ability of the Stadium Authority to understand fully the Stadium Manager's financial decision-making that impacts the Stadium Authority's bottom line, as well as how the Stadium Manager is performing with its legal responsibilities.

The Stadium Manager is also in violation of key terms in the COA in the Stadium Development Permit and Management Agreement that require providing the Stadium Authority notice of future events and negotiations for them (e.g., financial feasibility). First, is the requirement to maintain an Annual Events Program which has not been maintained by the Stadium Manager for years, despite

the requirement set forth by COA-P19. Second, are quarterly updates on events recently booked or under negotiations and information including contract terms which may impact the financials of an event, Management Agreement Section 3.3. The provisions in the Stadium Development Permit and Management Agreement are copied below, respectively:

**The applicant shall prepare, and submit to the Director of Planning and Inspection for approval, an Annual Events Program**, as described below; provided, however, that if the Annual Events Program or any amendment thereto, would provide for a total of more than 22 days on which Non-NFL events would be held with anticipated attendance of more than 25,000, the Annual Events Program (or amendment thereto) shall be subject to approval of the City Manager. **The Annual Events Program shall include a calendar that will identify and describe anticipated events at the stadium, including both projected NFL Events and non-NFL Events, the anticipated number of such events, event type, size of event (number of tickets to be sold/participant counts), day(s), time and duration of the event, parking availability, including locations of available parking and evidence of Off-Site Parking Permits, if applicable, and any special considerations related to the event...** The Director of Planning and Inspection's approval of the Annual Events Program shall be limited to approval of the Non-NFL Events Schedule. An amendment of the Annual Events Program may be necessary for significant new non-NFL events or significant changes in the number and size of smaller non-NFL events proposed subsequent to the regular adoption of the Annual Events Program... **(Stadium Development Permit, COA-19)**

The Stadium Manager and the Executive Director shall, at the request of the Executive Director, at a mutually convenient time, meet and confer no less often than quarterly during the Term of the Management Agreement to report on the status of the Stadium Manager's activities pursuant to Paragraph 3 .2 above and the then approved Marketing Plan, including, without limitation, **the status of Stadium Manager's marketing and promotional efforts, the status of any ongoing negotiations with respect to Non-NFL Events, financial performance and other matters relating to past Non-NFL Events**, development of the Marketing Plan for the succeeding fiscal year, and such other similar or other topics as the Stadium Authority may request. In addition, and without limiting the Stadium Manager's obligation to provide an Annual Statement of Stadium Operations pursuant to Section 4.2 of the Existing Management Agreement, the Stadium Manager shall furnish the Executive Director, within 45 days of each Non-NFL event with attendance projected to exceed 25,000 and on a quarterly basis for all other events, such written revenue or other reports relating to Non-NFL Events as the Parties may agree from time to time. **(First Amendment to the Management Agreement, Section 3.3)**

Council discussion on this matter **must** include the topic of the multi-year pattern of booking money losing events and how any Council action must ensure a positive revenue policy. Equally as important, as a fiduciary to both the City of Santa Clara and Santa Clara Stadium Authority, any action should result in the Stadium Manager's cure to the standing violations with respect to the above referenced legal obligations.

**Staffing Resources** - As discussed above, the Stadium Manager has not provided required quarterly updates or an Annual Events Program. Not only is this a Breach of the Stadium Management Agreement and COA, but these conditions result in the Stadium Manager committing very limited City



resources without advance coordination or notice of what other local events may be taking place. In the past, it has not been unusual for public safety departments to express concern with how staffing will be assembled for concurrent community events, require double overtime pay to secure resources, and/or contracting out with other law enforcement to ensure sufficient public safety resources are in place to meet the needs of the whole community.

As already stated, Council discussion on this matter should include action to make sure that there is Management Agreement compliance with maintaining quarterly updates and an Annual Events Program to address the absence of coordination and proper notice of when events are planned, along with other local events requiring City staffing support. This is especially important given the COVID-induced staffing reductions, approximately 26% less resources experienced citywide.

### **3: Increasing Curfew Violation Fee**

The Stadium Development Permit does not include a citation fee for Levi's Stadium non-NFL Events that go past the curfew. Instead, over the years, the City has relied on general provisions in the City Code to issue citations and/or fines when necessary. The City has issued citations to the Stadium Manager for events that exceed the curfew because they violated different provisions of the Santa Clara City Code (SCCC) such as:

- SCCC 8.30.030(h) - Public Nuisance (\$750)
- SCCC 9.05.010 (c) - Disturbance of Peace (Fines range from not exceeding \$150 for the first violation to not exceeding \$900 for a fourth violation within a one-year period)
- SCCC 9.10.040 - Noise or sound regulation (\$500)
- SCCC 18.114.020 - Violations and Penalties (\$500)

The fine amounts are outlined in the SCCC and Administrative Penalty Schedule approved in the May 24, 2016 Resolution. However, the Council should take note that the Stadium Manager uses Stadium Authority funds to issue payment for any violation fees.

Council discussion on this matter should recognize that violations fees are not a tool to induce compliance, as there is no financial hardship experienced by the violator, and that any increase will financially impact the Stadium Authority, not the Stadium Manager.

### **4: 2018 Community Survey Results for Noise and the Curfew**

On October 17, 2017, the City Council/Stadium Authority Board conceptually approved a multi-pronged framework for obtaining the public's opinion and the Council/Board directed the City Manager/Executive Director to implement a community engagement effort related to Levi's Stadium. The overarching objective of the project was to implement a transparent, independent and comprehensive process to gather statistically valid public views on a variety of policy issues related to Levi's Stadium, and to facilitate meaningful, robust qualitative input from stakeholders and the public on the outlined issues. Both quantitative and qualitative approaches were utilized, including (quantitative) broad-based public opinion research polling and scientific focus groups, and (qualitative) one-on-one leadership and community interviews and organizational focus groups. The City Council/Stadium Authority Board provided feedback on the groups and topics to include in the effort (Attachment 2).

As part of a study session on June 21, 2018, the consultants, The Lew Edwards Group with EMC Research and Public Dialogue Consortium, presented the final results of the Stadium Authority Board Community Outreach and Engagement Project. The consultants' high-level summary and final report are included as part of this report (Attachment 3). Through their engagement efforts, the consultants found that residents were dissatisfied with the level of traffic, parking, and "disruptive behavior" following stadium events. In general, stadium-related issues were not "top-of-mind" concerns in relation to other issues, such as generalized traffic concerns and the high cost-of-living. However, it was noted in the summary and final report that stadium-related issues did become more important and higher intensity among the near neighbor population.

As part of a May 2018 solutions survey that they conducted, the consultants found support for specific solutions to community concerns, particularly related to parking, neighborhood security, and stadium-related issues. In general, residents strongly supported services that would mitigate event-related issues following stadium events. Specifically, residents seek solutions to: (1) Stadium-related traffic, (2) Stadium-related parking, (3) Disruptive behavior pre/post Stadium events (particularly loitering, security/enforcement and noise control), and (4) Improving city-constituent communication. Residents were satisfied with the existing curfew system, but were open to changes and additional community engagement on that issue.

The consultants also provided solutions and items for further considerations to address the Stadium-related issues. They included having the Board consider engaging in partnerships with different agencies, including the Stadium Manager and Santa Clara Santa Clara Valley Transportation Authority, specifically to alleviate traffic and parking problems and engaging in proactive, in-house solutions to specific Stadium-related concerns. In particular, it was recommended that the City consider targeted policy changes designed to mitigate disruptive behavior before/after stadium events. Both the near-neighbors and citywide residents who participated in the engagement effort supported key policy changes to improve those services.

The City and Stadium Authority have engaged in a deployment study to determine strategies to mitigate neighborhood impacts and Stadium deployment. That study, along with other Council directions, has resulted in City and Stadium Authority staff implementing various efforts to address Stadium-related traffic, parking, disruptive behaviors pre and post Stadium events, and increasing communication to residents about Stadium events. These efforts include setting up a complaint line for stadium events, hiring a noise monitoring consultant, providing neighborhood protections, and increasing communications about event impacts. Both the City and Stadium Authority continue to engage the Stadium Manager to assist with mitigating these issues. Council's discussion should include discussion about neighborhood and regional impacts resulting from Stadium events.

#### **5: Community Engagement About Number of Curfew Exemptions**

As described in the Summary of the Stadium Authority Board Community Outreach and Engagement Project, residents were satisfied with the existing curfew system, but were open to changes and additional community engagement on that issue. Given the recent issues surfaced by the City of San Jose, coupled with the years that have passed since the original community input received, staff recommends that no action be taken at this time if the Council is interested in pursuing further community engagement on the topic. Pending the Council's direction, staff will implement a Request

for Qualifications process to hire a consultant to implement a community engagement effort that will solicit community input on the curfew and separately work with the City of San Jose on neighborhood mitigations, while enhancing focus on hot spots in Santa Clara. Community engagement could be completed via virtual meetings, or in person if feasible, and staff can compile an on-line community survey. Additionally, as staff has changed the deployment model since the original community engagement, this provides an opportunity to receive additional input on our public safety deployment strategy and make improvements, as needed.

#### **6: Great America's Noise Curfew**

Levi's Stadium's curfew restriction is generally consistent with those outlined for the Great America Amphitheatre, but not other attractions. The Planned Development Zoning for Great America outlines the following noise restrictions:

- There shall be no amplified entertainment within 200 feet of the east property line, nor within 50 feet of the west and south property lines of the park. All amplified entertainment shall be directed away from the nearest property line.
- **Amphitheatre: No amplified music after 11:00 p.m. on Friday/Saturday and 10:00 p.m. Sunday through Thursday.**
- Fireworks and pyrotechnics are only allowed between the hours from 10:00 a.m. and 10:00 p.m.

However, the theme park is allowed to operate from 9:00 a.m. to 1:00 a.m., including attractions and entertainment venues, amplified outdoor entertainment, and to operate rides from 9:00 a.m. to midnight. On up to 30 nights per year, a maximum of which 12 may be on Monday through Thursday nights, Great America is allowed to operate rides until 1:00 a.m.

#### **7: Researching Other Cities' Curfew Restrictions for Stadiums Located in Residential Areas**

Staff compiled a list of major outdoor venues located near residential areas in California that are used for concerts and/or sporting events. A summary of the findings made from this list is attached (Attachment 4). The document includes the name of the venue, location, venue capacity, curfew restrictions, if any, source for the restrictions, and additional notes, such as whether the venue is used by a sports team.

In general, the regional outdoor venues have curfews that range from 10:00 p.m. to 12:00 a.m. on weekdays (Sunday through Thursday) and from 10:00 p.m. to 12:00 a.m. on the weekends (Friday and Saturday) for Non-NFL/Non-MLB events. In September, the City of Oakland adopted an emergency order that suspended its 10:00 p.m. restriction on outdoor amplified sound to support outdoor gatherings during the COVID-19 pandemic. As such, the regional weekend curfew currently ranges from 11:00 p.m. to 12:00 a.m. for non-NFL/non-MLB events.

Staff also reached out to Southern California cities to inquire about curfew restrictions for venues like the Hollywood Bowl, Los Angeles Memorial Coliseum, and Rose Bowl, among others. At the time of this report, only some cities/venues have provided responses regarding their curfew restrictions. Of those that responded, their respective outdoor venues have curfews that range from 11:00 p.m. to no

restrictions from Monday through Thursday, from 11:00 p.m. to no restrictions on the weekends (Friday and Saturday), and from 10:30 p.m. to no restrictions on Sundays for events. The venue that had no restrictions is located in Downtown Los Angeles.

The curfew restrictions for the venues are set forth by various legal sources, such as lease agreements and city code. Levi's Stadium's curfew as outlined under COA-P22(c) is consistent with the curfew timeframe for regional outdoor venues when benchmarked to other venues. The Council's discussion should be informed by this data and coupled with the neighborhood adverse impacts, if new exemptions are to be developed.

### **NOISE MONITORING**

The City's noise monitoring program is a key component of current efforts to monitor impacts resulting from Stadium activity and should be considered concurrently with the policy alternatives below. COA-P23 sets forth the following requirement:

In order to control noise, the stadium loudspeaker systems (permanent and temporary) shall be oriented in a manner consistent with Community Noise Analysis prepared by WJHW, dated May 27, 2010 for the proposed 49ers Stadium, in order to control noise impacts to adjacent residential neighborhoods. In accordance with Section 9.10.070(c) of the Santa Clara City Code, and the recommendations of this noise analysis, sound system levels shall be limited to 100 dBA for NFL games and other uses of the permanent speaker system, and not more than 105 dBA for temporary concert speaker systems as presented in the analysis. For sound system installations and modifications within the stadium site, **the target for maximum sound level exposure in residential areas to the east and south shall be 60 dBA, in order to minimize noise impacts to sensitive receptors."**

While the EIR did anticipate noise impacts for non-NFL events, including non-NFL sports producing 61-66 dBA  $L_{eq}$  and concerts producing 66 dBA  $L_{eq}$  or less at the nearest neighborhood), staff has used the target 60 dBA outlined under COA-P23 as a threshold to ensure surrounding neighborhoods are not overly impacted by noise resulting from events.

Staff has presented on the noise issue before, including a December 19, 2017 Study Session. The Study Session PowerPoint is attached for reference (Attachment 5) and includes a slide on measured noise levels for 2017 concerts and NFL games.

Councilmembers have previously expressed their interest in improved noise monitoring reports. The City's existing noise monitoring agreement is set to expire on March 31, 2022. As there is a cost associated with removal of the equipment, staff would need to direct the consultants to remove the equipment prior to the expiration of the contract and if staff is to engage in a procurement process for a new service, it will be necessary to do so in the near future in order to avoid a disruption in the noise monitoring program.

This report provides an opportunity for the Council to provide direction and suggestions on the specific details and data that Council would like to see in future noise monitoring reports. Staff will use this feedback to either (1) work with the existing consultant to modify the agreement's scope of work and return with a cost proposal, or (2) implement a procurement process for a new consultant and include the specification for an improved noise report. These improved noise monitoring reports will be used to inform future policy making and evaluation for Levi's Stadium events.

**POLICY ALTERNATIVES**

The City Council has a number of policy alternatives to consider:

1. Maintain status quo and continue Council direction to the City Manager relative to COA-P22 (c);
2. Remove former Council direction to the City Manager and adhere to COA-P22(c);
3. Consider a Pilot Program to observe how other important policy/topics are impacted by directing staff to return with a Draft Policy for a Levi's Stadium Non-NFL Event Curfew Exemption Pilot Program. The Pilot Program would allow for exemptions based on a number of events established by the EIR and Council direction, as follows:
  - a) Stadium Manager to cure Stadium Management Agreement breaches/violations by regularly providing quarterly updates, submitting an Annual Events Program, and adhering to all terms set forth under the Stadium Management Agreement, Section 3.3 and the Stadium Development Permit, including COA-P19 and COA-P22(a);
  - b) Stadium Manager to cure any other violations of within existing Agreements;
  - c) Stadium Manager to ensure noise levels are under the target dBA outlined in COA-P23 for non-NFL events;
  - d) Pilot Program to be established during the Summer 2022 when school is not in session, to mitigate sleep deprivation for youth, with a public evaluation in Fall 2022 to determine next steps for Summer 2023;
  - e) No weekday event should exceed an 11:00 p.m. curfew;
  - f) Pyrotechnics should be planned for no later than 11:00 p.m.;
  - g) Any events booked during 2022 for future years outside of the Pilot Program term will be authorized and must meet the terms of the Pilot Program;
  - h) Financial feasibility of the event, including but not limited to, generating revenue for the Stadium Authority and falling under a category of profitable Non-NFL Events (no Pilot events can be money-losing events);
  - i) Advanced coordination, as called for in the legal agreements, to ensure that there are sufficient event and public safety staffing resources to accommodate the extended hours and proposed date of the event [based on 3(a)]; and,
  - j) Stadium Manager agrees to work collaboratively with the City and Stadium Authority to mitigate any additional traffic, parking, and pre and post event disruptive behaviors, such as loitering, security/enforcement and noise control, associated with the extended hours of the event.
- 4) Any other action as directed by Council.

**ENVIRONMENTAL REVIEW**

The environmental effects of the 49ers Santa Clara Stadium Project, including the noise impacts, were analyzed in the EIR certified by the City Council on March 9, 2010.

Under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21167.2, an EIR is conclusively presumed to be valid once the statute of limitations for challenging the EIR has expired. Here, the items under consideration by the Council all fall within the scope of the Project and the existing conditions of approval analyzed by the Stadium EIR, and CEQA precludes the reopening of the environmental review process under these circumstances.

**FISCAL IMPACT**

If left unaddressed by the City Council as part of any curfew flexibility, the issues discussed above

could result in more financial losses to the City and Santa Clara Stadium Authority. However, if the Council's final direction requires compliance and improved performance from the Stadium Manager, that could result in favorable financial impacts for the City and Stadium Authority. Until such direction is determined and implemented, the fiscal impact is unknown.

### **COORDINATION**

This report was coordinated with the City Attorney's Office, Stadium Authority Executive Director's Office, and Stadium Treasurer'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**

Staff recommends that any action taken by the Council should result in the Stadium Manager curing existing legal agreements violations and that the parameters of a Draft Council Policy should address improved compliance, financial performance, improved neighborhood mitigations, and improved coordination with the Stadium Authority.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. City of San Jose Letter Regarding Event Impacts
2. Council Feedback on Community Outreach and Engagement Project
3. Community Outreach and Engagement Project Summary and Final Report
4. Summary of Other California Cities' Curfew Restrictions for Major Outdoor Venues
5. December 19, 2017 Noise Monitoring Study Session PowerPoint