

John K. Haggerty  
1400 Coleman Ave., Suite C-21  
Santa Clara, CA 95050  
Telephone: (408) 988-2019

RECEIVED

SEP 10 2009

Office of the  
City of Santa Clara

September 9, 2009

Helene L. Leichter  
City Attorney  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

COPY

Re: **Charter Review Committee**  
(SB 43 And The Municipal Affairs Provisions  
Of The State Constitution)

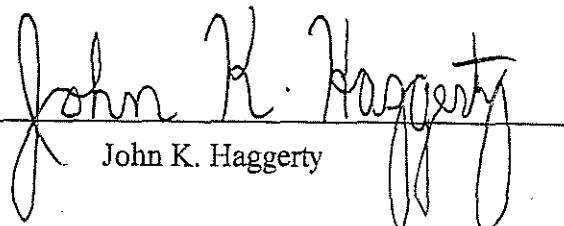
Dear Ms. Leichter:

I am writing this letter as a resident of the City of Santa Clara and a member of its current Charter Review Committee. At the last meeting of the Committee on September 3, 2009, John Watson, the project manager for the 49'ers organization, indicated to us that it was his understanding that, if the Legislature enacted SB 43, it would not be necessary for the City Charter to be amended to accomplish the "design-build" bidding mechanism his organization seeks. He apparently believes that, if SB 43 is enacted, only a ratification by the City Council would be necessary.

However, based on the contents of the memo I have enclosed herewith (regarding the municipal affairs provisions of the California Constitution), I am not certain that Mr. Watson is correct in this regard. More specifically, is it possible that, if a court were to hold that SB 43 involves a municipal affair, it could further hold that SB 43 does not trump the "lowest responsible bidder" provisions of the City Charter? I would appreciate hearing your thoughts on this subject at the next meeting of the Committee on September 17, 2009, when SB 43 is scheduled to be addressed.

If you have any questions regarding this letter or the enclosed memo, please do not hesitate to call. You may disseminate those documents to others as you see fit. Thank you for your attention to this letter.

Very truly yours,

  
John K. Haggerty

cc: J. Sparacino  
encl.

## MEMO

To: Helene L. Leichter, Esq.  
(City Attorney, RDA General Counsel)

From: John K. Haggerty  
(Charter Review Committee Member)

Date: September 9, 2009

Re: **A Charter City's Power To Regulate Municipal Affairs In  
Relation To State Legislation**

With respect to charter cities, such as the City of Santa Clara, article XI, section 5(a), of the California Constitution provides that:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and **with respect to municipal affairs shall supersede all laws inconsistent therewith.** (Emphases and boldface added.)

The respected California legal treatise, Witkin, discusses this constitutional provision as follows:

Under this theory of "municipal home rule," municipalities have supreme authority in the field of "municipal affairs," i.e., matters of internal or local concern, free from interference by the Legislature. [Numerous citations.] (8 Witkin, Summary of California Law (10th ed.), Constitutional Law, § 993, pp. 566-567 (emphasis added).)

Witkin proceeds to discuss the subject of what is a "municipal affair" as follows:

The cases have not developed a formula or test for determining whether a particular subject is a municipal affair, over which the municipality has full authority [], or is a matter of "statewide" or "general" concern as to which the legislative authority is paramount [] [Citations.]

Although the legislative purpose is entitled to great weight, the issue is one for judicial determination. "[T]he fact, standing alone, that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs, nor does it impair the constitutional authority of a home rule city or county to enact and enforce its own regulations to the exclusion of general laws if the subject is held by the courts to be a municipal affair rather than of statewide concern; stated otherwise, the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern." (*Id.* at § 995, 996, pp. 571, 572-573 (quoting *Bishop v. San Jose* (1969) 1 Cal.3d 56, 63)(emphases added).)

Memo to H. L. Leichter, Esq.  
Sept. 9, 2009  
Page 2 of 2

The courts have held that public contracting is a municipal affair. (See, e.g., *First Street Plaza Partners v. Los Angeles* (1998) 65 Cal.App.4th 650, 661.) In fact, the state Legislature appears to have recognized this in 2001 when it enacted Public Contract Code section 1100.7 which provides in pertinent part as follows:

With regard to charter cities, this code applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of this code.

The courts have also held that bidding procedures for public projects are a municipal affair. (See, e.g., *Piledrivers' Local Union No. 2375 v. City of Santa Monica* (1984) 151 Cal.App.3d 509, 511; *R & A Vending Services v. City of Los Angeles* (1985) 172 Cal.App.3d 1188, 1191; *Smith v. City of Riverside* (1973) 34 Cal.App.3d 529, 534.)

In addition, the courts have held that “[t]he expenditure of city funds on a city’s public works project is a municipal affair.” (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170-171 (emphasis added; also noting, at p. 171, that “it is well settled that a charter city may not act in conflict with its charter”).)

Accordingly, in light of the foregoing, it is probably worth considering whether an action proposed by the Legislature--relating to a charter city’s public works contract procedures and/or its expenditure of city funds--is inconsistent with the provisions of that city’s charter.

JKH/jkh

**INTEROFFICE MEMORANDUM**  
**Santa Clara City Attorney's Office**

**DATE:** September 17, 2009

**TO:** Members of the Charter Review Committee

**FROM:** Helene Leichter, City Attorney

**RE:** SB 43 and the Municipal Affairs Doctrine

---

By letter dated September 9, 2009, Committee Member John Haggerty asks whether SB 43's grant of power directly to the Stadium Authority to use design-build would "trump" the language of Charter Section 1310. Charter Section 1310 currently provides that most public contracts of \$1,000 or more are subject to competitive bidding. Mr. Haggerty asks whether the "municipal affairs" doctrine in the California Constitution would require that the provisions of Charter Section 1310 be applied to the stadium project regardless of the adoption of SB 43.

The municipal affairs doctrine, embodied in Article XI, § 5(a) of the California Constitution, grants charter cities broad legislative latitude over their "municipal affairs," free from any constraint imposed by the Legislature. A "municipal affair" is not defined, and may change over time, taking into account changing social issues and mores.<sup>1</sup> However, in general, the greater impact an issue has on regional and state interests, the less likely it is to be a purely municipal affair.<sup>2</sup> Although competitive bidding matters are often a matter of local concern, they are not always purely "municipal affairs." For example, consideration of minority and female owned businesses required by state legislation may supersede local competitive bidding procedures.<sup>3</sup>

Although general law cities must follow the public contracting procedures set forth in the California Public Contracts Code, charter cities may, pursuant to the municipal affairs doctrine, establish their own contracting procedures for public works. The City of Santa Clara's Charter, Section 1310, provides that almost every public works project "involving an expenditure of more than one thousand dollars (\$1,000.00) . . . shall be let to the lowest responsible bidder." SB 43 provides that the Stadium Authority may instead use the design-build process for the Stadium project, upon satisfaction of certain conditions, including that voter approval of the stadium

---

<sup>1</sup> *Baggett v. Gates*, 32 Cal.3d 128, 136, 185 Cal.Rptr. 232 (1982) – state legislation regarding police officers' employment rights was of statewide concern; *Bishop v. City of San Jose*, 1 Cal.3d 56, 62-63, 81 Cal.Rptr. 465 (1969); *Committee of Seven Thousand v. Superior Court*, 45 Cal.3d 491, 505, 247 Cal.Rptr. 362 (1988). A "municipal affair" is a legal, not factual, matter for the courts. *Id.*

<sup>2</sup> *Committee of Seven Thousand*, *supra* – construction of local roads is a municipal affair; construction of regional and state highways is not.

<sup>3</sup> *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal.App.4<sup>th</sup> 810, 820-824, 48 Cal.Rptr.2d 822, 828-831 (1996).

project be given, the cost is reasonable, the award of the contract is in the JPA's best interests, and that no monies from the general fund, enterprise funds, Mello-Roos district or RDA be used to pay for design-build activities.

Whether a subject is a municipal affair is relevant in determining whether state law is applicable to charter cities. Courts have repeatedly held that if there is no conflict between the language of a state law and a charter provision, there is no preemption and both laws are valid. If there is a conflict, the charter language prevails if the subject is a municipal affair, and state law prevails if it is not.<sup>4</sup> Thus, the first step in any municipal affair discussion is to determine whether a conflict exists between the state law and charter provision.

A. Charter Does Not Limit the JPA's Power

Here, there is no such conflict because SB 43 only grants the design-build power to the Stadium Authority, a joint powers agency which is a distinct legal entity from the City and RDA.<sup>5</sup> The limitation in Charter Section 1310 would apply only to the City. In a similar situation, the City of San Diego formed a "Convention Center Expansion Financing Authority" to issue bonds for renovations. San Diego was sued on the basis that the JPA could not issue bonds without complying with the two-thirds approval requirement for such financing under the San Diego City Charter. The California Supreme Court was direct in its decision, finding that:

"The City's charter regulates the manner in which *the City* may incur certain indebtedness. In this case, the City is incurring no indebtedness; rather, the Financing Authority is incurring indebtedness. As we already have noted, the Financing Authority is a separate legal entity from the City . . . the law permits what the City and the Port District have done." (emphasis in original)<sup>6</sup>

In addition, the Supreme Court declined to look at the "substance" of the transaction, e.g., the City's role in forming the JPA to avoid its own Charter requirements, finding that the application of the Joint Powers Act was controlling.<sup>7</sup> Thus, because SB 43 only affects the Stadium Authority, there is no conflict and it is highly unlikely that a court would pursue the inquiry further.<sup>8</sup>

---

<sup>4</sup> *Johnson v. Bradley*, 4 Cal.4<sup>th</sup> 389, 14 Cal. Rptr.2d 470 (1992) – local regulation of charter financing of campaigns not pre-empted by state regulation; *California Federal Savings and Loan Association v. City of Los Angeles*, 54 Cal.3d 1, 283 Cal.Rptr. 569 (1991); *Cobb v. O'Connell*, 134 Cal.App.4<sup>th</sup> 91, 96, 36 Cal.Rptr.3d 170, 174 (2005) – tax on financial corporations is a matter of statewide concern.

<sup>5</sup> See Government Code §§ 6505.3, 6508.1, 6551.

<sup>6</sup> *Rider v. City of San Diego*, 18 Cal.4<sup>th</sup> 1035, 1054-1055, 77 Cal.Rptr.2d 189, 201-202 (1998).

<sup>7</sup> *Id.*

<sup>8</sup> A court may also find that even though the City is forming the JPA, the City itself will not be contributing any general or enterprise funds to activities subject to design-build activities in violation of the Charter, as all activities funded by the Mello-Roos and RDA monies will be publicly bid and thus there is no conflict at all because the Charter provisions are not being violated.

B. A JPA May Have Greater Powers Than Its Members

Even if a court were to inquire into the substance of the JPA formation, it is unlikely that it would find a conflict exists on the basis that public contracting is a purely municipal affair. Because the Stadium Authority will be formed and operate pursuant to the California Joint Exercise of Powers Act (“Act”), any municipal affairs analysis must be conducted by taking into account that particular administrative structure.<sup>9</sup>

JPA's are created by the state, and their powers are created and defined by state legislative action. In general, the Act provides that JPA's must exercise powers that are common to all participating agencies. However, there are two exceptions to the common powers requirement.

First, recognizing that JPA's are often comprised of entities with differing powers, the California Legislature included a provision in the Act that a JPA may exercise a power that is available to one member but not the others, if the governing agreement specifies so.<sup>10</sup> Thus, in the case of *Zack v. Marin Emergency Radio Authority*,<sup>11</sup> a joint powers authority comprised of a county and several cities was not required to comply with a participant agency's zoning laws because the governing agreement specified that the county was the administrator of the JPA, and thus the JPA was only subject to statutory restrictions imposed on the county, which did not include compliance with city zoning laws. Similarly, a joint powers agency created between a public land conservancy and a park district was not required to comply with the requirement imposed on public conservancies to gain pre-approval of land acquisition from the State of California, because the governing agreement provided that any restrictions on the JPA's power were the same as the park district's, which entities are not required to get such approval.<sup>12</sup>

The second exception is for the Legislature to explicitly authorize the JPA to exercise powers that its member agencies do not possess. In general, restrictions applicable to the agencies comprising a joint powers authority, e.g., the inability to issue bonds or conduct eminent domain proceedings, do not apply if the joint powers authority has been granted specific powers under state law.<sup>13</sup> This is routinely done for various entities to allow construction activities, financing and insurance activities.<sup>14</sup> Similarly, SB 43 is a grant of power by the Legislature to the Stadium Authority which allows it to construct using a design-build process upon compliance with the pre-conditions stated in the text, which neither the City nor the RDA are otherwise authorized to perform.

C. Judicial Deference to Legislature's Determination

Finally, even if a court were to find a conflict exists, the courts give a strong deference to

---

<sup>9</sup> Government Code § 6500 and following.

<sup>10</sup> Government Code § 6509.

<sup>11</sup> 118 Cal.App.4<sup>th</sup> 671, 13 Cal.Rptr.3d 323 (2004).

<sup>12</sup> *Cooper v. Mountains Recreation and Conservation Authority*, 61 Cal.App.4<sup>th</sup> 115, 71 Cal.Rptr.2d 858 (1998).

<sup>13</sup> *Rider v. City of San Diego*, 18 Cal.4<sup>th</sup> 1035, 77 Cal.Rptr.2d 189 (1998).

<sup>14</sup> See, e.g., Government Code § 6516.3 and following.

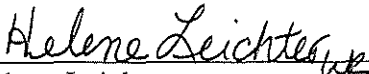
the Legislature's evaluation of whether an issue is one of local or broader interest and thus whether the issue is a "municipal affair" free from state regulation. The statement in SB 43 that the stadium construction is not just an issue of local interest to Santa Clara, but that "it is in the best interest of the communities located in and around the City of Santa Clara,"<sup>15</sup> will be accorded great weight by a court, particularly when coupled with the regional economic benefits and other issues that have been part of the City Council record to date, and it is therefore unlikely that a court would find the issue to be one of purely local interest.<sup>16</sup> Additionally, given the very limited nature and scope of the powers granted in SB 43, it is likely that a court would find the state's intrusion into local affairs was narrowly tailored.<sup>17</sup>

### CONCLUSION

In conclusion, SB 43 does not appear to conflict with Charter Section 1310, as SB 43 only grants the power of design-build to the Stadium Authority, which is a separate and distinct legal entity from the City, and which has been granted special powers apart from the powers held by its formative entities. Moreover, given the narrowly tailored application of the state law, and the legislative intent statement and evidence before the Council to date, it is unlikely that the issue would be considered to be one of purely local interest.

I have also attached for the Committee's information a copy of the Staff Report and accompanying PowerPoint presentation to the City Council made on October 23, 2007, regarding the legal issues related to the formation of the Stadium Authority JPA, in which many of the issues raised in this memorandum were touched upon.

Please let me know if you have any questions.

  
\_\_\_\_\_  
Helene Leichter  
City Attorney

HL:rk  
cc: Jennifer Sparacino, City Manager  
City Council (via email)

\\HELENE\Memos\Charter Review Committee - Muni Affairs and SB 43.doc18

<sup>15</sup> SB 43, Government Code § 6532(a).

<sup>16</sup> *Baggett, supra*, 32 Cal.3d 128, 134, 185 Cal.Rptr. 232; *Bishop, supra*, 1 Cal.3d at 63, 81 Cal.Rptr. 465.

<sup>17</sup> *Domar Electric, Inc., supra*.

Meeting Date: 10/23/07

# AGENDA REPORT

Agenda Item # 5B

Santa Clara

City of Santa Clara, California



**DATE:** October 17, 2007

**TO:** City Manager/Executive Director for Council/Redevelopment Agency Action

**FROM:** Assistant City Manager

**SUBJECT:** "Committee of the Whole" Discussion of the Structure and Functions of a Possible Stadium Authority as Outlined in the April 24, 2007 San Francisco 49ers Stadium Financing Proposal

## EXECUTIVE SUMMARY:

### Overview

As part of their stadium financing proposal presented at the April 24<sup>th</sup> Council/Agency meeting, the San Francisco 49ers outlined a concept for the creation of a Stadium Authority as follows:

- The City would create a Stadium Authority
- The Stadium authority would own and operate the stadium
- The 49ers would lease the stadium from the Authority for NFL games
- The Stadium Authority would schedule all other non-NFL events

Staff has taken the Stadium Authority (Authority) concept under review as part of the Feasibility Study process. It is important to note that there has been no Council commitment or action to date to create such an Authority, rather the Stadium Authority structure needs to be considered with all the elements of the stadium project, under the umbrella of the Feasibility Study.

### Proposed Stadium Authority Structure

The legal basis for the creation of a public Authority resides in Government Code Sections 6500 et.seq. These code sections permit several government entities to join together to form a new entity called a "Joint Powers" Authority or Agency. The members of the Stadium Authority would be the City of Santa Clara and the City of Santa Clara Redevelopment Agency. The seven elected members of the City Council, who also serve as members of the Redevelopment Agency Board, would serve as governing board members to the Authority. The Mayor would serve as chair of the Authority, with the City Manager as the Executive Director and the City Attorney as the Authority's General Counsel.

The primary governing documents of the Authority will be the Joint Powers Agreement between the City of Santa Clara and the Santa Clara Redevelopment Agency. The Joint Powers Agreement establishes the Stadium Authority and sets basic ground rules for its operation. The Authority will also enact Bylaws that will govern some aspects of Authority governance. The Authority will be formally created by action of the City Council and the Santa Clara Redevelopment Agency in approving the Joint Powers Agreement. Pertaining to the overall timeline for the construction of the proposed stadium, approval of the Joint Powers Agreement must precede the approval of the EIR for the stadium project and any final definitive agreements with the 49ers for the development and construction of the stadium. The Stadium Authority can be structured so that the City of Santa Clara and the Redevelopment Agency will not have any legal responsibility for the contractual obligations or the tort liabilities of the Authority. Subject to the limitations of the Joint Powers Agreement, the Authority will have all the powers that the City has.



### **Proposed Stadium Authority Functions**

The day-to-day staffing parameters for the Authority will depend in part on the scope and extent of the functions that the Authority undertakes. Some basic staffing models are:

- Operate the stadium with City staff serving as staff of the Authority under the typical City departmental management structure, with the City reimbursed by the Authority for staff expenses.
- The Stadium Authority would employ its own staff with the Executive Director (City Manager) as the hiring authority.
- The Authority would employ a private stadium management company well experienced in the complex operations and leasing of such a substantial facility, including the unique operating characteristics resident in an open-air stadium.
- A combination of the above staffing structures could also be used. As an example, certain management activities could be carried out by City employees while other operations and maintenance issues might be carried out by a private company under contract with the Authority.

It is staff's preferred option, through the initial study to date, that the Authority hire an experience stadium management company to be responsible for all aspects of stadium operations and maintenance.

In reviewing the breadth of Stadium Authority functions, staff has taken into consideration the 49ers concept of the operation of a Stadium Authority, however it may prove with further analysis that some functions should not reside with the Authority, but possibly be the responsibility of the 49ers or a related entity. It is also important to note that the fact that the Authority undertakes a particular function does not necessarily mean the Authority must bear the financial risk of carrying out the particular function. Examples of Authority functions are:

- Authority will lease the land for the stadium from the City pursuant to a long-term ground lease.
- Ownership of the stadium (Authority or possible City ownership of the stadium remains under study).
- Authority will contract with design and engineering professionals to design the stadium.
- Authority will contract with a construction contractor to construct the stadium.
- The construction of the stadium will be undertaken using funds that the Authority will obtain from the issuance of bonds and cash from stadium revenue sources:
  - \$330 million Stadium Authority financing sources:
    - Ticket Tax
    - Concessionaries Equity
    - Naming Rights
    - Pouring Rights
    - Stadium Builders Licenses
    - Corporate Founding Partners
  - \$330 million of Stadium Authority financing is estimated as follows:
    - \$185 million in Authority bonding
    - \$145 million cash from certain of the financing sources
- The Authority will lease the stadium to the 49ers, under a long-term contract, for use for all 49er home games.
- The Authority may lease the stadium for other events in addition to 49er home games.
- The Authority will be responsible for day-to-day stadium operations and the surrounding areas for football games and other stadium events, including maintenance, security, traffic control and parking.
- The Authority would enter into agreements with the owners of nearby parking lots (primarily office building complexes) in the vicinity of the stadium and make use of and operate those parking areas on stadium event days.
- The Authority will be responsible for obtaining insurance against hazards such as fires, floods or earthquakes and also insure against tort claims such as injuries to event attendees.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Providing the Council and community the opportunity to review the basic structure and functions of a Stadium Authority concept assists in the understanding of the major governance and operation issues inherent in owning and operating a large, complex project such as the proposed 49ers stadium.

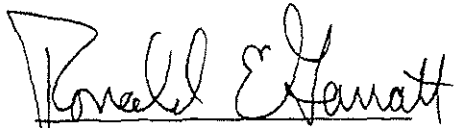
**ECONOMIC/FISCAL IMPACT:**

It is critical that, if the stadium project proceeds to completion, there be an experienced, competent operator able to maximize the publically-owned stadium's return on invested funds.

**RECOMMENDATION:**

It is recommended that the Council/Redevelopment Agency accept the Committee of the Whole presentation of the structure and functions of a Stadium Authority for a proposed San Francisco 49ers stadium in the City of Santa Clara and direct the City Manager to include this analysis in the accumulated body of materials and information being used in the Stadium Feasibility Study.

APPROVED:



Ronald E. Garratt  
Assistant City Manager



Jennifer Sparacino  
City Manager/Executive Director  
Redevelopment Agency

***Documents Related to this Report:***

*none*



## Santa Clara Joint Powers Authority Presentation

---

As part of the proposed 49ers'  
Feasibility Study



## Proposed Santa Clara Stadium Authority - Overview

---

April 24, 2007 49ers Stadium Proposal

- City would create a Stadium Authority.
- Stadium Authority would own and operate stadium.
- 49ers lease stadium from Authority for NFL games.
- Stadium Authority schedules non-NFL events.



## Proposed Santa Clara Stadium Authority - Overview

---

- City Feasibility Study
  - Stadium Authority concept under review.
  - No commitment to a Stadium Authority at this time.
  - Creation of Authority needs to be considered as a part of the larger Feasibility Study.

3



## Members of Santa Clara Stadium Authority

---

- City of Santa Clara.
- Santa Clara Redevelopment Agency.

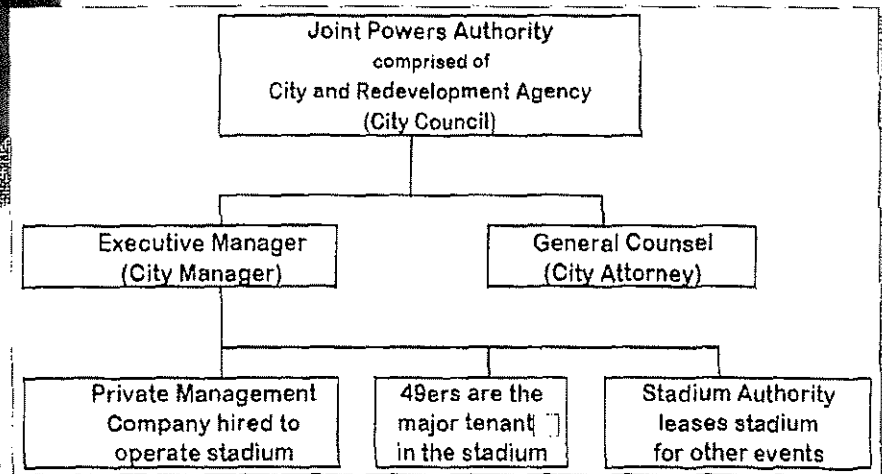
4

## Governance Structure

- o Seven members of City Council serve as governing board of Joint Powers Authority.
- o City Manager serves as Executive Director.
- o City Attorney serves as General Counsel.

5

## Organization Chart



6



## Governing Documents

---

- Joint Powers Agreement between City and Redevelopment Agency.
- ByLaws of Stadium Authority.

7



## Proposed Structure and Functions

---

- Insulation from Liability
  - City and RDA will not have legal responsibility for contractual obligations or tort liabilities.
- General Powers
  - Subject to the Joint Powers Agreement the Stadium Authority will have same powers as City.

8

## Proposed Structure and Functions

---

- Stadium Authority Staffing based:
  - Functional requirements of operating a stadium.
  - Existing Council / Manager roles and responsibilities.
- Basic models for stadium operations:
  - Through existing City departmental operations.
  - Authority employs staff/City Manager as hiring authority.
  - Authority employs private stadium management firm with experience in stadium management.
- Staff Recommendation – Hire private management firm.

9

## Proposed Structure and Functions

---

- Examples of Stadium Authority functions:
  - Lease of land.
  - Leasing the stadium.
  - Leasing the stadium for non-NFL events.
  - Ownership of stadium.  
City Vs Authority ownership remains a consideration.
  - Design of stadium.
  - Construction of stadium.

10

## Proposed Structure and Functions

---

- Examples of Stadium Authority functions (cont'd):
  - Overall financing of stadium.
  - Day-to-day operations including game day.
  - Parking and security operations.
  - Providing insurance for stadium.
  - Repair/refurbishment/replacement of stadium.

11

## Financing of Stadium Construction (as proposed by 49ers)

---

- Stadium Authority bonds:
  - Secured by naming rights contract revenue
  - Secured by ticket fee revenue
- Other Stadium Authority revenue:
  - Additional naming rights revenue
  - Additional ticket fee revenue
  - Seat license revenue
  - Concessionaire payments
- Payments from Team and NFL
- Payments from the City or Redevelopment Agency

12



## Proposed Structure and Functions

---

- Financing details from 49ers proposal:
  - \$330 M in Stadium Authority financing sources:
    - Ticket Tax
    - Naming Rights
    - Stadium Builders Licenses
  - \$330 M in Stadium Authority financing split:
    - \$185 M in Stadium Authority bonding
    - \$145 M cash from certain financing sources

13


## Proposed Structure and Functions

---

### Examples of Stadium Authority functions (cont'd):

- Enter into naming rights contract
  - Impose a ticket fee
  - Sell seat licenses
  - Enter into concession rights contracts

14




## Legal Issues

---

Presented by Lee Rosenthal,  
RDA Counsel

15



## Authority for Joint Powers Authority

---

- Joint exercise of powers agency, commonly "JPA"
- JPA is made up of other government agencies who come together to carry out a specific task or activity
- Formation and operation of JPAs authorized by State law.  
Government Code Sections 6500 et seq.

16

## Formation of Joint Powers Authority

---

- "Constitution" of a joint powers authority is the joint powers agreement required by Government Code Section 6503.
- Joint powers agreement typically creates a separate agency or entity.
- Joint powers authority also has by-laws that govern various aspects of the operation of the authority.

17

## Governing Board

---

- Typically, the governing board of a JPA is made up of members of the governing board of the entities that form the JPA.
- JPA law does not dictate composition of JPA governing boards so other models are possible:
  - JPA governing board members are made up of elected officials.
  - JPA governing board consists of appointed members.

18

## Government Agency Rules

---

- Because a JPA is a government agency, it is generally subject to same laws that apply to other government agencies. For example:
  - Brown Act governing the noticing, agendas and conduct of public agency meetings.
  - Public Records Act governing the availability of public agency documents to the public.

19

## Exercise of Common Power

---

- Purpose of a JPA must be to undertake an activity a function that the member agencies both can undertake - common power.
- However, under Government Code Section 6509, any restrictions on undertaking that activity are those of one of the member agencies designated in the joint powers agreement.
- As a result, sometimes a JPA can exercise a power (such as eminent domain or issuance of bands) that is available to one member but not the other.

20

## Limitations of Liability

---

- A JPA is authorized by Government Code Section 6508 to:
  - Enter into contracts
  - Own property
  - Incur debts
- Where a joint powers agreement creates a separate government entity, the parties' agreement may specify, under Government Code Section 6508.1, that they will not be liable for the JPA's debt and liabilities.
- A government agency forming a JPA can insulate itself from liability for JPA's debts.

21

## Functions Carried Out by JPA's

---

- Transportation services.
- Insurance and risk management.
- Open space acquisition and maintenance.
- Bond financing.
- Public recreation and entertaining facilities including stadiums and areas.
- Animal shelters.
- Regulatory functions such as air quality.

22



## Staff Recommendation

---

- Accept Committee of the Whole Presentation on the Structure and Functions of a Stadium Authority.
- Direct City Manager to include Stadium Authority report in materials and information used in the Feasibility Study.

23



---

Questions?

24