



**Date:** October 26, 2009

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

**From:** Administrative Analyst to the City Manager

**Subject:** **REVISED:** Recommendation from the Charter Review Committee to Use the Authority Granted by SB 43 to Allow a Design/Build Construction Process and the Use of the General Contractor Chosen by the Stadium Authority for the Proposed New Stadium

**EXECUTIVE SUMMARY:**

On June 23, 2009, Council established a process and timeline for creating a Charter Review Committee. The purpose of the Charter Review Committee was to determine if existing City Charter language requiring competitive bidding for Public Works projects could be modified to allow for some focused, limited use of a design/build process not subject to competitive bidding in some or all of the construction of an NFL stadium. Seventeen members were appointed: seven members directly appointed by each Council member, eight at-large members selected by Council through an application/interview process, one member selected by the Citizens Advisory Committee, and one member selected by the Chamber of Commerce. The Committee met a total of three times: August 20, 2009; September 3, 2009; and September 17, 2009 (copies of the minutes are attached). The Committee selected Don Von Raesfeld as chair and Pat Kolstad as vice chair.

According to the San Francisco 49ers, one of the most important aspects of the stadium project is to have the ability to construct the stadium using methods and techniques that the Team believes are most favorable to ensuring a timely completion at an agreed-to budget. From the Team's perspective, this requires the use of a design/build construction methodology, with the ability to select the general contractor of their choice, especially because the Team would carry the responsibility for any cost overruns on the project. As explained to the Charter Review Committee, the Team went through a detailed, competitive selection process in 2006 to designate a preferred general contractor. After this process was completed, the Team then determined that the City of Santa Clara was their preferable site to construct an NFL stadium. City staff and Team representatives provided the Charter Review Committee with a thorough explanation of City Charter Section 1310 bidding procedures and the current state-of-the-art processes for a design/build project at the Committee's September 3, 2009 meeting. The team representatives presented two specific requests to the Committee: 1) Allow the team to use a design-build process to help manage their cost overrun risk; and 2) Allow the team to continue using their previously-selected General Contractor to manage the stadium construction process.

Staff also presented an overview of Senate Bill 43, a bill introduced by Senator Elaine Alquist. SB 43 would authorize a joint powers agency that includes the City and its Redevelopment Agency to let a design-build contract without using the competitive bid process specified in Section 1310 of the City Charter for the construction of a stadium in Santa Clara. Passage of SB 43 would not mandate that the City use its provisions; rather, it would give the City an additional option for consideration in the process of building of a stadium, one that did not require a change to the existing City Charter. Council referred SB 43 to the Charter Review Committee so that it could be reviewed and considered as part of the Committee's deliberations.

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After careful review and consideration of all the information and materials presented, the Charter Review Committee at its September 17, 2009 meeting made the following recommendation:

- If Senate Bill 43 is signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium; and
- If Senate Bill 43 is not signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council propose that the City Charter be amended by a vote of the people in accordance with the draft language proposed, including
  - The City Charter be amended to provide a design/build process similar to that proposed in Senate Bill 43
  - The City Charter amendment would only apply to the proposed stadium
  - The City Charter amendment would allow the Stadium Authority to select a design/build contractor on a sole source basis, but would require that the majority of the subcontractors be awarded on a competitive bid basis
  - The Charter Amendment would provide that any City investment from Redevelopment Agency (RDA) and Community Facilities District (CFD) funds would be used only to pay subcontractors selected based on City's existing bid process.

At the time of the Charter Review Committee's final meeting, it was not yet known whether SB 43 would be signed into law. Since then, the Governor has in fact signed SB 43 (October 11, 2009). A copy of the bill is attached.

Also attached to this agenda report is information from the City Clerk/Auditor regarding updated options and costs regarding potential ballot measures.

**ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Using the authority granted under SB 43 would allow the 49ers to use a design/build construction process and allow the sole source selection of the general contractor by the Stadium Authority. It also requires that public funds used in financing stadium construction be competitively bid in compliance with existing Charter Section 1310 language. In addition, use of SB 43 avoids the need to modify Section 1310 of the City Charter, thereby avoiding the costs of putting Charter modification language on a ballot. The 49ers have committed to cover any cost overruns associated with construction of the stadium, protecting the City's General Fund and Enterprise Funds from impacts. A disadvantage is that the use of SB 43 could be perceived as a way of avoiding the requirement for public bidding contained in the Charter. Additionally, SB 43 contains more reporting requirements to the State than are needed under the City Charter.

**ECONOMIC/FISCAL IMPACT:**

Use of SB 43 would avoid the costs associated with putting a Charter modification measure on a ballot that would allow for the sole sourcing of the General contractor for the stadium project only. Additional staff time would be necessary to generate the state-mandated reports under SB 43, at an unknown cost. However, the state reporting requirement is one time only, not an annual reporting requirement.

**COUNCIL OPTIONS:**

The Council can consider one of three options regarding the Charter Review Committee's recommendation:

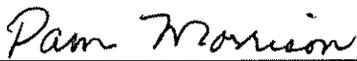
1. Note and File the minutes of the September 17, 2009 Charter Review Committee meeting, and take no further action to either use the provisions of SB 43 or make changes to the language in the City Charter, thereby requiring the Stadium Authority to use the competitive bidding process outlined in Section 1310 of the City Charter for the proposed new stadium.
2. Note and File the minutes from the September 17, 2009 Charter Review Committee meeting, and recommend that the City Charter be amended by a vote of the people to provide a design/build process similar to that proposed in Senate Bill 43 and to allow the Stadium Authority to select a design/build contractor on a sole source basis, with the provision that the majority of the subcontracts be awarded on a competitive bid basis.
3. Note and File the minutes from the September 17, 2009 Charter Review Committee meeting, and approve the recommendation of the Charter Review Committee to rely upon the authority granted in SB 43 which allows for the use of a design/build construction process and the use of the general contractor chosen by the Stadium Authority for a potential stadium should a stadium be approved by the voters. (Revised Option 3)

**RECOMMENDATION:**

That the Council:

- 1) Approve Option 3, approve the recommendation of the Charter Review Committee to rely upon the authority granted in SB 43 which allows for the use of a design/build construction process and the use of the general contractor chosen by the Stadium Authority for a potential stadium should a stadium be approved by the voters;
- 2) Note and file the minutes from the September 17, 2009 Charter Review Committee meeting; and
- 3) Authorize a letter of thanks from the Mayor and City Manager to the Charter Review Committee members for serving on the Committee.

APPROVED:



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Pam Morrison  
Administrative Analyst to the City Manager



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Jennifer Sparacino  
City Manager/Executive Director

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

- 1) *Charter Review Committee Minutes dated September 17, 2009*
- 2) *October 15, 2009 Memo from City Clerk/Auditor on Options and Costs Regarding Potential Ballot Measure for the Proposed San Francisco 49ers Stadium*
- 3) *Charter Review Committee Minutes date September 3, 2009*
- 4) *Charter Review Committee Minutes dated August 20, 2009*
- 5) *Text of Senate Bill 43 (Alquist)*

Meeting Date: 10/27/09

Santa Clara



# AGENDA REPORT

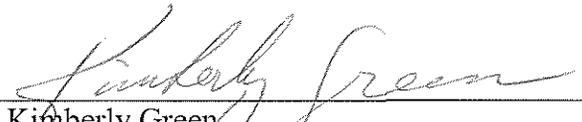
City of Santa Clara, California

Agenda Item # 6B-2



**Date:** October 26, 2009  
**To:** City Council for Information  
**From:** Executive Assistant to the Mayor and City Council  
**Subject:** Correspondence Received Regarding: Charter Review Committee Recommendations

Attached are 2 communications received in the Mayor and Council Offices from Monday, October 26, 2009 through Tuesday, October 27, 2009 regarding Recommendations from the Charter Review Committee (Item #6-B on the October 27, 2009 City Council Meeting Agenda).

  
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Kimberly Green  
Executive Assistant  
Mayor and City Council

Attachments: Communications from residents

cc:  
*City Manager*  
*City Clerk*

## Kimberly Green

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**From:** gcjgapel@comcast.net  
**Sent:** Tuesday, October 27, 2009 10:34 AM  
**To:** Kimberly Green  
**Subject:** Bypass Competitive Bid Process

The following has sent a message:

Name: Jo Apel

Email: gcjgapel@comcast.net

Comments: Bypassing the competitive bid process for the 49ers Stadium is just another attempt to ramrod this stadium down the throats of Santa Clara residents. In this tough economic time we do not need a football stadium in our city! If the 49ers want a stadium they can pay for it with their own funds, not use city money for it! We will vote no when it comes on the ballot. Please do not bypass the city charter!!!

**Kimberly Green**

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**From:** Jerry Marsalli [jerrymarsalli@yahoo.com]  
**Sent:** Sunday, October 25, 2009 11:16 PM  
**To:** Mayor and Council  
**Subject:** Charter Review Committee's recommendation re: SB43

Dear Mayor Mahan and City Council members,

I want to encourage you to accept the Charter Review Committee's recommendation to use the authority granted by Senate Bill 43 to allow a "design/build/construction" process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium.

Senate Bill 43 provides the City with the option to allow the "design/build" method without changing the City Charter. It's a one time only option that only applies to the stadium and allows all other projects to continue to use the "lowest bid" process.

The selected general contractor will still be required to competitively bid all sub-contract work in accordance with the City Charter. Only private funding will be used to pay the "design/builder" and the City's redevelopment agency funds will go to sub-contractors hired in accordance to the City's charter.

This is a tremendous opportunity for the City to take the next step forward with the Stadium and bringing it to the ballot in June 2010 for the residents of Santa Clara to make the final decision.

I'm also looking forward to the public hearing on the Stadium's Environmental Impact Report. I encourage you to have the EIR placed on the Council's Agenda as quickly as possible so the public will be able to learn all the facts in an open forum so all questions and concerns can be addressed.

In closing, I want to thank you for your careful consideration and diligence during these negotiations about the 49er Stadium proposal.

Regards,

Jerry Marsalli

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**Elaine Alquist**

**Letter to the Editor Re: "Santa Clara City Council to Vote on Stadium Public Bidding Issue"**  
**Mercury News**

As the author of SB 43, I need to correct a misstatement quoted in yesterday's article on how my state law would affect the \$114 million in public investment that the citizens of Santa Clara will be making for the new 49ers stadium.

SB 43 explicitly states that every last cent of the \$114 million public investment will be competitively bid pursuant to the requirements of the Santa Clara City Charter. As a longtime resident of Santa Clara, I would never author a state law that interfered with my community's right to local control.

10/27/09

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## Santa Clara Plays Fair

[www.SantaClaraPlaysFair.org](http://www.SantaClaraPlaysFair.org)

P.O Box 6244 Santa Clara, CA 95056-6244

Madame Mayor, Santa Clara City Councilmembers and City Staff, thank you & good evening. I'm Bill Bailey and I have lived in Santa Clara for 20 years. I am the Treasurer of Santa Clara Plays Fair<dot>org. All of us are volunteers.

The Term Sheet you approved on June 2<sup>nd</sup> was very clear: Upon acceptance of the Charter Committee's recommendations, per Section 6.3, the City Council is to "*submit a proposed Charter amendment to the voters for approval.*"

But on June 30<sup>th</sup>, Senate Bill 43 was hijacked to give a carve-out benefiting ONLY the San Francisco 49ers. On July 8<sup>th</sup> and September 9<sup>th</sup>, members of this Council went to Sacramento to support the bill, which DENIES us the right to vote on our own City Charter. Taking away the vote of some 40,000 Santa Clarans on that Charter change is not only completely unfair, it is a violation of the Term Sheet.

**The solution is not SB 43, because there is nothing wrong with our Charter.** The fairest solution for Santa Clarans is the very one that for two-and-a-half years the San Francisco 49ers – and this City Council – have refused to hear: **Let the 49ers build their stadium with their own money.** Our City's Charter would then no longer apply, and the 49ers alone would control the design-build process. There would have been no need for the formation of the Charter Review Committee – and certainly no need for the hijacking of SB 43.

SB 43 was rewritten just for the 49ers by Assemblyman Alberto Torrico, District 20, Fremont-Newark. Mr. Torrico represents not one single Santa Claran – and **the \$114 million subsidy is our money, not his.**

The Term Sheet of June 2<sup>nd</sup> already takes our city backwards. Now: We're learning that, not only do the San Francisco 49ers insist on a subsidy, they demand immunity from our City's ordinances as well.

I urge this City Council NOT to invoke Senate Bill 43. Either tell the 49ers, "ZERO subsidy" – or give us, next June, the TWO ballot measures we've earned – one for the 49ers' subsidy and one for the 49ers' Charter carve-out.

This All-American City is entitled to both of them. Thank you.