Meeting Date: 12-4-07

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 4D

Santa Clara All-America City 2001

DATE: November 28, 2007

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

FROM: Assistant City Manager

SUBJECT: Overview of Proposed 49er Stadium Issues Pertaining to Parking and Traffic, the California Environmental Quality Act (CEQA), Construction Contracting and the Process and Timing of a Possible Ballot Measure

EXECUTIVE SUMMARY:

The April 24, 2007 proposal by the San Francisco 49ers to construct an $853 million stadium in the City of Santa Clara involves a myriad of issues pertaining to land use, financing, construction, and event logistics. City Staff and the 49ers have been exploring these issues for the past seven months as part of the ongoing feasibility study. No commitment has been made to date to a stadium project nor has there been a commitment to any level of funding. As previously outlined for the community, the City Council is holding a series of meetings in December to address the various issues under review in the feasibility study process.

While stadium financing and Great America Theme Park lessee approval have been focal points to date, this agenda report addresses other critical components of the proposed 49ers stadium project:

- Game day traffic and security issues effecting the City's Police and Fire Departments.
- Parking 19,000 anticipated cars, including a discussion of how parking lots could be managed and controlled to produce the necessary parking revenue stream to support stadium operations.
- The type of environmental review process required for the proposed stadium.
- A review of the stadium construction bidding process as it relates to existing City practices.
- The types of ballot measures that might be involved in a stadium project of this size and scope and the timing necessary for such ballot measures.

The "Committee of the Whole" meeting structure is designed as a focused opportunity to share information on the stadium project with the Council and community. Information pertaining to the topics above will be presented at the December 4, 2007 Council meeting with exhibits attached as follows:

- The Police and Fire Departments will speak to game day traffic and security issues. There is no report attached;
- Exhibit 1- a memo from the City's Director of Planning and Building Inspection and Redevelopment Agency Counsel pertaining to stadium parking issues;
- Exhibit 2 - a memo from the City Attorney, with input from the Director of Planning and Inspection, addressing environmental review of the stadium project;
- Exhibit 3 - a memo from the City's Redevelopment Agency Counsel regarding stadium construction contracting and the contractor bidding process;
- Exhibit 4 - a memo from the City Attorney outlining the types of ballot measures the may be brought forward in connection with the proposed stadium; and
- Exhibit 5 – a memo from the City Clerk addressing election calendar information regarding potential ballot measures.

ADVANTAGES AND DISADVANTAGES OF ISSUE:
The various issues addressed in this report allow the Council and community a deeper understanding of the complexity of a project of this magnitude. Although the City has not decided to move forward with a stadium project, the attached reports provide valuable information in evaluating the many variables inherent in a stadium project.

ECONOMIC/FISCAL IMPACT:
The parking controls and construction bidding issues addressed in this report have a direct impact on the financing and operations of a 49ers stadium. These financing implications will be discussed in detail at the next "Committee of the Whole" meeting on December 11, 2007.

RECOMMENDATION:
It is recommended that the Council/Redevelopment Agency accept the attached reports on stadium parking, stadium environmental review, stadium construction financing, and possible ballot measures and timing pertaining to the stadium project, and direct the City Manager to include these reports in the accumulated body of materials and information being used in the Stadium Feasibility Analysis.

APPROVED:

Ronald E. Garratt
Assistant City Manager

Jennifer Sparacino
City Manager/Executive Director
Redevelopment Agency

Documents Related to this Report:
1) Exhibit 1 – Analysis of Stadium Parking Issues
2) Exhibit 2 – Outline of the Environmental Review Process for a Proposed Stadium
3) Exhibit 3 – Analysis of Stadium Construction Contracting and Bidding
4) Exhibit 4 – Outline of Various Types of Ballot Measures
5) Exhibit 5 - Election calendar information regarding potential ballot measures.

STAFF REPORT REGARDING STADIUM PARKING

A. Introduction.

The San Francisco 49er's April 24, 2007 proposal for a stadium in Santa Clara contemplates a need for 19,000 parking spaces to serve the Stadium and that most of the parking for the proposed Stadium would be provided on currently existing commercial and public parking lots and parking structures located within approximately a 15 minute walk of the Stadium. There are currently about 26,000 existing spaces within that walking distance which equates to a walk of about 4000 to 5000 feet. These parking lots and parking structures currently do not normally have heavy use on the weekends when there would be demand for the parking for Stadium patrons. The team proposal contemplates that much of the parking would be provided pursuant to contracts between the Stadium Authority and the owners and/or tenants who control that parking in the vicinity of the Stadium. In all probability, the Stadium Authority would contract with an experienced parking operator to actually operate the parking that the Stadium Authority has a right to use.

There are a number of subsidiary issues that arise from this parking program. The success of the program requires coordination of the parking program with the City's pedestrian and vehicular traffic and safety control program that would be in effect during major events at the Stadium including football games. Also, there would be a need for controls and limitations on on-street parking to facilitate pedestrian, mass transit and vehicle movement and to prevent event parking in surrounding residential neighborhoods.

B. Street Parking Controls.

There are some State law limitations on a city's parking and traffic controls. Generally, control of streets and road is an issue of statewide concern for which the State can preempt local regulation. However, with regard to control of traffic and parking, the Legislature has enacted Vehicle Code Sections 21101, 21106 and 22507 which give local governments the right to enact controls over vehicular and pedestrian traffic and parking on local streets. The permitted local controls give the City sufficient authority to control traffic and parking around the Stadium when there are games or other events at the Stadium. The permitted local controls also give the City the authority to preclude event parking in residential areas in the vicinity of the Stadium.

C. Contracts with Parking Lot Owners.

It is expected that owners or tenants of existing parking lots in the vicinity of the Stadium would be willing to enter in to contracts with the Stadium Authority to make their lots available for parking for Stadium games and events. As noted above, many of these lots are not in use at the times that parking is most likely needed for Stadium events. Also, these owners and tenants will have an economic incentive to enter into those contracts because they will share in the parking revenue. The Stadium Authority will also relieve the owners and tenants of the need to deal with parking issues such as obtaining permits for the parking, managing the parking, providing security for the lot, cleaning the lot or, if the lot is not to be used for Stadium parking,

EXHIBIT 1

keeping parking poachers off the lot. The 49er's have had preliminary discussions with a number of lot owners and tenants who have expressed interest in making their parking available pursuant to contracts with the Stadium Authority.

There is, of course, a possibility that some owners and tenants will not be willing to make their parking available for Stadium events. Some owners may not want others using their property and other owners may have redevelopment plans that would preclude a commitment of their parking lots. However, the staff believes that the economic incentives are likely great enough to encourage most owners and tenants to make their parking available. Also, there are sufficient commercial and public spaces within a reasonable distance of the Stadium (approximately 26,000 spaces within a 15 minute walk). Consequently, if some owners or tenants choose not to make their parking available, it may not cause a shortage of parking. This Stadium will also be well served by public transit. Note that this parking issue is one that would receive detailed analysis in the environmental impact report for the Stadium.

There is also a possibility that some owners or tenants will not be willing to contract with the Stadium Authority but will choose to open their lots for parking for Stadium events. This would not affect the amount of parking available but would affect parking and traffic coordination on event days. However, as described below, owners and tenants will be required to obtain City land use permits to make use of their properties for off-site parking. The conditions of approval for that off-site parking use can require that owners and tenants participate in coordination efforts.

D. Land Use Permits.

Under the City's Zoning Ordinance, the Stadium requires on-site parking for 17,000 cars. In order for those spaces for the stadium to be provided off-site, the City would have to approve a variance or use permit to permit the utilization of off-site parking to serve the Stadium. A variance or use permit would be based on a "shared use" analysis showing that the off-site parking is available for the Stadium events and is not otherwise needed for the primary use on the property where the off-site parking is located.

The use of the off-site lots and structure for Stadium parking presents another land use issue. For most zoning districts, the use of property for parking for uses other than those on the property (i.e. off-site uses) is not specifically addressed in the City's Zoning Ordinance. Such off-site parking is permitted in one zone within the City but not on the properties with parking that surround the Stadium. Consequently, to provide for off-site parking for the Stadium, it would be necessary to amend the City's zoning regulation to adopt an overlay district that deals with off-site uses. It is likely that any overlay would establish a permit process whereby owners or tenants who wanted to use their parking lots or structures for parking for Stadium events can obtain permits subject to reasonable conditions that deal with various management and operational issues such as policing, security, litter, pedestrian and vehicular access, traffic and coordination. Each parking lot may be required to pay a fee for traffic control and other services provided by the City in conjunction with Stadium events.

Both a variance or use permit for Stadium off-site parking and the amendment of the City's Zoning Ordinance to create an overlay zone to accommodate off-site parking would be subjects considered in the environmental impact report for the Stadium project.

E. Parking Revenue and Expenses.

Under the 49er's proposal, the Stadium Authority's costs of operating parking for Stadium events would be operating expenses of the Stadium. As will be detailed in other aspects of the feasibility report, the 49er's are generally responsible for covering all Stadium operating expenses. The revenue that the Stadium Authority receives for parking will also be operating revenue of the Stadium and, as will also be detailed in other aspects of the feasibility report, would be used together with other revenues to pay the expenses of operating the Stadium including the parking.

F. Parking Tax.

The City could impose a parking tax to defray Stadium costs. A parking tax would require voter approval. Depending on the structure of the tax, the tax could require a majority or a two-thirds affirmative vote. The City would have to consider and decide whether a parking tax would cover only parking associated with the Stadium or would also cover other paid parking in the City.

At this time it does not appear that the revenue from a parking tax is necessary for the construction or operation of the Stadium. Parking fees and charges generated from Stadium Authority operation of parking and from private operators of parking would likely produce the same level of revenue as would a parking tax.

G. Conclusion.

The adequacy of parking for Stadium events is an issue that will be addressed in detail in the environmental impact report for the Stadium project. The staff's initial review of the parking aspects of the 49er's April 24, 2007 proposal indicates that the proposal can be feasibly implemented. There are many detailed issues that need to be addressed and resolved. These issues will be addressed in the environmental impact report, and assuming the City ultimately approves the project, in the conditions of approval for the Stadium, in the contracts with the owners and tenants who control the existing parking in the vicinity of the Stadium, and in the conditions of approval for off-site parking uses.

Prepared by: Lee Rosenthal
Redevelopment Agency Counsel
November 2007

INTEROFFICE MEMORANDUM
Santa Clara City Attorney's Office

DATE: **November 29, 2007**

TO: **Jennifer Sparacino, City Manager**

FROM: **Helene Leichter, City Attorney**

SUBJECT: **Environmental Review on the Stadium Project**

You have asked what environmental review is required as the stadium concept moves forward. This memorandum provides an overview of the basic environmental review process under the California Environmental Quality Act ("CEQA")[1], and generally addresses what environmental review may be required for the different stages of the stadium.

Background

In January 2007, the City commenced a feasibility study on building a football stadium. There are currently two locations being studied – one in the main parking lot of Great America and another directly across San Tomas Creek in the Great America overflow parking lot.

In 1998-1999, the City conducted environmental review for the Bayshore North Redevelopment Project. This review analyzed the environmental consequences of nine proposed projects on eight parcels in the redevelopment plan area, and was performed on a "program" level.[2] Although the current zoning for the parcels would allow for a stadium, that particular type of project was not analyzed in the 1998-1999 environmental review.

However, one of the projects analyzed in the 1998-1999 environmental review was a "multi-level parking structure of up to 5000 parking spaces located on 10 acres on the south side of Tasman Drive, opposite the Convention Center."[3] This parking structure was to be connected to the Convention Center via an overhead pedestrian bridge.[4] This project was identified as a means of achieving the goal to consolidate parking for the convention center and Great America.[5]

In 2003, the City issued bonds to construct the previously identified parking structure. However, the structure was relocated to the north side of Tasman and the pedestrian over-crossing was

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1 Public Resources Code § 21000 *et seq.*
2 1998 Final Environmental Impact Report for North Bayshore, Preface, p. 5.
3 *Id.* at p. 4.
4 *Id.*
5 *Id.* at p. 11.

EXHIBIT 2

moved to over San Tomas Aquino Creek.[6] The design of the garage was refined to create a six-story, 1780 space garage. No final supplemental environmental review was completed, and the garage was never built.

In order to provide some of the parking necessary for stadium use on game days, the 49ers have proposed moving the garage back to the south side of Tasman. The proposed location differs from that analyzed in the FEIR in 1998. In addition, the garage may need to be resized and redesigned to encompass not only the parking needs of Great America and the Santa Clara Convention Center, but potentially the Hyatt Hotel under the terms of its ground lease with the City.

General CEQA Requirements

CEQA requires that public agencies examine, and make public, the environmental consequences of their "projects." CEQA is triggered by any proposed public or private project that is not otherwise exempted under the numerous CEQA statutory and categorical exemptions.

For purposes of CEQA, a "project" is defined as an action that has the potential to result in a direct physical, or a reasonably foreseeable indirect physical, change in the environment, and which is (a) an activity directly undertaken by any public agency; (b) an activity undertaken by a person which is supported, in whole or in part, by public agency assistance; or (c) an activity that involves the issuance of an entitlement by a public agency.[7]

The requirements of CEQA cannot be avoided by dividing a large project into smaller pieces, each of which may have only a minimal potential impact on the environment but which cumulatively may have a significant impact.[8] Specifically, CEQA requires that "[w]here an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project."[9]

Environmental review must be completed prior to the public agency's "approval" of a project.[10] The CEQA Guidelines define "approval" as "the decision by a public agency which commits the agency to a definite course of action in regard to a project . . . [l]egislative action in regards to a project often constitutes approval."[11]

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6 Although a draft environmental review document in the form of an addendum was prepared for this relocation, there is no record in the City Clerk's office or in the Planning Department that it was ever certified or formally acted on. Nonetheless, all of the design work to date has centered on the parking garage being located north of Tasman.
7 Public Resources Code § 21065.
8 *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208, 31 Cal.Rptr.3d 901, 928.
9 CEQA Guidelines, § 15165.
10 Public Resources Code § 21080(a).
11 CEQA Guidelines, § 15002(a).

The Environmental Review Process

The primary steps following identification of a "project" are:

1. Determination of whether the project is exempt from CEQA review under statutory or categorical exemptions;

2. Preparation of an initial study regarding the potential significant environmental effects;

3. Preparation of either a negative declaration (no significant environmental effects), a mitigated negative declaration (any environmental effects can be mitigated), or an environmental impact report.

4. If an environmental impact report is required, the City first files a Notice of Preparation with the State. A draft EIR is then prepared and a public review process occurs, during which the public may submit comments on the draft EIR.

5. Following receipt of comments on the draft EIR, the City prepares responses to the comments, which are included in the final EIR, and amends the draft EIR if necessary in response to the comments.

6. The final EIR is then certified. Certification must include findings that alternatives to the project have been reviewed, that significant effects on the environment can be mitigated through feasible mitigation measures, or that overriding considerations require proceeding with the project without mitigation.

Application to Stadium

In general, entering into an exclusive negotiating agreement ("ENA") prior to commencing substantive negotiations for the use of property is not considered an "approval" for purposes of CEQA, particularly if the agreement is conditioned on full CEQA review and approval for the ultimate use, and the public agency is not irrevocably committed to the use under the terms of the ENA.[12]

Likewise, a citizen-sponsored initiative, or city-sponsored ballot measure that does not bind the agency to a particular course of action, are not considered "approvals."[13] However, a measure submitted to the voters by a public agency that may lead to voter approval, in essence, of a project is subject to CEQA review prior to being placed on the ballot.[14]

The fact that the proposed stadium is in a redevelopment area does not alter the above conclusion. Under CEQA, when an agency prepares an EIR in connection with the adoption of a

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12 *City of Vernon v. Board of Harbor Commissioners* (1998) 63 Cal.App. 4th 677, 74 Cal.Rptr. 2d 497.
13 *Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165, 105 Cal.Rptr. 2d 214 (2000).
14 *Id.*

redevelopment plan, it is possible to avoid further environmental review for activities carried out pursuant to that redevelopment plan, if the review is conducted on a project, not program level.[15] In applying these rules to the North Bayshore Redevelopment Plan and its environmental review, the 1998-1999 EIR was a program EIR and as such, it does not qualify for such exemption.

In addition, to the extent that there are new or different environmental impacts or mitigation measures, or if cumulative circumstances have changed since the prior environmental review, a supplemental or subsequent environmental impact report may be required.[16] Here, there have been changed circumstances since the 1998 EIR, most notably that the stadium project and its potential impacts were never considered in the EIR. In addition, other development has occurred in the area, including the soccer park. As a consequence, it appears that even for the garage project, full environmental review is required.

Conclusion

It is anticipated that full environmental review will have to be conducted on the stadium and garage, and that such review will have to be complete prior to commencement of construction of either the stadium or a garage. However, neither a non-binding ballot measure, or entering into an ENA or other document that does not bind the Council to a specific course of action, are likely to trigger CEQA review.

Please let me know if you have any questions.

Lindsay Speck
for Helene Leichter
City Attorney

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15. Pub. Resources Code § 21090; see also CEQA Guidelines § 21157.
16. Pub. Resources Code §§ 21090, 21166.

STAFF REPORT REGARDING STADIUM CONSTRUCTION CONTRACTING

A. INTRODUCTION

The San Francisco 49er's April 24, 2007 proposal for a stadium in Santa Clara contemplates that the Stadium would be built and owned by a joint powers public agency. That public agency (the "Stadium Authority") would be created by the City and the Santa Clara Redevelopment Agency. The 49er's proposal also suggests that the contractor for the construction of the Stadium would be selected by a competitive selection process followed by a negotiated contract with the selected contractor.

When a joint powers entity like the Stadium Authority is created, the powers of the joint powers entity generally depend on the powers of the government entities that are the members of the joint powers entity. In this case, the Stadium Authority's mode of contracting for the Stadium construction must be a mode of contracting available to its members, the City or the Redevelopment Agency. The next section of this report analyzes the City and Redevelopment Agency's authorized mode of contracting.

B. CITY AND REDEVELOPMENT AGENCY CONTRACTING

Section 1310 of the Santa Clara City Charter requires that all public construction projects in excess of $1000 be undertaken by contract "let to the lowest responsible bidder." Similarly, Public Contracts Code Section 20688.2 applicable to the Redevelopment Agency requires that all construction in excess of $5000 be carried under contracts procured by "competitive bids."

Competitive bidding is the most common means of contracting in California. It is a means of contracting that assures that selection of contractors is made on a fair and objective basis. Contractors who bid must be qualified to do the work. The contractor selected will be the responsible contractor who submits the lowest responsive bid.

There are various means of carrying out competitive bidding that can be adapted to construction of a complex project like the Stadium. The actual bidding can be preceded by a prequalification process where contractors who are interested in building the Stadium submit their qualifications for building the Stadium. The Stadium Authority would then review the qualifications to determine if an interested contractor has the necessary experience, specialized expertise and financial capacity to undertake the construction of the Stadium. Only those contractors who are qualified are permitted to submit bids. The Stadium Authority could also use a "design/build" process where qualified contractors submit bids for both the final design and construction of the Stadium. The "design/build" process may save some time in the process by combining the design, bidding and construction process.

EXHIBIT 3

C. ALTERNATIVES TO COMPETIVE BIDDING

There are other possible avenues to constructing the Stadium that would permit for the competitive selection process that the 49er's have proposed. However, for this particular project, those avenues are not available. For example, a State law allows competitive selection of contractors for construction of "revenue producing" public infrastructure. While the proposed Stadium fits the general definition of revenue producing infrastructure, the State law specifically excludes stadium construction from the scope of the law.

If the City, Redevelopment Agency or Stadium Authority were to lease land to the 49er's but the 49er's built and owned the Stadium, the construction of the Stadium would then be a private project and not subject to competitive bidding laws applicable to public projects. However, as noted above, the 49er's April 24, 2007 proposal contemplates that the Stadium Authority will build and own the Stadium.

Lastly, there is a legal concept of physical integration which has sometimes been used for projects that have substantial public and private elements. The concept is based on the case of Graydon v. Pasadena Redevelopment Agency where the courts approved a redevelopment agency contract with a private developer to build a public parking structure without public bidding. In that particular case, the parking structure was to be built under and supporting the privately owned shopping center that the private developer was to build. The physical integration of the public and private improvements convinced the court that it was proper to allow the redevelopment agency to contract with the private developer for the construction of the public parking structure. In the case of the Stadium, all the improvements will owned by the Stadium Authority. Consequently, the physical integration concept does not apply.

D. CHARTER AMENDMENT

The staff position is to follow the existing City Charter and conduct a competitive bidding process, however, if the City desires to accommodate the 49er's proposal for competitive selection and negotiated contract for construction of the Stadium, the City Council would have to propose an amendment to the City Charter to the voters, and it would have to be approved by a majority of the voters. The past practice of the City for potential amendments to the City Charter has been for the City Council to establish and appoint members to a Charter review committee that would consider and solicit public input on proposed amendments to the Charter and make recommendations to the City Council on proposed amendments. A City Charter amendment of this sort could also be proposed by initiative petitions and presented to the voters in that manner.

If it is the direction of the City Council, the staff would work to develop a review process for consideration of a possible Charter amendment and an outline of possible issues for the amendment. The staff believes that any Charter amendment proposal, at a minimum, should provide for selection of contractors using a fair process with objective criteria that gives all qualified contractors the ability to compete for work. The criteria would include contractor experience, expertise and financial capacity. In addition, any Charter proposal would limit the use of a competitive selection and negotiated contract process to only those complex projects where the City Council determines that the interests of the City or Stadium Authority will be best

served by use of a competitive selection process and will be protected by private sector commitments, such as the one the 49er's propose here, where the team would be responsible for the risk of construction cost increases or overruns.

E. CONCLUSION

The Staff recommends that, if the Stadium Authority is to go forward with construction of the Stadium, the construction contractor can be selected using a competitive bidding process as required under the City Charter and the law applicable to the Redevelopment Agency. The competitive bidding process allows sufficient flexibility through mechanisms such as prequalification of bidders to assure that the selected contractor will have the necessary expertise to build the Stadium within the contract price. To implement a competitive selection and negotiation process, as the 49er's have proposed, would require an amendment of the City Charter.

Prepared by: Lee Rosenthal
Redevelopment Agency Counsel
November 2007

INTEROFFICE MEMORANDUM
Santa Clara City Attorney's Office

DATE: **November 29, 2007**

TO: **Jennifer Sparacino, City Manager**

FROM: **Helene Leichter, City Attorney**

RE: **Types of Ballot Measures**

You have asked what types of ballot measures may be brought in connection with the proposed stadium. This memorandum outlines the types of ballot measures that may be brought under California law, and the basic process for each. I understand that the City Clerk will address, by separate memorandum, the timelines for the upcoming 2008 election cycles.

One overarching consideration with any City ballot measure is whether compliance with the California Environmental Quality Act ("CEQA") is required before placement of a measure on the ballot by the City Council. In general, the CEQA guidelines provide that voter-initiated measures are not considered a "project" under CEQA.[1] However, a measure generated and placed on a ballot by a city council that shifts partial or total approval for a project to the voters will be considered a discretionary project under CEQA, and therefore environmental review under CEQA is required prior to placement of such measure on the ballot.[2]

Initiatives and Referenda

The California Constitution provides the power of initiative and referenda to voters in California. An initiative is "the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them."[3] A referendum is "the power of the electors to approve or reject statutes or parts of statutes, except urgency statutes, statutes calling elections and statutes providing for tax levies or appropriations for usual current expenses of the state."[4]

The California Elections Code contains procedural requirements for initiatives and referenda.[5] Santa Clara has adopted these provisions by reference in its charter, and thus is bound by the general election law.[6]

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[1] 14 Cal. Code Regs. § 15378(b)3; *see Stein v. City of Santa Monica*, 110 Cal. App. 3d 458, 168 Cal. Rptr. 39 (1980) (codified by CEQA Guidelines). However, if a city believes that a voter-sponsored initiative is ill advised because it will have an adverse impact on the environment, it may refer the matter for an abbreviated environmental review pursuant to Cal. Elec. Code §§ 9111 and 9212.
[2] *Friends of Sierra Madre v. City of Sierra Madre*, 25 Cal. 4th 165, 105 Cal. Rptr. 2d 214 (2001).
[3] Cal. Const. art. II, § 8(a).
[4] Cal. Const. art. II, § 9(a).
[5] *See* Cal. Elec. Code §§ 10101 *et seq.*

EXHIBIT 4

However, the requirements for initiatives that propose changes to a city charter are slightly different from the general requirements for initiative ordinances.[7] These changes primarily relate to the form and process of the initiative itself, most notably that a petition to amend a charter must be signed by fifteen percent (15%) of the registered voters of the City.[8]

Limitations on Initiatives and Referenda

Initiatives and referenda may only be applied to legislative acts.[9] Legislative acts generally involve the formulation of rules to be applied in all future cases; adjudicatory acts generally involve the application of a fixed rule to a specific set of existing facts. Typical legislative acts subject to initiatives and referenda include zoning and rezoning ordinances,[10] general and specific plans,[11] and development agreements adopted pursuant to California Government Code sections 65864 and 65867.5. Typical adjudicatory acts include conditional use permits,[12] variances,[13] planned unit development permits,[14] and subdivision map approvals.[15]

An initiative or referendum measure may not be filed regarding matters that the legislature has committed to the discretion of the city council, such as final environmental review under CEQA.[16] The power of initiative and referendum also do not extend to "essential government functions,[17] or matters which have been preempted by the state.[18] Finally, initiatives and referenda must be consistent with the city's general plan.[19]

If an initiative or referendum is believed to be unlawful (as opposed to procedurally defective), the City may take the following steps:

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[6] City Charter of the City of Santa Clara, Section 700; Cal. Const. art. XI, § 5(b); *People v. Hill*, 125 Cal. 16, 20 (1899).
[7] Elec. Code § 9255.
[8] *Id.*
[9] *Devita v. Napa County*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
[10] *See Arnel Development Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 169 Cal. Rptr. 904 (1980); *Associated Homebuilders v. City of Livermore*, 18 Cal. 3d 582, 135 Cal. Rptr. 41 (1976).
[11] *See Devita v. Napa County*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995); *Midway Orchards v. County of Butte*, 220 Cal. App. 3d 765, 269 Cal. Rptr. 796 (1990); *Nelson v. Carlson*, 17 Cal. App. 4th 732, 21 Cal. Rptr. 2d 485 (1993).
[12] *See Wiltshire v. Superior Court*, 172 Cal. App. 3d 296, 218 Cal. Rptr. 199 (1985).
[13] *See Topanga Association v. County of Los Angeles*, 11 Cal. 3d 506, 113 Cal. Rptr. 836 (1974).
[14] *See Fishman v. City of Palo Alto*, 86 Cal. App. 3d 506, 150 Cal. Rptr. 326 (1978).
[15] *See Horn v. County of Ventura*, 24 Cal. 3d 605, 156 Cal. Rptr. 718 (1979);
[16] *Committee of Seven Thousand v. Superior Court*, 45 Cal. 3d 491, 247 Cal. Rptr. 362 (1988); *Mitchell v. Walker*, 140 Cal. App. 2d 239, 295 P.2d 90 (1956), *overruled on other grounds, Kugler v. Yocum*, 69 Cal. 2d 371, 71 Cal. Rptr. 687 (1968).
[17] *See City of Atascadero v. Daly*, 135 Cal. App. 3d 466, 185 Cal. Rptr. 228 (1982) (impairment of fiscal management abilities); *Simpson v. Hite*, 36 Cal. 2d 125, 222 P.2d 225 (1950) (siting a courthouse); *Newsom v. Board of Supervisors*, 205 Cal. 262, 270 P. 676 (1928) (franchising authority)
[18] *See, e.g., Redevelopment Agency v. City of Berkeley*, 80 Cal. App. 3d 158, 169, 143 Cal. Rptr. 633 (1978) (redevelopment); *Bruce v. City of Alameda*, 166 Cal. App. 3d 18, 212 Cal. Rptr. 304 (1985) (subsidized rental housing); *Wiltshire v. Superior Court*, 172 Cal. App. 3d 296, 218 Cal. Rptr. 199 (1985) (solid waste management); *Voters for Responsible Retirement v. Board of Supervisors*, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814 (1994).
[19] *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 277 Cal. Rptr. 1 (1990)

- The City Attorney may refuse to prepare the title and summary if the initiative is unconstitutional. The city attorney would then seek a declaration that the proposed initiative is unconstitutional and seek relief from the duty to prepare a title and summary.[20]
- The City Council may refuse to place the measure on the ballot. The initiative proponents then may file a mandamus action, and the city defends the action. However, this action is problematic as the strong preference of the courts is to defer ruling on an initiative or referendum's validity until after the election.
- The City Council may place the measure on the ballot, and direct the city attorney to file an action to remove the measure from the ballot.
- The City may file a post-election challenge seeking a judicial determination of the validity of the measure.

Process for City Initiatives

1. Notice of Intent to Circulate Petition. The initiative process is begun by the filing of a notice of intent to circulate petition with the city clerk together with text of the initiative.[21]

2. Ballot Title and Summary Request. The city attorney must provide an impartial and non-argumentative ballot title and summary, in fewer than 500 words, within 15 days of the filing of the notice of intent.[22] Any elector of the city may seek a writ of mandate to amend the ballot title or summary if either is false, misleading or inconsistent with the requirements of the Elections Code.[23]

3. Publication or Posting. A notice of intention and the title and summary of the proposed measure must be published or posted.[24]

4. Circulation of Petition. After publication or posting, the proponents may circulate the petitions among the registered voters of the city.[25] The petition must be signed and circulated in accordance with the Elections Code.

5. Referral of Petition by City Council. The city council may refer the petition to any city agency or agencies for their reports on fiscal impacts, general and specific plan consistency, various land use issues and "any other matters."[26]

6. Submission with Signatures. A proposed initiative may be submitted to the legislative body of the city by a petition filed with the clerk after being signed by not less than the required number of votes. The petition may be in separate sections, providing each section complies with

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[20] *See Jahr v. Casebeer*, 70 Cal. App. 4th 1250, 83 Cal. Rptr. 2d 172 (1999).
[21] Elec. Code § 9202.
[22] Elec. Code § 9203.
[23] Elec. Code § 9204; *San Francisco Forty-Niners v. Nishioka (Comstock)*, 75 Cal. App. 4th 637, 89 Cal. Rptr. 2d 388 (1999).
[24] Elec. Code § 9205.
[25] Elec. Code § 9207.
[26] Elec. Code § 9212.

all the requirements. The first page of each section must contain the title of the petition and the text of the measure.[27]

7. Council Options. If the petition qualifies, the city council must either adopt it without change or submit the proposal to the voters.[28]

8. Special Election. If the petition contains the signatures of at least 15 percent of the registered voters and expressly requests a special election, the council must call a special election. The special election must be held not fewer than 88, nor more than 103, days after the date of the order of elections. However, when it is legally possible: (1) the special election may be held on the same date as an election occurring wholly or partially within the same territory if the petition qualifies within 180 days prior to that election, the special election may be held on the same date as the statewide general election if the petition qualifies during the period between the primary and general election in the same year. The City Council is not required to, but may, call a special election even if the measure does not otherwise qualify for a special election.[29]

9. Regular Election. If the petition contains the signatures of at least 10 percent of the registered voters or at least 15 percent of the registered voters for a charter amendment, the council must place the measure on the ballot at the next regular election held not fewer than 88 days after the date of the order of election.[30]

10. Effective Date of Adoption or Repeal. A majority vote is required to adopt the measure. If adopted by vote of the city council without submission to the voters, or adopted by the voters, the measure can only be repealed or amended by the voters (unless the language of the measure provides otherwise).[31]

11. Ballot Arguments. The proponents may file an argument in favor of the measure and the city council may file an argument against the measure. Arguments may not exceed 300 words.[32]

12. Council Initiative. The city council may on its own submit a measure for voter approval without a petition.[33]

13. Impartial Analysis. When directed by the city council, the city attorney must prepare an impartial analysis on a city measure. The analysis must not exceed 500 words. The analysis should explain the effect of the measure on existing law and the operation of the measure.[34]

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[27] Elec. Code § 9201; *Mervyn's v. Reyes*, 69 Cal. App. 4th 93, 81 Cal. Rptr. 2d 148 (1998).
[28] Elec. Code §§ 9214, 9215.
[29] Elec. Code §§ 1404, 1405, 9214, 9215, 10301.
[30] Elec. Code §§ 1405, 9215.
[31] Elec. Code § 9217; *Mobilepark West Homeowners Association v. Escondido Mobilepark West*, 35 Cal. App. 4th 32, 41 Cal. Rptr. 2d 393 (1995) (city council adopted ordinance purporting to clarify and implement existing rent control initiative measure declared invalid).
[32] Elec. Code § 9282.
[33] Elec. Code § 9222.
[34] Elec. Code § 9280.

14. Conflicting Initiatives. When two or more conflicting measures pass, the one receiving the highest number of affirmative votes controls. Measures "conflict" if they present themselves as conflicting, or if each creates a comprehensive regulatory scheme relating to the same subject.[35]

Process for City Referenda

1. Petition Signature and Time Requirements. The petition must be submitted within 30 days of adoption of the ordinance and signed by not less than 10 percent of the registered voters (if the city has 1,000 or fewer registered voters, the signatures of 25 percent or 100 voters are required).[36] The referendum petition must be in a form prescribed by statute and each section of the petition must have a declaration of the circulator attached. The declaration must include a statement the circulator is a voter or is qualified to be a voter in California.[37]

2. Number or Title to Be Included. Each section of a referendum petition must contain the identifying number or title of the ordinance that is subject to the referendum.[38]

3. Text to Be Included. The text of any ordinance or resolution for which a referendum is sought, must be attached to the petition.[39]

4. Filing. Petitions must be filed during normal office hours as posted.[40] Petitions are filed with the city clerk, who must determine the number of signatures and certify the results.[41]

5. Effect of Valid Petition. If a valid petition containing the requisite number of signatures is timely submitted, the city council must either repeal the entire ordinance or submit the ordinance to a vote.[42] The submission of such a petition suspends the effective date of the ordinance.[43]

6. Time of Election. If not repealed, the city council must submit the ordinance to the voters at: the next regular municipal election if it occurs within not fewer than 88 days; or, if there is no regular election within that time, at a special election called not fewer than 88 days after the order of the city council.[44]

7. Election Procedures. These are the same as those dealing with initiatives.[45]

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[35] *Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission*, 51 Cal. 3d 744, 274 Cal. Rptr. 2d 787 (1990).
[36] Elec. Code § 9237.
[37] Elec. Code §§ 102, 104, 9238.
[38] Elec. Code § 9238.
[39] Elec. Code § 9238.
[40] Elec. Code § 9242.
[41] Elec. Code §§ 9239, 9240.
[42] Elec. Code § 9241.
[43] Elec. Code § 9237.
[44] Elec. Code § 9241.
[45] Elec. Code §§ 9217-9225, 9243.

8. Effect of Adverse Vote. To become effective, the ordinance must be approved by a majority vote. If not approved by a majority vote or if the city council repeals the ordinance, the same or similar ordinance cannot be again enacted for one year from the date of the election or repeal.[46]

City Advisory Ballot Measures

In addition to the powers of initiative and referenda, the City Council may place such delegable measures as it determines appropriate on the ballot.[47] When such matters are submitted to the electorate, they are deemed adopted or rejected based upon the majority vote.

The city council may also submit "advisory measures" to the electorate.[48] Such measures are advisory only and do not bind the council in the legal sense. The topics for advisory measures include almost any relevant topic, so long as the measure is clearly labeled as "advisory."

The procedure for such advisory measures is simply that the Council adopts the appropriate resolutions calling for the election, and places the advisory measure on the ballot. The city clerk must publish a synopsis of the measure in the manner provided for publication of in the form provided for in the Elections Code.[49]

Please let me know if you have any questions.

Helene Leichter /CE

Helene Leichter
City Attorney

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[46] Elec. Code § 9241.
[47] Elec. Code § 306.
[48] Elec. Code § 9603.
[49] Elec. Code § 12111.

INTEROFFICE MEMORANDUM
Santa Clara City Clerk's Office

DATE: **November 30, 2007**

TO: **Jennifer Sparacino, City Manager**

FROM: **Rod Diridon, Jr. , City Clerk/Auditor**

RE: **Potential Election Calendar Information Regarding Potential Ballot Measure Related to the San Francisco 49ers Stadium Proposal**

Per the request of the City Council, please see below information regarding the following items:

1). Potential calendars for the City Council to place an item on the June 3, 2008 ballot. (See attachment 1)

2). Potential calendars for the City Council to place an item on the November 4, 2008 ballot. (See attachment 2)

3). Preliminary estimated costs for placing the item on the ballot for the June 3, 2008 or the November 4, 2008 election cycles are:

June 3, 2008:	$109,321 (estimate)
November 4, 2008:	$62,728 (estimate)

Please let me know if you would like additional information regarding the upcoming June 2008 or November 2008 election cycles.

Rod Diridon, Jr.
City Clerk/Auditor

Enclosure(s)
1) Potential June 3, 2008 Election Calendar
2) Potential November 4, 2008 Election Calendar

EXHIBIT 5

CITY OF SANTA CLARA

JUNE 3, 2008 ELECTION CYCLE
POTENTIAL ELECTION CALENDAR

CALENDAR 1: Calendar 1 utilizes the existing City Council meeting schedule and follows the basic timelines set out in previous City of Santa Clara ballot measures.

January 22, 2008 (Tues) or, Feb. 12, 2008 (Tues):	**ITEM PLACED ON BALLOT**: City Council adopts resolutions placing item on the June 3, 2008 ballot.
February 27, 2008 (Wed): 5:00 PM	**IMPARTIAL ANALYSIS DUE:** The City Attorney's impartial analysis submitted to the City Clerk's Office no later than February 27, 2008 at 5:00 PM.
March 5, 2008 (Wed): 5:00 PM	**BALLOT ARGUMENT DEADLINE**: Limited to 300 words, March 5, 2008 at 5:00 PM is the last date at which pro and con ballot arguments would be accepted by the City Clerk's Office.
March 12, 2008 (Wed): 5:00 PM	**REBUTTAL ARGUMENT DEADLINE**: Limited to 250 words, March 12, 2008, at 5:00 PM is the last date at which rebuttal arguments will be accepted by the Clerk's Office.
June 3, 2008 (Tues):	**ELECTION DAY**: Polls are open from 7:00 a.m. to 8:00 p.m.

CALENDAR 2: Calendar 2 relates more closely to the final due-dates set out by the Santa Clara County Registrar of Voters.

February 19, 2008 (Tues) or, Feb 26, 2008 (Tues):	**ITEM PLACED ON BALLOT**: City Council adopts resolutions placing item on the June 3, 2008 ballot.
March 5, 2008 (Wed): 5:00 PM	**IMPARTIAL ANALYSIS DUE:** The City Attorney's impartial analysis submitted to the City Clerk's Office no later than March 5, 2008 at 5:00 PM.
March 11, 2008 (Tues): 5:00 PM	**BALLOT ARGUMENT DEADLINE**: Limited to 300 words, March 11, 2008 at 5:00 PM is the last date at which pro and con ballot arguments would be accepted by the City Clerk's Office.
March 18, 2008 (Tues): 5:00 PM	**REBUTTAL ARGUMENT DEADLINE**: Limited to 250 words, March 18, 2008, at 5:00 PM is the last date at which rebuttal arguments will be accepted by the Clerk's Office.
June 3, 2008 (Tues):	**ELECTION DAY**: Polls are open from 7:00 a.m. to 8:00 p.m.

CITY OF SANTA CLARA

NOVEMBER 4, 2008 ELECTION CYCLE
POTENTIAL ELECTION CALENDAR

CALENDAR 1: Calendar 1 utilizes the existing City Council meeting schedule and follows the basic timelines set out in previous City of Santa Clara ballot measures.

July 10, 2008 (Tues) or, July 15, 2008 (Tues):	**ITEM PLACED ON BALLOT**: City Council adopts resolutions placing item on the November 4, 2008 ballot.
August 6, 2008 (Wed): 5:00 PM	**IMPARTIAL ANALYSIS DUE:** The City Attorney's impartial analysis submitted to the City Clerk's Office no later than August 6, 2008 at 5:00 PM.
August 13, 2008 (Wed): 5:00 PM	**BALLOT ARGUMENT DEADLINE**: Limited to 300 words, August 13, 2008 at 5:00 PM is the last date at which pro and con ballot arguments would be accepted by the City Clerk's Office.
August 20, 2008 (Wed): 5:00 PM	**REBUTTAL ARGUMENT DEADLINE**: Limited to 250 words, August 20, 2008, at 5:00 PM is the last date at which rebuttal arguments will be accepted by the Clerk's Office.
November 4, 2008 (Tues):	**ELECTION DAY**: Polls are open from 7:00 a.m. to 8:00 p.m.

CALENDAR 2: Calendar 2 would require an additional City Council meeting to be held during the month of August. It relates more closely to the final due-dates set out by the Santa Clara County Registrar of Voters.

August 5, 2008 (Tues) Or, August 12, 2008 (Tues):	**ITEM PLACED ON BALLOT**: City Council holds special meeting and adopts resolutions placing item on the November 4, 2008 ballot.
August 15, 2008 (Fri): 5:00 PM	**IMPARTIAL ANALYSIS DUE:** The City Attorney's impartial analysis submitted to the City Clerk's Office no later than August 15, 2008 at 5:00 PM.
August 19, 2008 (Tues): 5:00 PM	**BALLOT ARGUMENT DEADLINE**: Limited to 300 words, August 19, 2008 at 5:00 PM is the last date at which pro and con ballot arguments would be accepted by the City Clerk's Office.
August 26, 2008 (Tues): 5:00 PM	**REBUTTAL ARGUMENT DEADLINE**: Limited to 250 words, August 26, 2008, at 5:00 PM is the last date at which rebuttal arguments will be accepted by the Clerk's Office.
November 4, 2008 (Tues):	**ELECTION DAY**: Polls are open from 7:00 a.m. to 8:00 p.m.

* Please note, the Abbreviated Election Calendar for the November, 2008 election cycle has not yet been released by the Registrar of Voters. These dates are estimates.