COUNCIL AGENDA: 05-19-09
ITEM: 3.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: **SEE BELOW**

DATE: 05-14-09

SUBJECT: AB 1192 (STRICKLAND) CITIES: POWERS.

RECOMMENDATION

As recommended by the Rules and Open Government Committee on May 13, 2009 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, adopt an oppose position to AB 1192 (Strickland) Cities: Powers.

RULES COMMITTEE: 05-13-09
ITEM: 6.1a

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: April 28, 2009

Approved Christine J. Shippey   Date 5/1/09

SUBJECT: ASSEMBLY BILL NO. 1192 (STRICKLAND) CITIES: POWERS

RECOMMENDATION

It is recommended that:

1. The City Council oppose Assembly Bill No. 1192 (Strickland) which would prohibit public agencies, including charter cities such as the City of San José, from leasing or selling existing public improvements to a private or public entity, which the public agency then rents, leases back, or repurchases through installment payments.

2. Direct the Committee to provide a one-week turnaround for Mayor and City Council review.

OUTCOME

If the Rules and Open Government Committee and the City Council accept staff's recommendation, the City's representative in Sacramento could begin seeking opposition to AB 1192.

BACKGROUND

Assembly Bill No. 1192 (the "Bill") was introduced by Assembly Member Audra Strickland on February 27, 2009, amended in Assembly on April 20, 2009, and is scheduled for a hearing by the Assembly's Local Government Committee on May 6, 2009. The Bill would prohibit public agencies from leasing or selling existing public improvements to a private or public entity, which the public agency then rents, leases back, or repurchases through installment payments.

This prohibition would eliminate the City's ability to expand, improve, or renovate existing facilities through the issuance of certificates of participation, lease revenue bonds, or lease revenue commercial paper notes, or use those financing instruments to refinance or restructure any of its outstanding lease revenue bonds or lease revenue commercial paper notes. The Bill does allow for the lease-backed or installment purchase financing of completely new facilities on vacant land by temporarily selling or leasing the vacant land. The Bill is supported by the Howard Jarvis Taxpayer Association.

The City of San José (the "City") has used the lease revenue structure to finance the construction, improvement, or purchase of a large number of City-owned facilities. In a lease revenue financing, the City leases a City-owned facility to the City of San José Financing Authority (the "Authority") and then the Authority leases it back to the City, or the Authority leases an Authority-owned facility to the City. In either case, the lease payments made by the City to the Authority secure the Authority's repayment of bonds issued by the Authority.

The Authority has approximately $870 million of lease revenue debt outstanding as of March 31, 2009 as summarized in the following table:

City of San José Financing Authority
Lease Revenue Debt

Series	Project Name	Issue Amount	Outstanding Principal as of 3/31/09	Final Maturity
1993B	Community Facilities	18,045,000	2,861,384	11/15/18
1997B	Fire, Childcare, Library	9,805,000	1,560,000	08/01/12
2001E	Communication Center Refunding	18,610,000	6,135,000	05/01/10
2001F	Convention Center Refunding	186,150,000	153,310,000	09/01/22
2002B	Civic Center	292,425,000	292,145,000	06/01/37
2003A	Central Service Yard Phase I Refunding	22,625,000	18,400,000	10/15/23
2006A	Civic Center Refunding	57,440,000	57,440,000	06/01/39
2007A	Recreational Facilities Refunding	36,555,000	34,340,000	08/15/30
2008A	Civic Center Refunding	60,310,000	60,310,000	06/01/39
2008B	Civic Center Garage Refunding	36,580,000	36,580,000	06/01/39
2008C	Hayes Mansion Refunding	10,915,000	10,915,000	06/01/27
2008D	Hayes Mansion Refunding	47,390,000	47,390,000	06/01/25
2008E	Ice Centre Refunding	28,070,000	28,070,000	06/01/25
2008F	Land Acquisition Refunding	67,195,000	67,195,000	06/01/34
Commercial Paper	Tax-Exempt Projects	Various	45,688,000	Notes
Commercial Paper	Taxable Projects	Various	7,907,000	Notes
Total		945,710,000	870,246,384	

ANALYSIS

The passage of the Bill would have a significant detrimental impact on the ability of the City to issue and refund debt. As noted above, the Bill would prohibit the City, through the Authority or any other corporate entity, from issuing certificates of participation, lease revenue bonds, or lease revenue commercial paper notes secured by installment purchases or leases of existing City facilities. It would allow the issuance of installment purchase or lease revenue debt only for the purpose of constructing a new facility on vacant land.

The Bill is written so broadly that it would likely prevent the Authority and the City from refinancing the Authority's existing debt to take advantage of lower interest rates, revise the terms and conditions of its existing debt that become undesirable or burdensome, or restructure the Authority's existing debt in response to changes in the financial markets or City needs. It is also unclear as to whether the City would be permitted to refinance tax-exempt debt with taxable debt to accommodate a change in use of the financed facility (i.e. refund tax-exempt debt with taxable debt if City were to enter into or change an agreement with respect to operations and maintenance of a financed facility). Historically, the City and the Authority have refinanced the Authority's debt for all of these purposes.

The value of the ability to restructure existing debt was demonstrated over the course of the last year as the City and the Authority refunded the Authority's variable-rate bonds to eliminate the significant increase in interest rates caused by rating agency downgrades of the bond insurers. Currently, the City is contemplating selling a portion of the bond-financed Airport West property, which could require the City to replace as a leased asset the property to be sold with another City property. The Bill's prohibition against new leases could eliminate this economic development opportunity.

Although refinancing may result from unanticipated events, the City has also committed to long-term financing strategies for the Civic Center, Central Service Yard, and the Convention Center that are based on the expectation that the Authority will issue refunding bonds in the future to restructure debt on those facilities or take advantage of lower interest rates. Elimination of future refunding opportunities will likely result in significant cash flow challenges and higher debt service payments related to those facilities.

It is unlikely that the Bill would prevent the City from continuing the Authority's existing lease revenue commercial paper program (the "CP Program"), but it would prevent the City from substituting new leased assets for existing ones. The elimination of the City's ability to substitute assets would make it impossible for the City to maintain the existing size ($116 million) of the CP Program in the event assets are sold (as currently contemplated for assets such as the E-Lot). Additionally, to the extent an asset was sold, the City would need to immediately pay off a portion of the commercial paper notes allocated to the sold asset, thus creating an immediate budgetary impact to the City. The CP Program has enabled the City to finance smaller projects at relatively low interest rates. Without the CP Program, implementation of these projects would have been delayed resulting in higher costs.

This Bill eliminates the ability for the City to effectively manage its financed assets as a way to leverage limited resources for the benefit of our residents and taxpayers. Without this cost-effective and flexible method of financing the construction of capital facilities, the City will be forced to pay higher debt service, pay off debt prematurely, and ultimately lower the level of City services provided to residents.

Supporters

- Howard Jarvis Taxpayer Association

Opponents

- Public Agencies
- League of California Cities

POLICY ALIGNMENT

The attached analysis is consistent with the Council adopted 2009 Legislative Guiding Principles, and the Council-adopted guidelines, including under "A. Protect Local Control 1. Protect local government revenues by maintaining local authority over the collection of fees and generation of revenue. 10. Oppose legislation that reduces the authority and/or ability of local government to determine how best to effectively operate local programs, services and activities. B. Ensure Region's Competitiveness and Protect City Revenue Base: Support efforts, legislation and policies that: 5. Improve methods of assessment, collection and allocation of local revenues, and oppose efforts that threaten the sources and flexibility of revenues."

COORDINATION

This memorandum was coordinated with the City Attorney's Office, Finance, Intergovernmental Relations Director in the City Manager's Office, and the City's Legislative Representative in Sacramento.

SCOTT P. JOHNSON
Director, Finance

For questions please contact Julia H. Cooper, Deputy Director of Finance, at (408) 535-7011.