

# Memorandum

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**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** ANNUAL SUMMARY OF LABOR  
NEGOTIATIONS

**DATE:** February 1, 2018

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## **RECOMMENDATION**

Accept staff report and public input on the Annual Summary of Upcoming Labor Negotiations.

## **OUTCOME**

As recommended by the Sunshine Reform Taskforce and approved by the City Council, this report will provide the public an opportunity to have information related to labor negotiations in advance of the commencement of negotiations and to provide input to the City Council.

## **BACKGROUND**

Pursuant to the Public Information provisions of the Sunshine Reform Task Force Phase 1 Report approved by the City Council on August 21, 2007, staff is to bring forward to the City Council in open session on an annual basis a summary of labor negotiations for the upcoming year. The purpose of this process is to provide an opportunity for the public to be informed about the City's labor negotiations before the City commences negotiations and to provide the City Council input before the negotiations begin.

This memo provides a summary of background information related to labor negotiations, a summary of bargaining unit information, personnel cost information, and a summary of labor negotiations cost saving strategies.

The following chart shows the City's bargaining units, total Full Time Equivalents (FTEs<sup>1</sup>) for the [2017-2018 Adopted Budget](#) represented by each bargaining unit and the expiration of their most recent contract. In addition to the bargaining units listed below, there are approximately 299 unrepresented FTEs, including unrepresented employees in Units 99, 81 and 82.

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<sup>1</sup> Full Time Equivalents (FTEs) are the combined total number of budgeted full-time positions. For example, one full-time position equals one FTE. Similarly, two half-time positions equal one FTE.

<b>Bargaining Unit/Union</b>		<b>Approximate FTEs<sup>2</sup></b>	<b>Contract Expiration</b>
Association of Building, Mechanical and Electrical Inspectors	(ABMEI)	85	06/30/18
Association of Engineers and Architects, IFPTE Local 21 Unit 41/42 and Unit 43	(AEA)	305	06/30/18
Association of Legal Professionals of San Jose	(ALP)	39	06/30/18
Association of Maintenance Supervisory Personnel, IFPTE Local 21	(AMSP)	112	06/30/18
City Association of Management Personnel, IFPTE Local 21	(CAMP)	424	06/30/18
Confidential Employees' Organization, AFSCME Local 101	(CEO)	211	06/30/18
San Jose Fire Fighters, IAFF, Local 230	(IAFF)	698	06/30/18
International Brotherhood of Electrical Workers, Local 332	(IBEW)	78	06/30/17 <sup>3</sup>
Municipal Employees' Federation, AFSCME Local 101	(MEF)	2171.3	06/30/18
International Union of Operating Engineers, Local #3	(OE#3)	720.7	09/30/18
San Jose Police Officers' Association	(POA)	1107	06/30/20
<b>TOTAL</b>		<b>5951</b>	

The 2017-2018 Adopted Budget closed a shortfall of \$10.0 million. The [2018-2022 Five Year Forecast](#) ("Forecast"), released February 2017, anticipated shortfalls in the General Fund to continue each year from 2018-2019 through 2021-2022, ranging from \$11.5 million to \$34.8 million annually, for a total shortfall of \$76.5 million.<sup>4</sup> This projection is derived by comparing estimated revenues with the cost of delivering Council-approved existing services as well as the services for which the City has already committed, such as the operation of new facilities or other capital projects scheduled to come on-line over the forecast period. It should be noted that the City Manager's Budget Office is currently in the process of further updating these figures. While these margins are relatively narrow when put into the context of the size of the General Fund budget, ranging from -0.5% to -1.5% of the projected annual budget (combined total of revenues and expenditures), they do point to an overall weakening of the City's economic position. It is also important to note that the Forecast does not incorporate several elements that could impact the General Fund over the forecast period including: 1) costs associated with services that were funded on a one-time basis in 2016-2017; 2) costs associated with unmet/deferred infrastructure and maintenance needs; and 3) one-time revenue sources or expenditure needs. In addition, the changes that have been made to the defined benefit retiree healthcare plan are still being costed by the Retirement Boards' actuary; accordingly, there may be additional impacts to the General Fund that may result from these changes. The Forecast reflects increased revenues that are more than offset by increased expenditures, primarily due to increases in personnel costs, with the largest increases in retirement costs and employee pay. Looking forward, the Administration's goal is to ensure the fiscal health of the City while delivering essential services in the most cost-effective manner.

<sup>2</sup> **Source:** [2017-2018 Adopted Budget](#); does not include approximately 299 unrepresented positions.

<sup>3</sup> The City and IBEW are currently at impasse and engaged in mediation. Additional information on IBEW negotiations can be found here: <http://www.sanjoseca.gov/index.aspx?NID=527>

<sup>4</sup> **Source:** [2017-2018 City Manager's Budget Request & 2018-2022 Five Year Forecast and Revenue Projections for the General Fund and Capital Improvement Program dated February 2017](#).

For Fiscal Year 2018-2019, the City and ten of its eleven bargaining units will be engaged in negotiations on successor labor agreements.

During the 2015 contract negotiations, the City reached multi-year contracts with ten (10) of the City's bargaining units: the agreements with ABMEI, AEA, AMSP, CAMP, OE#3, MEF, and IAFF had a term of three (3) years and are set to expire on June 30, 2018, with the exception of the agreement with OE#3, which is set to expire on September 30, 2018. The City's agreements with ALP, CEO, and IBEW had a term of two (2) years and were set to expire on June 30, 2017. The City and ALP and CEO agreed to extend the terms of their current MOAs for an additional year, with an expiration of June 30, 2018, in lieu of engaging in full negotiations for a successor MOA. The extension included a three percent (3%) general wage increase effective the first pay period of Fiscal Year 2017-2018. IBEW declined the City's offer to extend the terms of their current MOA and requested to engage in full negotiations over a successor MOA. The City and IBEW began negotiations over a comprehensive successor MOA in Spring 2017 but have been unable to reach an agreement, and impasse was declared by the City in September 2017. The City and IBEW are currently trying to resolve this impasse through mediation.

In January 2017, the City and the POA reached agreement on a multi-year successor contract which included a total 20% (16.25% pensionable and 3.75% non-pensionable) wage increase over the term of the three and a half year agreement, in addition to other items, and will expire on June 30, 2020.<sup>5</sup> The agreement was ratified by the POA and approved by City Council on [February 7, 2017](#).

In 2015 and 2016, the City and the bargaining units reached agreements on Alternative Pension Reform Settlement Frameworks (Frameworks)<sup>6</sup> to settle the litigation and other administrative proceedings surrounding the 2012 pension reform measure known as Measure B that include, among other things: revised Tier 2 pension benefits that include increased pension benefits for Tier 2 employees while preserving the 50/50 risk sharing between the City and Tier 2 employees; closing the defined benefit retiree healthcare benefit to new participants, as well as agreement on a new lowest cost medical plan associated with retiree healthcare (which went into effect on January 1, 2018); and continuing the elimination of the Supplemental Retiree Benefit Reserve (SRBR). In addition, the City and bargaining units reached agreement on the Alternative Pension Reform Act known as Measure F which was passed by the voters in the November 2016 election. Measure F included, among other things, prohibiting any enhancements to defined retirement benefits without voter approval; codifying the Tier 2 pension benefit; closing the defined benefit retiree healthcare plan; and prohibiting retroactive defined retirement benefit enhancements.

Since the approval of the agreement the City has worked with the bargaining units representing employees in the Federated City Employees' Retirement System as well as the Police and Fire Department Retirement Plan to implement the changes including enacting ordinances. The ordinance for the Police and Fire Retirement Plan became effective March 31, 2017, and the ordinance for the Federated City Employees' Retirement System became effective June 18, 2017.

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<sup>5</sup> For additional information on the agreement between the City and the POA, please see: [http://sanjose.granicus.com/MetaViewer.php?view\\_id=&event\\_id=2670&meta\\_id=614650](http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2670&meta_id=614650)

<sup>6</sup> For additional information on the negotiations over the Alternative Pension Reform Settlement Frameworks, please see: <http://sanjoseca.gov/index.aspx?nid=4657>

In addition, the City received the IRS Closing Agreement which approved the election allowing employees to opt out of the defined benefit retiree healthcare plans into the Voluntary Employees' Beneficiary Association (VEBA) and the City held a one-time irrevocable election at the end of 2017 for employees in the defined benefit retiree healthcare plans to opt-in to the VEBA. However, the IRS is still in the process of reviewing the retirement boards' Private Letter Ruling request regarding the transfer of funds between the Section 115 retiree healthcare trusts and the individual VEBA accounts. During this upcoming year, it is expected that significant time and effort will be spent to continue implementing the VEBA, as well as other terms of Measure F and the Frameworks.

## **ANALYSIS**

### **Personnel Costs**

As a service organization, the great majority of the City's costs pay for the employees who provide those services. In previous years, the City has experienced increases in those costs, such as base payroll, retirement benefits, and healthcare benefits, and it is projected that increases in personnel costs will continue. However, many of the changes made have mitigated these increased costs. The City is appreciative of the collaboration of the bargaining units who have agreed to these changes, and recognizes the sacrifices made on the part of the City's employees.

### **2018-2019 Cost Savings Strategies Which are Subject to Meet and Confer with the City's Bargaining Units**

As noted above, in approaching upcoming labor negotiations with ten of the City's eleven bargaining units, the City must continue its pursuit of bringing revenues and expenditures into alignment with the immediate service delivery needs of the community, while also being mindful of recruitment and retention of the City's workforce.

Items that have been identified as subject to meet and confer include, but are not limited to, maximizing the City's resources by exploring further appropriate outsourcing and civilianization opportunities, continued review of the City's compensation structure, and continued examination of the City's existing layoff and bumping process. The Auditor's Office also has open audit recommendations which have potential budget savings and are subject to meet and confer. These recommendations are attached as Attachment 1.

There are other operational issues that are subject to the meet and confer process that may need to be addressed in the upcoming Fiscal year. These will continue to be discussed with the affected Departments and will be brought forward to City Council in closed session for recommendations, if applicable.

## **Labor Negotiations Background**

The City negotiates in accordance with various laws, regulations and City policies, as explained below.

### *Guiding Principles for Labor Negotiations*

In [June of 2007](#), the City Council approved guiding principles for labor negotiations, which aligned the approach to bargaining with the priorities established by both the Council and the community and which were subsequently revised in [April of 2014](#). The Guiding Principles for Labor Negotiations are attached as Attachments 2 and 3 respectively.

### *Council Policy – Labor Negotiation Guidelines*

In March of 2008, the City Council approved a Council Policy on Labor Negotiation Guidelines, which applies to the Mayor, members of the City Council and Mayor and Council Staff. The purpose of the policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith and to avoid actions that would circumvent the City's designated bargaining team. The [Council Policy- Labor Negotiation Guidelines](#) are attached as Attachment 4.

### *Meyers-Milias-Brown Act (MMBA)*

The MMBA governs the labor-management relations in California local government, including cities, counties, and most special districts. The MMBA provides the right to organize, sets guidelines for such things as the scope of representation and the requirement to meet and confer in good faith.

The MMBA states that the governing body of a public agency shall meet and confer in good faith regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations (i.e. unions/bargaining units).

Although it is commonly referred to as an obligation to “negotiate,” the MMBA refers to the obligation to “meet and confer” in good faith. The MMBA defines meeting and conferring in good faith as having the mutual obligation to personally meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals and to endeavor to reach agreement on matters within the scope of representation.

The MMBA defines the scope of representation as all matters related to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

*City of San Jose Employer-Employee Relations Resolution (#39367)*

In addition to the MMBA, the City of San Jose has local rules that govern collective bargaining between the City and the recognized bargaining units that represent City employees.

Section 21 of Resolution #39367 designates the City Manager as the Municipal Employee Relations Officer. As such, the City Manager is the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours and other terms and conditions of employment. Resolution #39367 also authorizes the City Manager to delegate these duties and responsibilities to an Employee Relations Officer or other members of his/her staff.

**Negotiation/ "Meet and Confer" Process**

As mentioned above, under the Meyers-Milias-Brown Act (MMBA), the City has an obligation to "meet and confer" in good faith with the City's bargaining units regarding wages, hours and other terms and conditions of employment. The City Manager has delegated the authority to meet and confer to the Office of Employee Relations. The negotiations for a new agreement typically commence prior to the expiration of an existing Memorandum of Agreement (MOA). The City and the Union each establish a negotiating team. Resolution #39367 provides for paid release time for up to three bargaining unit team members for time spent during the negotiation meetings that coincide with the employees' normal work hours.

During the negotiations, the City team meets with the union team to discuss various issues and interests for the new contract. The City's negotiating team is provided negotiation authorization by the City Council through the City Manager. Proposals are exchanged related to the issues presented during the negotiations. Tentative agreements are often reached on individual issues as part of the negotiation process and ultimately, a tentative agreement is reached on the entire contract. All tentative agreements are contingent upon ratification of the union membership and approval of the City Council in open session.

If negotiations do not result in a tentative agreement on a new contract, Resolution #39367 states that impasse procedures may be invoked by either party and provides for mediation as the impasse procedure. If mediation assists the parties in reaching an agreement, it is still contingent upon ratification of the union membership and approval of the City Council in open session.

*Impasse Procedures and Arbitration*

As a result of the passage of Assembly Bill 646 (AB646), effective January 1, 2012, local government agencies like the City of San Jose are required to include fact finding in their impasse procedures for any bargaining unit requesting to do so that is not subject to binding interest arbitration; it is worth noting that fact finding can be requested solely by the bargaining unit and not the agency. Additionally, Assembly Bill 1606 (AB1606) was passed in 2012 and provided additional requirements regarding fact finding. Previously, if the parties reached an impasse and have exhausted any applicable impasse procedures, a public agency had the option to unilaterally

implement its last, best, and final offer; however, fact finding has added additional layers of time and complexity. The notable changes created by fact finding includes the agency holding a public hearing on the impasse; a written, non-binding, findings of fact and recommended terms of settlement issued by the fact finding panel; and the prohibition on a public agency from unilateral implementation of its last, best, and final offer until certain time criteria are met. Fact finding, if invoked by a bargaining unit, will increase the costs as well as increase the use of resources and time associated with the bargaining process. In addition, revisions to Resolution #39367 are necessary to reflect the addition of fact finding to the process, and such revisions will be presented to City Council for discussion in the future.

It is the goal of both parties to reach a negotiated agreement. However, the MMBA states that a public agency may, after impasse procedures have been exhausted, including fact finding if invoked, implement its last, best, and final offer. In addition, after impasse procedures have been concluded and an agreement has not been reached on a new contract, the bargaining unit has the right to strike and/or engage in other protected concerted activity, except for police officers and fire fighters who do not have the right to strike.

For the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters (IAFF, Local 230), if the parties fail to reach agreement after participating in mediation, City Charter Section 1111, provides for an Arbitration Board, comprised of a City representative, Union representative, and a neutral arbitrator to decide each issue by majority vote. The results of arbitration are binding. The City Charter limits outside arbitrators from: basing awards to employees primarily on the City's ability to pay; creating any unfunded liability for the City; increasing police and firefighter compensation more than the rate of increase in General Fund revenues; granting retroactive benefits; and depriving or interfering with the discretion of the Police or Fire Chief to make managerial, operational, or staffing decisions.

## **2018 Labor Negotiations**

In early 2018, the City anticipates beginning negotiations on successor agreements with those bargaining units whose current agreement expires on June 30, 2018, including those shown below. It should be noted that the City has already begun negotiations with IAFF, IFPTE (AEA, AMSP and CAMP) and MEF.

- *Association of Building, Mechanical and Electrical Inspectors (ABMEI)* represents approximately 85 Full Time Equivalents (FTEs), including the classifications of Building Inspector and Building Inspector, Supervisor.
- *Association of Engineers and Architects, IFPTE Local 21 (AEA)* represents approximately 305 Full Time Equivalents (FTEs), including the classifications of Engineer, Architect, Senior Engineer, and Senior Architect.
- *Association of Legal Professionals (ALP)* is a bargaining unit that was formed in 2009 and represents approximately 39 Full Time Equivalents (FTEs), including the classifications of Deputy City Attorney and Senior Deputy City Attorney.

- *Association of Maintenance Supervisor Personnel, IFPTE Local 21 (AMSP)* represents approximately 112 Full Time Equivalents (FTEs), including the classifications of Building Maintenance Superintendent and Building Services Supervisor.
- *City Association of Management Personnel, IFPTE Local 21 (CAMP)* represents approximately 424 Full Time Equivalents (FTEs), including the classifications of Senior Analysts and Information Systems Analysts.
- *Confidential Employees' Organization/AFSCME Local 101 (CEO)* represents approximately 211 Full Time Equivalents (FTEs), including the classifications of Analyst and Administrative Assistant.
- *San Jose Fire Fighters, IAFF, Local 230 (IAFF)* represents approximately 698 Full Time Equivalents (FTEs), including the classifications of Fire Fighters, Fire Engineers, Fire Captains, and Battalion Chiefs.
- *Municipal Employees' Federation/AFSCME Local 101 (MEF)* represents approximately 2,171 Full Time Equivalents (FTEs), including the classifications of Librarian, Code Enforcement Inspectors and Recreation Leaders.
- *Operating Engineers, Local No. 3 (OE#3)* represents approximately 720 Full Time Equivalents (FTEs), including the classifications of Maintenance Assistant, Park Ranger and Parking and Traffic Control Officer.

The following bargaining unit currently has an expired agreement, and the City and this bargaining unit are currently at impasse and have engaged in mediation.

- *International Brotherhood of Electrical Workers (IBEW)* represents approximately 78 Full Time Equivalents (FTEs), including classifications of Electrician and Senior Electrician.

In addition to negotiations on the successor agreements, the City and various bargaining units are also involved in other labor issues. The list below includes significant items that are being discussed or will be discussed.

- The City and bargaining units reached agreement on the Alternative Pension Reform Act known as Measure F which was passed by the voters in the November 2016 election. The City has finalized ordinances related to the Frameworks. The ordinance for the Police and Fire Department Retirement Plan became effective on March 31, 2017, and the ordinance for the Federated City Employees' Retirement System became effective June 18, 2017. During this upcoming year, it is expected that significant time and effort will be spent to continue implementing the VEBA, as well as other terms of Measure F and the Frameworks.
- The City, POA, and IAFF anticipate beginning discussions on a Public Safety Wellness Improvement Committee to discuss modification to, or creation of, wellness and/or workers'



compensation policies, procedures, and protocols as agreed upon in the Alternative Pension Reform Settlement Framework.

- The City and the POA anticipate continuing discussions on multiple items, which may be subject to meet and confer, including but not limited to:
  - Discussions regarding the outsourcing/civilianization opportunities;
  - Expansion of Community Services Officers duties;
  - Discussions regarding premium pay while on disability leave;
  - Discussion after consultant review of staffing, deployment, and work schedules; and
  - Discussions regarding the modified duty/exempt officer positions.

The City and the bargaining units shall also continue to discuss issues on an ongoing basis as such issues arise.

### **Transparency/Sunshine Reform**

These Annual Summary of Labor Negotiations reports are to provide the public with information related to labor negotiations, prior to the negotiations process in order to provide an opportunity for the public to give input to the City Council.

Also as part of the Sunshine Reform, the City provides the public with information on the City's internet related to ongoing negotiations, costs of benefits and other payroll costs. The link to this website is: <http://www.sanjoseca.gov/index.aspx?nid=186>.

### **CONCLUSION**

The restoration of City services to its citizens must be balanced with the continuing efforts to control personnel costs to create capacity to continue to restore services. While our collaborative efforts have resulted in the gradual restoration of pay and services over the last several years, there are nonetheless projected shortfalls in the coming years. It is hoped that our collaborative efforts will continue in the upcoming years, while keeping in mind the significant sacrifices City employees have previously made as well as the City's need to recruit and retain a qualified work force.

### **EVALUATION AND FOLLOW-UP**

When Tentative Agreements are reached with the bargaining units during negotiations for a subsequent collective bargaining agreement, they will be brought to the City Council in open session for approval. Specific negotiation direction from the City Council will be received in closed session.

**PUBLIC OUTREACH**

This item is being provided in accordance with the Sunshine Ordinance. In order to provide the public with information about the City's labor negotiations, this report will be posted on the internet in advance of the City Council meeting. Bargaining unit representatives will be notified of this agenda item in advance. A copy will be sent to them as soon as the memo has been distributed.

**COORDINATION**

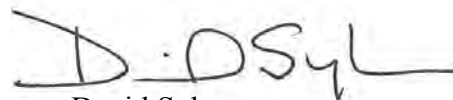
This memo has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a Project, File No. PP17-009, Annual Report.

A handwritten signature in black ink, appearing to read "D. Sykes", with a horizontal line extending to the right.

David Sykes  
City Manager

For questions, please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8154.

Attachments

2018 ANNUAL SUMMARY OF LABOR NEGOTIATIONS  
ATTACHMENT 1

# Open Audit Recommendations

## Recommendations Potentially Subject to Meet and Confer

### #10-13 POLICE DEPARTMENT STAFFING: OPPORTUNITIES TO MAXIMIZE THE NUMBER OF POLICE OFFICERS ON PATROL (Issued 12/9/10)

#2: To better align staffing with workload, SJPD should propose additional shift start times.

### #11-04 KEY DRIVERS OF EMPLOYEE COMPENSATION: BASE PAY, OVERTIME, PAID LEAVES AND PREMIUM PAYS (Issued 5/11/11)

#1: We recommend the City Administration take steps to move towards a merit-based system by: (1) requiring a current positive performance appraisal before implementing any pay increase (including step and general wage increases), and (2) considering elimination of the automatic step increase process and/or establishing minimum performance thresholds for receiving step increases, and (3) automating the current performance appraisal system.

#2: To reduce the cost of overtime, the City should (1) conduct a Citywide FLSA overtime review or at a minimum review job specifications for specific positions and whether they would qualify for an FLSA overtime exemption; (2) pursue reductions in overtime to align with FLSA requirements (including but not limited to calculating overtime on hours worked, not paying overtime to exempt employees, and not paying overtime to employees receiving executive leave); and (3) prepare full cost estimates of contract provisions that exceed FLSA provisions.

#3: We recommend that the City include eligible paid time off in calculations of total compensation, and consider aligning paid leaves, particularly holidays, with other comparable employers.

#5: We recommend the City Administration (1) seek to eliminate obsolete premium pays, (2) disclose the direct and indirect costs associated with rolling in premium pays, and (3) consider discounting the value of premium pays to maintain cost neutrality when rolling in premium pays OR identify and disclose the full cost associated with rolling in these premium pays into base pay.

### #12-07 FIRE DEPARTMENT INJURIES: A MORE COORDINATED RESPONSE AND BETTER FOLLOW-UP IS NEEDED (Issued 9/12/12)

#6: To ensure that Fire employees returning to the field from a long absence of any kind are physically able to perform their job functions, the City should develop a policy and process to require them to undergo a physical agility test. This may be subject to meet and confer, and could be applicable to employees in other physically demanding positions around the City.

#15: We recommend that subject to meet and confer with the bargaining units, the City should discontinue its practice of paying Fire and Police employees' premium pays when the employees are off of work due to a disability.

### #12-08 TEN YEARS OF STAFFING REDUCTIONS AT THE CITY OF SAN JOSÉ: IMPACTS AND LESSONS LEARNED (Issued 11/08/12)

#1: We recommend eliminating bumping from the City's civil service rules as it is not cohesive with the City's modernized broadband classification structure nor with the complex and specialized work that many City employees do. If elimination is not possible, we recommend: limiting bumping to intradepartmental bumping only, limiting the number of people who can bump into a given position over a given time period, limiting the number of bumps and reinstatements into a given work unit over a given time period, and/or lowering the threshold for meeting position exemption requirements.

#2: Modify the reinstatement process to

- a) Allow departments to choose the most qualified candidate on the City reinstatement lists when such lists are in effect, regardless of seniority.
- b) Develop an exemption process for managers who have compelling cases for not filling critical positions from reinstatement lists.
- c) Allow employees to waive reinstatement for a certain time period or a certain number of opportunities.

## Open Audit Recommendations

### Recommendations Potentially Subject to Meet and Confer

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#3: Pursue changes to the layoffs, bumping and reinstatement rules that subordinate seniority and factor in applicable job skills, recent job performance and disciplinary records.

#### **#16-08 POLICE OVERTIME: THE SAN JOSÉ POLICE DEPARTMENT RELIES ON OVERTIME TO PATROL THE CITY DUE TO UNPRECEDENTED VACANCIES (Issued 9/22/16)**

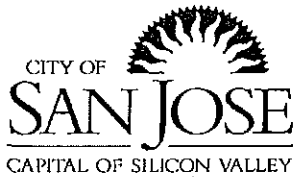
#8: While vacancies remain high and operational needs require high use of overtime, the Police Department should allow more overtime to be worked for pay and/or require the first ten hours of overtime to be worked for pay.

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#9: To reduce the liability associated with high comp time balances, the San José Police Department should:

- a) Lower the allowable comp time balance from 480 hours,
  - b) Explore a comp time buy-out program, and
  - c) Consider a mandatory comp time balance buy-out upon promotion between sworn ranks.
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2018 ANNUAL SUMMARY OF LABOR NEGOTIATIONS  
ATTACHMENT 2



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Les White

**SUBJECT:** See Below

**DATE:** May 31, 2007

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**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** N/A

**SUBJECT:** GUIDING PRINCIPLES FOR LABOR NEGOTIATIONS

### **RECOMMENDATION**

Approve the guiding principles for labor negotiations.

### **OUTCOME**

Adoption of the guiding principles for labor negotiations.

### **BACKGROUND**

In accordance with the Mayor's March Budget Message, the proposed budget for Fiscal Year 2007-2008, responds to the priorities of both the community and the City Council, while addressing the sixth consecutive year of a multi-million dollar General Fund shortfall. However, projected growth in personal service costs continues to out-pace revenue growth through Fiscal Year 2011-2012.

Personal service costs account for two-thirds of the total General Fund uses. The increase of approximately 45% in the average budgeted position cost from 2000 to present can be attributed to three main cost components: salary, health care benefits and pension benefits. Along with the budget shortfalls already predicted for the next five fiscal years and the continued increases in cost for current employee salaries and benefits, liability for post-employment health care benefits for retirees has been estimated to be as high as \$1.4 billion.

Salaries and benefits are determined through the negotiation process with the City's bargaining units. In order to address the significant issues identified above, the City should be guided by principles in labor negotiations in order to remain mindful of the service needs of the City and the continued fiscal challenges.

## ANALYSIS

One of the primary functions of the City is to provide services to the community. Accordingly, 2/3 of the General Fund is allocated to personal services. However, personal services costs have risen significantly during a time of serious fiscal challenges. Fiscal Year 2007-2008 marks the sixth consecutive year of budget shortfalls, with projected shortfalls in the next four years.

As the City continues to explore innovative methods to bridge the gap between revenue and expenses, it is important to partner with our bargaining units in addressing these ongoing costs. Although it is very important to work together with our employees and bargaining unit representatives on collaborative efforts on an on-going basis, the cost of salaries and benefits of bargaining unit employees are determined through the contract negotiation process. These negotiations occur prior the expiration of the eleven agreements with the bargaining units. These agreements expire at different times and in different years.

The following guiding principles are being presented for consideration related to present and future labor negotiations:

- *Focus on the cost of total compensation<sup>1</sup> while considering the City's fiscal condition, revenue growth, and changes in the Consumer Price Index*
- *Use short-term and long-term strategies to address increasing benefit costs such as wellness programs, cost containment initiatives, etc.*
- *Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction among City Council and City staff*
- *Remain mindful of increasing costs, including the retiree healthcare liability*
- *To the extent possible, preserve the City's market competitiveness as an employer*
- *Efficiently and effectively provide services that align with both the priorities of the community and the City Council*

These guiding principles will align the approach to bargaining with the priorities established by both the Council and the community.

## PUBLIC OUTREACH/INTEREST

The purpose of this section is to describe discussions that have occurred with the public, stakeholders, community groups and/or other governmental agencies. Staff will be asked to use the following checklist to determine if items are to be considered items of "Significant Public Interest", thus requiring additional notification per the matrix below. Please note the outreach that was done.

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<sup>1</sup> Total Compensation includes the total costs of a position including salary, pension, and all other benefits.



- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Public Outreach does not apply to the item; however, this memorandum will be placed on the City website for the June 12, 2007 Council Agenda.

#### COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and Office of Employee Relations. A meeting is scheduled with the City Labor Alliance (CLA) to review these principles and receive comments.

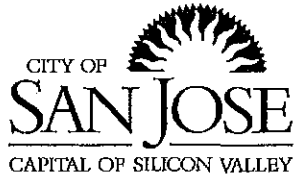
#### CEQA

Not a project.

  
LES WHITE  
City Manager

For questions please contact me at 535-8111.

2018 ANNUAL SUMMARY OF LABOR NEGOTIATIONS  
ATTACHMENT 3



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Edward K. Shikada

**SUBJECT: APPROVAL OF REVISED  
GUIDING PRINCIPLES FOR  
LABOR NEGOTIATIONS  
RELATED TO COMPENSATION**

**DATE:** March 27, 2014

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## RECOMMENDATION

Approve revised Guiding Principles for Labor Negotiations related to compensation.

## OUTCOME

If approved by the City Council, staff will utilize the Guiding Principles during negotiations with the City's bargaining groups.

## BACKGROUND

On June 12, 2007, the City Council approved the following Guiding Principles for Labor Negotiations:

- *Focus on the total cost of compensation while considering the City's fiscal condition, revenue growth, and changes in the Consumer Price Index.*
- *Use short-term and long-term strategies to address increasing benefit costs such as wellness programs, cost containment initiatives, etc.*
- *Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction among City Council and City staff.*
- *Remain mindful of increasing costs, including the retiree healthcare liability.*
- *To the extent possible, preserve the City's market competitiveness as an employer.*
- *Efficiently and effectively provide services that align with both the priorities of the community and the City Council.*

At the time these guiding principles were approved, the City had undergone significant budget shortfalls and was facing even more significant budget shortfalls. It was recognized that for represented employees, salaries and benefits are determined through the negotiation process with the City's bargaining units. It was determined that in order to address the significant budget issues, the City should be guided by principles in labor negotiations in order to remain mindful of the service needs of the City and the continued fiscal challenges.

Subsequently, on March 4, 2008, the City Council adopted *Council Labor Negotiation and Transparency Guidelines*, which were revised on January 25, 2011. These guidelines are attached. These guidelines cover areas beyond compensation and benefits, and set parameters for the City Council when the City Manager or the City Manager's designee is in negotiations with any bargaining unit. These include the roles of Council members and staff relative to the City Manager's execution of the duty to negotiate on behalf of the City, and that written proposals made or received shall be posted for public review on the City's web site after the proposals have been submitted to the designated negotiators. Negotiation information can be found at the City's website at <http://www.sanjoseca.gov/index.aspx?NID=505>.

As indicated in the 2014-2015 City Manager's Budget Request and 2015-2019 Five-Year Forecast, the City's budget is in a fairly stable position over the forecast period. The difficult budget balancing actions implemented in recent years played a critical role in bringing revenues and expenditures in close alignment. These actions included a combination of significant service and position reductions, and employee total compensation reductions. These employee compensation reductions included but are not limited to a 10% total compensation reduction, rollback of a general wage increase of 2% two unions received, and benefit cost sharing changes. These were significant concessions made by City employees.

It is important to note that while the City's budget has stabilized, there continues to be a significant deficit in the service levels provided to the residents and businesses in San José. There are major gaps in services across the board that impact our community, from public safety to parks, libraries, and community services. There are also significant unmet deferred infrastructure and maintenance needs that will have a long-term impact on the City.

## ANALYSIS

As noted above, significant changes have been made to employee compensation in that all City employees took an across the board compensation reduction of 10%. This was done in recognition that for Fiscal Year 2011-2012, the City had to address another General Fund shortfall of \$115 million. Yet despite achieving a 10% total compensation reduction for all employees, 140 employees were laid off, including 66 Police Officers.<sup>1</sup> Absent this sacrifice by the workforce, additional significant layoffs and resulting service reductions would have had to occur. This is illustrative of the difficult fiscal situation faced by the City and its employees that,

<sup>1</sup> Source: 2011-2012 Adopted Budget.

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Subject: Revisions to Guiding Principles for Labor Negotiations Related to Compensation

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regardless of the significant sacrifices made by employees, the City could not avoid a reduction in its workforce. This is also significant in that it was across the board, meaning every City employee took the wage reduction.

While the City must continue its pursuit of balancing the long-term need of eliminating the General Fund structural deficit, bringing revenues and expenditures into alignment, with the immediate service delivery needs of the community, the City also recognizes the needs of the workforce in restoring the pay reduction and has committed to doing so over time. For example, most City employees received a 2% general wage increase for Fiscal Year 2013-2014. The City is also cognizant that there might be areas in which pay may need to be restored more quickly due to recruitment and retention issues with certain classifications.

Also as noted in the 2015-2019 Five-Year Forecast, an employee compensation planning reserve and an employee market competitiveness reserve has been included. The employee compensation planning reserve is for planning purposes to restore over time the compensation reductions all employees took. The employee market competitiveness reserve is included to potentially provide salary adjustments to specific job classifications where significant ongoing recruitment and retention issues are being experienced.

The Administration is recommending revisions to the Guiding Principles for Labor Negotiations in recognition of the changes in our budget situation and to provide guiding principles on negotiations related to increases that may need to occur for certain classifications represented by a bargaining unit due to recruitment and retention issues.

The following are the recommended revised Guiding Principles for Labor Negotiations, to accompany the attached *Council Labor Negotiation and Transparency Guidelines, Policy 0-39*:

*Salaries and benefits are determined through negotiations with bargaining units. In negotiations with the unions over salaries and benefits, the City will be guided by the following principles:*

- *The City strives to maintain a compensation structure that provides salaries and benefits that are competitive within the marketplace to attract and retain highly qualified employees.*
- *The City's fiscal circumstances will be considered when negotiating changes to compensation.*
- *The City will consider employee compensation and benefits in the context of providing high quality community services in both the short and long term.*
- *The City will consider Total Compensation (salary, pension, and all other benefits) while recognizing that market competitiveness adjustments may need to emphasize a review of "Total Cash Compensation" of comparable classifications.*

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- *Priorities for market-based compensation adjustments will consider recruitment, retention, and the market as these factors affect specific job classifications.*
- *Market competitiveness adjustments will be advanced as funding is identified.*
- *Negotiations regarding compensation should take into consideration both short term and long term strategies to address increasing benefit costs for both the City and employees, such as retiree healthcare.*
- *The City will maintain a consistent approach to bargaining through clear, ongoing communication of policy direction among City Council and City staff, as specified in Council Policy 0-39.*

These revised guiding principles will align the approach to bargaining with the priorities established by both the Council and the community in recognition of our current circumstances.

#### **EVALUATION AND FOLLOW-UP**

Follow-up with the City Council related to this action is anticipated to occur through Closed Session direction and subsequent action in Open Session.

#### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum doesn't meet any of the criteria above, but will be posted on the City's website in advance of the April 8, 2014 meeting.

HONORABLE MAYOR AND CITY COUNCIL

March 27, 2014

**Subject: Revisions to Guiding Principles for Labor Negotiations Related to Compensation**

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**COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

**CEQA**

Not a Project, File No. PP10-068(b), Municipal Code or Policy change, Title 3 (Personnel).



EDWARD K. SHIKADA  
CITY MANAGER

For questions please contact Alex Gurza, Deputy City Manager, at (408) 535-8155.

Attachment

2018 ANNUAL SUMMARY OF LABOR NEGOTIATIONS  
ATTACHMENT 4



# City of San José, California

## COUNCIL POLICY

<b>TITLE</b> Council Labor Negotiation and Transparency Guidelines	<b>PAGE</b> 1 of 3	<b>POLICY NUMBER</b> 0-39
<b>EFFECTIVE DATE</b> March 4, 2008	<b>REVISED DATE</b> January 25, 2011	
<b>APPROVED BY COUNCIL ACTION</b> 3/4/2008, Item 3.6, Res. No. 74265; 1/25/11, Item 3.2, Res. No. 75705		

### BACKGROUND

Collective bargaining is governed by the Meyers-Milias-Brown Act (MMBA), the City of San José Employer-Employee Relations Resolution (#39367) and the City Charter. The City Charter designates the City Manager as the chief administrative officer of the City. Accordingly, Resolution #39367 delegates the authority to negotiate labor contracts on behalf of the City to the City Manager or the City Manager's designee.

Pursuant to the Meyers-Milias-Brown Act, the City has a right to insist that contract negotiations take place at the bargaining table between the designated representatives of the City and the designated representatives of the various bargaining unit employees. Members of the City Council shall not negotiate with employee representatives. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith and not to bypass the negotiation teams.

As used in this policy, "negotiate" means to meet and confer with another to endeavor to reach agreement on matters within the scope of representation.

Unless agreed to by the City and the bargaining unit, negotiation sessions are confidential, but there is great public interest in having information about the negotiations available for public review.

### PURPOSE

This policy applies only to the Mayor, members of the City Council, Mayor and Council staff, and Council Appointees.

References in this policy to members of the City Council or Council staff include the Mayor and Mayor's staff.

The purpose of this policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith, to avoid actions that would circumvent the City's designated bargaining team, and to provide timely and accurate information about the negotiations to the City Council and the public.

<b>TITLE</b> Council Labor Negotiation and Transparency Guidelines	<b>PAGE</b> 2 of 3	<b>POLICY NUMBER</b> 0-39
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**POLICY**

It is the policy of the City Council that all of its members and staff and Council Appointees shall abide by the following guidelines when the City Manager or the City Manager's designee is in negotiations with any bargaining unit:

1. Pursuant to San Jose Resolution #39367, negotiations are conducted by the City Manager through his/her designee. Accordingly, negotiations regarding potential proposals and possible settlement shall occur between the City's designated negotiator(s) and the union's designated negotiator(s).
2. Pursuant to Section 411 of the City Charter, while the Council may express its views to the City Manager, the Council shall not interfere with the execution by the City Manager of his or her authority and duty to negotiate on behalf of the City.
3. Members of the City Council or Council staff or other Council Appointees shall not negotiate with the bargaining unit representatives or persons acting on their behalf.
4. In order to avoid misunderstandings and potential unfair labor practices, unless requested by the City Manager, members of the City Council or Council staff or other Council Appointees should not discuss with any bargaining unit representative or persons acting on their behalf any matter that is a subject of the negotiations while the City and the bargaining units are engaged in the negotiation process. The negotiating process shall be defined as the time period starting with the first negotiation session until a resolution has been achieved. This provision does not apply when the City Attorney is handling litigation on matters that are subject to negotiations, interest arbitration, or when the City Attorney is contacted by a bargaining unit's designated legal counsel to discuss legal issues. The City Attorney shall notify the City Manager of any such communications to ensure coordination with the legal issues and Council direction to the City Manager for labor negotiations.
5. Nothing in this policy shall prohibit members of the City Council, Council staff or Council Appointees from listening to bargaining unit representatives or persons acting on their behalf. Members of the City Council shall not knowingly respond to or discuss any proposals or any other confidential closed session discussion.
6. Nothing in this policy shall preclude the City Manager from requesting the assistance of the City Attorney or other Council Appointees in carrying out the responsibilities as the Municipal Employee Relations Officer.
7. Members of the City Council and City Council staff shall disclose to the City Manager and to the entire City Council material facts regarding issues related to ongoing negotiations. (See Council Policy 0-32 regarding disclosure of material facts).
8. Authorization and direction to the City Manager is provided in closed or open session. If done in closed session, in order to maintain the integrity of the negotiation process, closed session discussions must remain confidential.
9. Written proposals made or received shall be posted for public review on the City's web site after the proposals have been submitted to the designated negotiators.

<b>TITLE</b> Council Labor Negotiation and Transparency Guidelines	<b>PAGE</b> 3 of 3	<b>POLICY NUMBER</b> 0-39
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10. The City Manager will provide periodic updates on labor negotiations to the City Council in open session except for elements that are required to be held confidential. These updates shall include a summary of proposals exchanged since the last update.
11. Bargaining unit representatives or persons acting on their behalf may comment on the City Manager's open session labor negotiations update. This shall be done during open session to ensure all of the Council receives the same information. The City Council may listen to these statements made in the public forum and may ask questions for clarification purposes, but shall not respond to the comments, or engage in dialogue or any other form of bargaining with the representatives.
12. Nothing in this policy shall limit, restrict, or modify any of the powers provided to Council Appointees under the City Charter.