



Memorandum

TO: Honorable Mayor & City Council

FROM: Debra Figone

**SUBJECT: COUNCIL POLICY ON LABOR
NEGOTIATION GUIDELINES**

DATE: January 3, 2008

COUNCIL DISTRICT: City-Wide

SNI AREA: N/A

RECOMMENDATION

Approval of Council Policy on Labor Negotiation Guidelines.

OUTCOME

The City Council will have a policy that sets guidelines for the Mayor, members of the City Council and Council staff to ensure labor negotiations are conducted in good faith and to avoid actions that may constitute an unfair labor practice.

BACKGROUND

On November 8, 2007, the Mayor issued a Memorandum regarding the 2007 Mayor's Biennial Ethics Review. The memorandum directed staff to return to Council with recommendations for a Council policy to provide guidelines for negotiations with bargaining units. During the November 20, 2007, Council meeting, the City Council approved the recommendation that was included in the Mayor's Biennial Ethics Review and staff was asked to return in January 2008 with a Council Policy.

This memo is provided in response to the Council direction and provides a draft Council Policy that is intended to set guidelines for the Mayor, members of the City Council and Council staff to ensure negotiations are conducted in good faith and to avoid actions that may constitute an unfair labor practice.

ANALYSIS

Various laws and regulations govern labor negotiations. The Meyers-Milias-Brown Act (MMBA) governs labor-management relations and collective bargaining in California local government, including cities. The California Public Employment Relations Board (PERB) is the administrative agency charged with administering the MMBA. Labor negotiations in San Jose are also governed by the City's Employer-Employee Relations Resolution (#39367) and the provisions of the City Charter. In addition, the City must comply with the provisions of the Brown Act.

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 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 or bargaining units). 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 scope of representation includes 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 Employee-Employer 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 bargaining units.

Section 21 of Resolution #39367 designates the City Manager as the Municipal Employee Relations Officer and, as such, is the City's 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.

City Charter

The responsibility and authority of the City Manager to negotiate on behalf of the City specified in the City's Employee-Employer Relations Resolution is consistent with the City Charter. Section 701 of the City Charter designates the City Manager as the chief administrative officer of the City. In addition, Section 411 of the City Charter states that while the Council may express its views to the City Manager, the City Council and Mayor shall not interfere with the execution by the City Manager of his or her powers and duties.

Brown Act

The City Council provides negotiating parameters/authority to the City Manager in Closed Session. The Brown Act provides that a person may not disclose confidential information that has been acquired by being present in a closed session unless the Council authorizes disclosure of that confidential information.

Obligation to Negotiate in Good Faith

Both the City and the bargaining units have an obligation under the applicable laws to negotiate in good faith on matters that are within the scope of representation which include wages, hours, and other terms and conditions of employment. Any one incident or act may not constitute bad faith bargaining, but rather is analyzed based on the "totality of circumstances." Examples include direct dealing with bargaining unit representatives or persons acting on their behalf, delay tactics, regressive bargaining, surface bargaining and bypassing the City or Union negotiating team. Bypassing can occur when either side bypasses the designated representatives, for example, by going directly to the City Council with proposals or concessions.

Although going directly to the City Council with proposals or concessions can be considered bypassing, it does not prohibit bargaining representatives from addressing the City Council. The contracts with the City's police and fire unions both have provisions in their contracts that specifically provide for the opportunity to make public presentations to the City Council. The contracts provide that if the parties remain at impasse following mediation, the union may choose to make a presentation during a public City Council meeting without the requirement of a Council response. This same opportunity is available to any bargaining unit.

A recourse for an accusation of bad faith bargaining is through filing an unfair labor practice charge with the Public Employment Relations Board (PERB). PERB is a regulatory body which investigates unfair labor practices and interprets and protects the rights and responsibilities of employers, employees and employee organizations in labor relations matters.

POLICY ALTERNATIVES

The goal in developing the draft Council Policy was to reinforce the City's obligation to meet and confer in good faith through the City's designated representatives and to avoid actions by the City Council and Council staff that may constitute bad faith bargaining. In order to achieve this objective, the following options were considered:

Alternative A

In order to ensure that labor negotiations are conducted by the City's designated negotiator, one alternative is a Council policy that restricts members of the Council and Council staff from any meetings or discussions with bargaining unit representatives or persons acting on their behalf during negotiations. While this would ensure that bypassing the City's negotiating team does not occur, this alternative is not recommended because it is excessively restrictive in that it precludes meetings on topics unrelated to negotiations.

Alternative B

Another alternative considered was a Council policy that only limits meetings and discussions with bargaining unit representatives or persons acting on their behalf regarding specific negotiation proposals, possible settlements, negotiation strategy or Council direction. This alternative ensures that negotiation discussions occur between the City's and the bargaining unit's designated representatives. While ensuring that negotiations are conducted in good faith and avoids bypassing of the City designated negotiators, this alternative does not limit discussions or meetings on any topic not related to the labor negotiations. Alternative B is the recommended option, and is contained in the attached draft policy.

It is important to note that the attached draft policy does not restrict bargaining unit representatives from making comments during open forum of City Council meetings or from putting comments to the City Council in writing. Further, as stated above, this alternative in no way restricts any meetings or discussions on topics unrelated to labor negotiations.

Alternative C

A third alternative considered was a Council policy that prohibits Council and Council staff from negotiating with bargaining unit representatives or persons acting on their behalf. This alternative does not ensure that negotiation discussions occur through the City's designated negotiators. In addition, it is difficult to determine what constitutes "negotiations" versus only "discussions" about proposals, and therefore, would not avoid bypassing of the designated negotiators. For these reasons, Alternative C was not recommended.

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.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 item will be posted on the internet.

COORDINATION

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



Debra Figone
City Manager

Attachment

For questions please contact Debra Figone, City Manager, at 535-8111.

DRAFT

City of San José, California

COUNCIL POLICY

TITLE Council Labor Negotiation Guidelines	PAGE 1 of 2	POLICY NUMBER
EFFECTIVE DATE	REVISED DATE	
APPROVED BY COUNCIL ACTION		

BACKGROUND

Collective bargaining is governed by the Meyers-Millas-Brown Act (MMBA), the City of San Jose 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 on behalf of the City to the City Manager or the City Manager's designee. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith.

PURPOSE

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

The purpose of this policy is to set guidelines for the Mayor, members of the City Council members and Mayor and Council staff to ensure negotiations are conducted in good faith and to avoid actions that may constitute an unfair labor practice.

POLICY

It is the Policy of the City Council that all of its members and staff 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. During negotiations and until the meet-and-confer process has been completed, members of the City Council or Council staff shall not meet and/or discuss with the bargaining unit representatives or persons acting on their behalf specific negotiation proposals, possible settlements, negotiation strategy or Council direction. This does not restrict bargaining unit representatives from making comments during open forum of City Council meetings or from putting comments in writing. This also does not restrict meetings or discussions with City Council members or Council staff on topics not related to negotiations.

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City of San José, California

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4. If any contact is made by a bargaining unit representative or persons acting on their behalf regarding ongoing negotiations to Council members or Council staff, Council members should refer the bargaining unit representative or persons acting on their behalf to the City Manager and report it to the City Manager.
5. Authorization and direction to the City's negotiating team is provided in closed session. In order to maintain the integrity of the negotiation process, such authorization must remain confidential.
6. The Brown Act provides that a person may not disclose confidential information that has been acquired by being present in a closed session unless the Council authorizes disclosure of that confidential information.