



# Memorandum

**TO:** Mayor and City Council

**FROM:** Councilmember  
Donald Rocha

**SUBJECT:** Item 3.2

**DATE:** January 21, 2011

Approved

*Don Rocha*

Date

*1/21/11*

RECOMMENDATION

Approval of Mayor Reed’s recommended modifications to Council Policy 0-39 with the following amendments:

- a) Delete Section 4;
- b) Modify Section 11 to include clear language that would allow for the Mayor and Council to ask questions for clarification purposes. The following substitute sentence is offered for consideration:

*The City Council may listen to these statements made in the public forum, but shall not respond to the comments, or engage in dialogue or any other form of bargaining with the representatives. **Nothing in this policy will prohibit or restrict questions for clarification purposes.***

ANALYSIS

As an elected official I take my responsibility to the public and stakeholders seriously, as do my colleagues. Part of that role as a public servant is listening and engaging with the public that we represent. My request for the above modifications is simply to allow for that, and also to provide for opportunities to learn from other perspectives or opinions. The requested amendments in no way allow for negotiations by the Mayor or individual Councilmembers.

These amendments address issues with concerns on how the negotiation process is being handled, not the outcome of negotiations, which is an important distinction to make. I agree that it is extremely important that Councilmembers and their staff refrain from bypassing the negotiation teams and participating actively in the terms of collective bargaining process, and that accurate information be conveyed at all times by all parties. However, I hesitate to fully support proposals which limit my ability to listen to those involved in the negotiation process. The Administration has regular and lengthy opportunities to discuss issues surrounding the negotiation process during Closed Session of the City Council. The same opportunity to meet

with City Council is not afforded to bargaining groups, and even though regular opportunities to visit Open Session of City Council are afforded, length and the opportunity to give comprehensive analysis are not necessarily available to them.

The end goal of this initiative is transparency, and in my mind, equity. The objective of labor negotiations should be to find solutions and compromises that are responsible and fair for all involved: the City, the employees, and the taxpayer. I appreciate the initiative to bring forth simple changes to the way that we interact with our employees during budget negotiations. The result should be that they feel that their concerns have been represented appropriately, and that as decision-makers we feel that our decisions, guidance, and subsequent outcomes are responsible to our constituents and organization. The proposed policy amendments provide a framework for the pursuit of that goal, but to adequately reach that destination we need to focus on preserving opportunities for information and communication to be shared.

The proposed language can be interpreted that employees would not be able to speak to a Councilmember about anything relating to City employment during a bargaining period. This could extend to conversations between employees and Councilmembers about staffing levels, operation issues, or working conditions. Under the proposed language, those topics could be interpreted as inappropriate, even if only obliquely.

Further, the proposed addition to Policy 0-39 might be interpreted to remove the right to meet individually, and therefore may violate employees' First Amendment right to freedom of speech and freedom to petition. The opportunity to come before the City Council in open session to present issues and/or information about the collective bargaining process does not constitute a fair and equitable alternative to the ability to meet with individual Councilmember, Council Staff, or Council Appointees, in terms of time length and ability to convey information freely.

If the intent of these amendments is to respond to concerns conveyed by the City Labor Alliance and to insure that the information presented is accurate and equally available to Councilmembers then I believe that the proposed amendments that I have offered might help that goal. The ability for Councilmembers to meet with employees during the bargaining process will create an environment of full disclosure and accurate information to be shared. If an employee met with me regarding concerns that arose during a negotiation session and those concerns were shared at a City Council meeting in open session, and the employee or their representative was available to speak and answer questions regarding the concern, this process would become as transparent as it could be.