# RESOLUTION NO. 75705

## A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AMENDMENTS TO COUNCIL POLICY NO. 0-39, RELATING TO COUNCIL LABOR NEGOTIATION AND TRANSPARENCY GUIDELINES

**WHEREAS,** City Council Policy 0-39, relating to Council Labor Negotiation Guidelines, was originally adopted on March 4, 2008; and

**WHEREAS,** the City Council of the City of San José ("City") desires to amend the Policy to allow bargaining unit offers to be presented to the City Council in open session; and

**WHEREAS,** public comment was received and it was moved and approved that the amended Policy be adopted by resolution; and

**WHEREAS**, this Policy supersedes the policy adopted on March 4, 2008, under Resolution No. 74265 of the Council of the City of San José;

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The revised City Council Policy 0-39 entitled, "Council Labor Negotiation and Transparency Guidelines," which revised Policy is attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth herein, is hereby approved and shall, as of the date and time of adoption of this Resolution, replace City Council Policy 0-39, previously approved by the City Council on March 4, 2008.

ADOPTED this 25th day of January, 2011, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, ROCHA, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

# EXHIBIT A
## *City of San José, California*

### COUNCIL POLICY

| TITLE Council Labor Negotiation and Transparency Guidelines | PAGE 1 of 3 | POLICY NUMBER 0-39 |
|---|---|---|
| EFFECTIVE DATE March 4, 2008 | REVISED DATE | |
| APPROVED BY COUNCIL ACTION 3/4/2008, Item 3.6, Res. No. 74265, _____ | | |

### 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.

**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.

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.