

September 12, 2011

Vera Todorov
President
Association of Legal Professionals (ALP)
c/o City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

RE: City/ALP Negotiations

Dear Ms. Todorov:

We are in receipt of ALP's letter dated September 6, 2011. While the City does not agree with several of ALP's assertions, we do not wish our most significant concerns to be lost in a point-by-point rebuttal.

ALP's refusal to provide a counter proposal unless and until the City affirmatively states that ALP has received "all" City proposals or until the City provides ALP a "complete package proposal" is inappropriate and potentially indicia of bad faith bargaining on the grounds of refusal to provide written proposals and conditional bargaining. Particularly because the City is required to negotiate over retirement benefits with numerous units simultaneously, the City's proposals will inevitably change over time, in response to union proposals or as a result of further refinement. The City has provided a considerable array of very significant proposals, both as part of the proposed charter amendment, and separately. We are prepared to discuss these now as part of the cooperative/iterative process contemplated by the Meyers Milias Brown Act.

In addition, ALP asserts that there are outstanding information requests from our August 11th meeting and that a request for information was attached to ALP's September 6th letter. The City is unaware of any outstanding information requests from the meeting of August 11th, and ALP's letter of September 6th did not contain an attached information request. However, the City is in receipt of an information request from ALP dated September 7th. Please clarify if the information request dated September 7th was intended to be enclosed in ALP's letter of September 6th.

ALP's letter of September 6, 2011, includes several inaccurate statements that have been previously addressed.

The City and ALP commenced negotiations over a successor agreement January 24, 2011. ALP is correct that the City did not provide any substantive proposals regarding retirement benefits for future employees (i.e. "second tier"). The City consistently proposed that the complex issue of retirement reform, including retirement benefits for future employees, be included in future negotiations. The City/ALP Mediated Tentative Agreement achieved on May 27, 2011, includes a

reopener provision providing for retirement reform negotiations during the term of the agreement. In accordance with that reopener, the City notified ALP July 22, 2011, of its interest in commencing retirement negotiations as soon as possible. Despite this notification and the agreement between the parties that:

"...each party agrees to meet and confer over the following issues within ten (10) days of written notice from the other party," ALP requested to delay the commencement of negotiations until 20 calendar days after the City's notification to ALP.

ALP's letter asserts that the City's proposals provided to ALP on August 11th are in conflict with the draft proposed ballot measure. We do not agree, however, in the interim, the City provided a revised draft of the proposed ballot measure on September 9th based, in part, on comments received from other unions who have been participating in negotiations. Of course, we would be happy to discuss this perceived issue further during negotiations.

ALP asserts that the City was "required to by law" to meet and confer with ALP over Measure W, which was passed by the voters in the November 2010 General Election. This is the first time since the Measure W was first proposed that ALP has made such an assertion. It is also unclear how this assertion relates to the current negotiations over actual changes to retirement benefits. Further, ALP's assertion that the City "lay in wait" until after ALP signed an agreement with a reopener to negotiate retirement benefits before opening those negotiations is circular. Plainly, the reopener should have put ALP on notice that the City intended to initiate pension negotiations. Further, as your own letter admits, the Mayor released the general terms of a proposed ballot measure on pension *before* ALP signed a tentative agreement.

In conclusion, the City continues to believe that by both the City and ALP coming to the table and engaging in good faith negotiations over retirement reform we can achieve an agreement that enables the City to provide services to the residents and a sustainable retirement benefit for current and future City employees. We do not believe that vituperative exchanges of correspondence and attempts to impute malicious intent further the process, especially on an issue as important as retirement benefits.

Sincerely,



Gina Donnelly
Deputy Director of Employee Relations

c: Debra Figone, City Manager
Rick Doyle, City Attorney