



COUNCIL AGENDA: 10-7-14
ITEM: 3.7

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

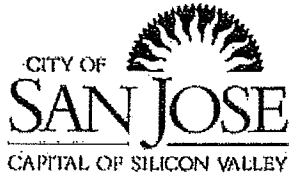
SUBJECT: SEE BELOW

DATE: 10-2-2014

SUBJECT: PUBLIC ACCESS TO EMPLOYEE BARGAINING NEGOTIATIONS

RECOMMENDATION

As recommended by the Rules and Open Government Committee on October 1, 2014, conduct discussion on public labor negotiations.



Memorandum

TO: Rules Committee

FROM: Councilmember Pierluigi Oliverio

SUBJECT: NOVEMBER 2014 BALLOT
MEASURE TO HOLD UNION
NEGOTIATIONS AS PUBLIC
MEETINGS

DATE: June 5, 2014

Approved:

Pierluigi Oliverio
MLC

Date:

06/05/14

RECOMMENDATION:

Direct the City Attorney to draft a ballot measure for review at the June 17, 2014 city council meeting which allows members of the public to attend union negotiations.

By way of background, San Jose voters approved Measure V back in 2010, which mandated any arbitration hearings to be open to the public, and that associated documents submitted during such hearings would become public records. I believe we should follow that example, and allow voters to do the same for union negotiations.

SENT VIA EMAIL

July 2, 2014

Lamoin Werlein-Jaen
Business Agent
IFPTE Local 21

John Mukhar
President
Association of Engineers and Architects (AEA)
IFPTE Local 21

Steve Contreras
President
Association of Maintenance Supervisory
Personnel (AMSP), IFPTE Local 21

Kara Capaldo
President
City Association of Management Personnel
(CAMP), IFPTE Local 21

Jim Unland
President
San Jose Police Officers' Association (SJPOA)

Joel Phelan
President
San Jose Fire Fighters, IAFF, Local 230

Yolanda Cruz
President
Municipal Employees' Federation (MEF)
AFSCME Local 101

LaVerne Washington
President
Confidential Employees' Organization (CEO),
AFSCME Local 101

Peter Fenerin
President
Association of Building, Mechanical and
Electrical Inspectors (ABMEI)

William H. Pope
Business Representative
International Union of Operating Engineers,
Local No. 3 (OE#3)

Sal Ventura
Assistant Business Manager
International Brotherhood of Electrical
Workers, Local No. 332 (IBEW)

Vera Todorov
President
Association of Legal Professionals (ALP)

Charles Allen
Business Agent
AFSCME Local 101

Frank Crusco
Chief Steward
International Brother of Electrical Works, Local
No. 332 (IBEW)

Re: Public Labor Negotiations

Dear Bargaining Unit Representatives:

As you may know, during the June 11th Rules and Open Government Committee meeting, there was discussion surrounding a ballot measure for the November 2014 election which would mandate that labor negotiations be open to the public.

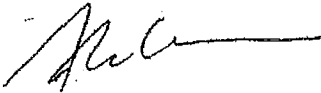
All City Bargaining Units
Re: Public Labor Negotiations
July 2, 2014
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We have in the past agreed to make labor negotiations open to the public on a case by case basis as part of an agreement with a particular bargaining unit. We believe that a requirement that labor negotiations be public is a ground rule, which is a mandatory subject of bargaining. The City Council has not decided whether or not to pursue this ballot measure; however, they have directed staff to discuss this with the City's bargaining units and to bring this item back to the City Council on August 5, 2014, in consideration for the November 2014 ballot. Attached is what the ballot measure would look like if there was a decision to proceed.

Please let us know by July 15, 2014, your thoughts about a requirement in the City Charter that all labor negotiations be open to the public.

We look forward to hearing from you.

Sincerely,



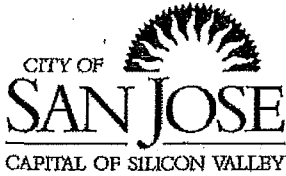
Alex Gurza
Deputy City Manager

c: Jennifer Schembri, Deputy Director of Employee Relations

Draft Ballot Language for Public Labor Negotiations

Section 1112

Any meeting of one or more agents, representatives, or officers of the City with any agent or officer of any employee organization to negotiate wages, hours, or any other term or condition of employment subject to meet and confer under state law shall be open and public and all persons shall be permitted to attend and listen to the deliberations of any such meeting, except as otherwise provided by state or federal law. All physical or electronic records of communications, discussions or consultations between any representative, agent or officer of the City and any representative, agent or officer of any employee organization shall be considered a public record, except as otherwise provided by state or federal law.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: PROPOSED BALLOT MEASURE - **DATE:** July 24, 2014
PUBLIC ACCESS TO
EMPLOYEE BARGAINING NEGOTIATIONS

Approved

Date

7/25/14

RECOMMENDATION

- a. Council discussion and consideration of a Public Access to Employee Bargaining Negotiations ballot measure for the November 4, 2014, election;
- b. Adopt a resolution of the City Council calling and giving notice, on its own motion, for a Special Municipal Election to be held on November 4, 2014, to submit to the electors of the *City of San Jose*, the following measure:

"Public Access to Employee Bargaining Negotiations

Shall the Charter be amended to require meetings of the City and employee bargaining organizations to negotiate wages, hours, or any other term or condition of City employment be open to the public and all records of communications between these representatives related to such negotiations considered public records, except as otherwise provided by state or federal law?"

1. Council discussion and consideration of whether the full text of the proposed ordinance should be printed in the November 4, 2014, Voter's Sample Ballot, pursuant to Elections Code 12111, to be incorporated in the resolution calling the election;
2. Council discussion and consideration of whether to permit rebuttal arguments in the November 4, 2014, Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election;
3. Council discussion and consideration of whether to authorize the City Council or any member or members of the City Council to submit an argument in favor of the City measure on the November 4, 2014, Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election; and
4. Direct the City Clerk to take all actions necessary to place this measure for a November 4, 2014, Special Municipal Election, if needed.

HONORABLE MAYOR AND CITY COUNCIL

July 24, 2014

Subject: Proposed Ballot Measure - Public Access to Employee Bargaining Negotiations

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BACKGROUND

During the June 11, 2014, Rules and Open Government Committee meeting, there was discussion surrounding a potential ballot measure for the November 2014 election which would mandate that labor negotiations be open to the public. At that time, the City Council had not yet decided whether or not to pursue a ballot measure and because this would be subject to meet and confer, the Rules and Open Government Committee directed the matter to be discussed in closed session with the City Council. The City Council subsequently directed City staff to discuss the issue with the City's bargaining units and bring the item back to City Council on August 5, 2014.

On or about July 2, 2014, all bargaining units were advised of a potential ballot measure regarding requiring labor negotiations be open to the public in addition to being provided a draft ballot measure for review. Feedback was received and is summarized below.

ANALYSIS

Transparency in Labor Negotiations

While the City has a right to insist that labor negotiations take place at the bargaining table, it also has an interest in maintaining transparency in the labor negotiation process. Given the significant portion of the City's General Fund that is allocated to employee costs and the direct impact that labor negotiations has to those costs, the City has made significant efforts to provide an unprecedented amount of labor relations information to the public. This includes information prior to the initiation of negotiations, negotiations in progress, and total compensation costs for City employees. In addition, during labor negotiations, all proposals made by the City and each bargaining unit are posted on the City's website after they are exchanged. This is in accordance with Council Policy 0-39, *Council Labor Negotiations and Transparency Guidelines*, which states 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." If a Tentative Agreement is reached with a bargaining unit, the entire Tentative Agreement is made available to the public before the City Council takes action to approve it.

Position of the Bargaining Units

The bargaining units were asked to provide their thoughts and comments regarding the Public Access to Employee Bargaining Negotiations ballot measure proposal by July 15, 2014.

The bargaining units that responded were opposed to a charter requirement that requires that labor negotiations be open to the public. The bargaining units indicated that they thought the issue should be discussed at the beginning of each bargaining cycle as part of a discussion on ground rules.

Accordingly, the bargaining units are opposed to the proposed ballot measure and a decision by the City Council to proceed with the proposed ballot measure at this time would necessitate a change to the City Charter that is not supported by the City's bargaining units. In addition, on or about July 14, 2014, IFPTE, Local 21 requested to commence bargaining over the proposed

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Subject: Proposed Ballot Measure - Public Access to Employee Bargaining Negotiations

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ballot measure stating that the matter was within the scope of representation and, therefore, subject to the meet and confer process. The POA and IAFF, Local 230 also requested a meeting. The City met with the POA on this and other issues on July 17, 2014. The POA subsequently provided a letter stating that they had an interest "in discussing the concept of open negotiations for proposed changes in the City Charter" but that, "for regular bargaining, open negotiations is best reserved for ground rules." Mandating that labor negotiations be public is within the scope of bargaining and therefore subject to the meet and confer process. We have reached no agreement on this nor has the meet and confer process been completed.

Timeline if Proceeding with the Ballot Measure

The City Council must approve putting a ballot measure before the voters 88 days in advance of the election in November. The election date is November 4, 2014, and 88 days prior to that date is August 8, 2014. Therefore, in order to put a ballot measure on for a November 4, 2014, election, the City Council must decide to put this matter on the ballot at its Council meeting scheduled for August 5, 2014.

Ballot Measure Rebuttal Arguments

If the City Council decides to proceed with the proposed ballot measure and also wishes to allow rebuttal arguments to it, then the resolution calling for the Charter amendment to be placed on the November 4, 2014, election ballot will also provide for rebuttal arguments pursuant to Elections Code 9285. If allowed by the City Council, the City Clerk may accept rebuttal arguments from either the author(s) of a primary argument in support of or in opposition to a ballot measure, or any other person(s) authorized in writing by the author(s) to submit a rebuttal argument. Rebuttal arguments may not exceed 250 words and may be signed by no more than five (5) persons.

Councilmember Argument

In addition, if the Council wishes to permit an individual Councilmember or group of Councilmembers to submit an argument for or against the City measure, Elections Code 9282 requires the City Council provide specific authorization to do so.

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)

HONORABLE MAYOR AND CITY COUNCIL

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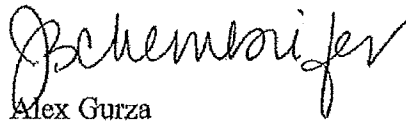
This action does not meet any of the criteria listed but will be posted on the City's website for the August 5, 2014, City Council Agenda.

COORDINATION

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

COST SUMMARY/IMPLICATIONS

The City Clerk will issue a separate memorandum which provides the ballot measure costs and the associated budget.



Alex Gurza

Deputy City Manager

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

SENT VIA EMAIL

September 8, 2014

Lamoin Werlein-Jaen
Business Agent
IFPTE Local 21

John Mukhar
President
Association of Engineers and Architects (AEA)
IFPTE Local 21

Steve Contreras
President
Association of Maintenance Supervisory
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Frank Crusco
Chief Steward
International Brother of Electrical Works, Local
No. 332 (IBEW)

Re: Public Labor Negotiations

Dear Bargaining Unit Representatives:

On July 2, 2014, we contacted all bargaining units regarding a potential ballot measure for the November 2014 election mandating that all labor negotiations be open to the public through a City Charter amendment. At that time, we provided you with draft ballot measure language for your review

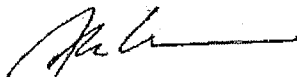
and comment. Some bargaining units were not in favor of public negotiations while others were generally not opposed to the idea of public labor negotiations; however, there was opposition in mandating such a requirement through a City Charter amendment.

On August 5, 2014, the City Council did not move forward with the proposed ballot measure but, after some discussion, directed staff to continue to meet and confer with bargaining units regarding mandating all labor negotiations be open to the public through an ordinance instead of a City Charter amendment. However, after further consideration, the City Council has directed staff to continue discussing the issue of public negotiations as part of the ground rules discussions at the beginning of each bargaining process. This means a discussion with each particular bargaining unit regarding their interest in having negotiations open to the public.

The issue of transparency is an issue that has been raised before and is one that the City takes very seriously. Consistent with its philosophy of open government, the City is committed to providing as much information to the public as possible about labor negotiations. To that end, the City provides an unprecedented amount of labor relations information to the public. This includes any correspondence exchanged between the City and the bargaining units. In addition, during labor negotiations, all proposals made by the City and each bargaining unit are posted on the City's website after they are exchanged. When a Tentative Agreement is reached with a bargaining unit, the entire Tentative Agreement, as well as any City Council memorandum related to that agreement, is made available to the public at least seven to ten days before the City Council takes any action to approve it. These steps afford the opportunity for the public to be aware of proposals either the City or the bargaining units are making prior to any agreement being reached.

Regardless of whether or not the negotiations themselves are open to the public, the City remains committed to ensuring that the public remains informed about labor relations issues, and the City will continue to make publicly available correspondence, proposals, and agreements reached and exchanged between the City and its bargaining units.

Sincerely,



Alex Gurza
Deputy City Manager

c: Jennifer Schembri, Deputy Director of Employee Relations