



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: ANNUAL SUMMARY OF LABOR
NEGOTIATIONS

DATE: November 8, 2010

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

RECOMMENDATION

Accept staff report and public input on Annual Summary of Upcoming Labor Negotiations.

OUTCOME

As recommended by the Sunshine Reform Taskforce and approved by the City Council, this report will provide the public an opportunity to have information related to labor negotiations in advance of the commencement of negotiations and to provide input to the City Council.

INTRODUCTION

This memorandum is intended to present a factual perspective on the challenges that the Mayor and City Council, the City Administration, labor, business, neighborhood leaders, the City workforce and the community at large continue to face in eliminating the City's General Fund structural deficit and many of the other City funds due to continued fiscal difficulties. It establishes how addressing this challenge relates to labor negotiations in the City of San Jose. Facts alone will not solve the problem. The information presented in this memo sets forth some of the issues associated with the problem that we are facing, specifically the costs to deliver services. These are difficult issues to confront because they can surface negative reactions depending on one's perspective. The pathway to resolution, however, will continue to require a commitment on all sides to continue engaging in difficult conversations and collaborative problem solving approaches. It is not the intent of this memo to make value judgments on the state that the City finds itself in, nor to blame our labor unions and excellent workforce. Its purpose, rather, is to confront the realities of the unprecedented times that we find ourselves in, so that the Mayor and City Council can find a path to providing fiscally sustainable services to the community.

BACKGROUND

Pursuant to the Public Information provisions of the Sunshine Reform Task Force Phase 1 Report approved by the City Council on August 21, 2007, staff is to bring forward to the City Council in open session on an annual basis a summary of labor negotiations for the upcoming year. The purpose of this process is to provide an opportunity for the public to be informed about the City's labor negotiations before the City commences negotiations and to provide the City Council input before the negotiations begin.

This memo provides a summary of background information related to labor negotiations, a summary of bargaining unit information for those bargaining units that the City will be in negotiations with in January 2011, personnel cost information, and a summary of labor negotiations cost saving strategies.

The presentation of the 2011 Annual Summary of Labor Negotiations is preceded by two important reports regarding personnel costs that have been presented and accepted by the City Council. First, the City responded to the Santa Clara County Civil Grand Jury Report- *Cities Must Rein In Unsustainable Employee Costs* on September 21, 2010. The primary focus of the Grand Jury's findings and recommendations are options to control personnel costs. The City has either implemented, is in the process of implementing, or is in the process of reviewing the majority of these recommendations. The Civil Grand Jury report and the City's response can be found at

<http://www.sanjoseca.gov/employeeRelations/totalcomp/CityResponsetoSantaClaraCountyCivilGrandJuryReport09.21.10.pdf>

Secondly, the City Auditor issued a Pension Sustainability Audit: *Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future* on September 29, 2010. The audit focused on the rising cost of City retirement benefits, identifying the major cost drivers and recommendations to achieve more sustainable retirement costs for the future. On October 26, 2010, the City Council took action to accept the City Auditor's recommendations. The Pension Sustainability Audit can be found at

<http://www.sanjoseca.gov/auditor/AuditReports/1010/1010.pdf>.

The following chart shows the City's bargaining units, total Full Time Equivalent (FTEs¹) for the 2011-2012 Base Budget represented by each bargaining unit and the expiration of their current contract.

¹ Full Time Equivalent (FTEs) are the combined total number of budgeted full-time positions. For example, one full-time position equals one FTE. Similarly, two half-time positions equal one FTE.

Bargaining Unit/Union	FTEs²	Contract Expiration
San Jose Fire Fighters, IAFF, Local 230 (IAFF)	647	06/30/09 ³
Association of Building, Mechanical and Electrical Inspectors (ABMEI)	49	12/10/09 ⁴
International Brotherhood of Electrical Workers, Local 332 (IBEW)	75	06/30/11
Association of Legal Professionals of San Jose (ALP)	38	06/30/11
San Jose Police Officers' Association (POA)	1204	06/30/11
International Union of Operating Engineers, Local #3 (OE#3)	759	06/30/11
Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 41/42 and Unit 43	199	06/30/11
Association of Maintenance Supervisory Personnel (AMSP)	79	06/30/11
City Association of Management Personnel (CAMP)	345	06/30/11
Municipal Employees' Federation, AFSCME Local 101 (MEF)	1850	06/30/11
Confidential Employees' Organization, AFSCME Local 101 (CEO)	191	09/18/11
TOTAL	5436	

There are two bargaining units that have expired contracts. The remaining nine contracts will expire in 2011, with eight of the nine expiring June 30, 2011, and the ninth (CEO) expiring September 18, 2011. Therefore, the City will be in negotiations with all 11 bargaining units for Fiscal Year 2011-2012.

ANALYSIS

General Fund Structural Budget Deficit

The City is entering its tenth year of General Fund shortfalls. In order to achieve a balanced budget for Fiscal Year 2010-2011, the Mayor and City Council were faced with closing a \$118.5 million General Fund budget gap. In addition, many of the City's special funds were also impacted by this economic crisis and had significant shortfalls to rectify. Because of the significant challenge posed by closing a budgetary shortfall of this magnitude, on March 23, 2010, the City Council voted to direct the City Manager to achieve a 10% reduction in overall personnel costs for Fiscal Year 2010-2011. Six of the City's 11 bargaining units agreed to a 10% total compensation reduction (5% ongoing and 5% one-time) for Fiscal Year 2010-2011. The concessions achieved provided funds to reduce the number of employee layoffs that would have otherwise been necessary, thus preserving services to the public. The concessions achieved approximately \$18.7 million in savings in the General Fund and \$31.4 million savings in all funds and preserved 252⁵ positions across all City Departments. The chart below shows the City success to date in achieving the City Council's direction of a 10% reduction in total compensation.

² Source: 2011-2012 Base Budget. Does not include 233 unrepresented positions.

³ Although the contract with the San Jose Fire Fighters, Local 230 expired in June 2009, an agreement has not been reached as of the date of this memo.

⁴ There is no current contract with ABMEI, however, the items previously implemented for ABMEI were for Fiscal Year 2010-2011.

⁵ 70 of these positions were restored (8 ongoing) in August 2010 as a result of total compensation concessions.

Progress of Achieving 10% Total Compensation Reduction			
Employee Unit	Fiscal Year 2010-2011 Total Compensation Changes		
	Ongoing	One-Time	Total
Unit 99/Unit 82	-5%	-5%	-10%
AEA	-5%	-5%	-10%
ALP	-5%	-5%	-10%
AMSP	-5%	-5%	-10%
CAMP	-5%	-5%	-10%
IBEW	-5%	-5%	-10%
OE#3	-5%	-5%	-10%
ABMEI⁶	-5%	0%	-5%
POA	-0.67%	-3.15%	-3.82%
IAFF, Local 230⁷	TBD	TBD	TBD
MEF⁸	+2%	0%	+2%
CEO⁹	+2%	0%	+2%

Unfortunately, the achieved savings were not sufficient to close the entire General Fund budget gap of \$118.5 million. Consequently, many difficult decisions had to be made to balance the Fiscal Year 2010-2011 budget, including the elimination of almost 660 City jobs resulting in approximately 200 employees being laid off. In addition, with concession savings and other funding decisions, approximately 220 City jobs were preserved with \$22.6 million in one-time funding. These jobs and associated services are scheduled to be eliminated effective July 2011. The loss of these additional employees will further reduce services Citywide, including public safety, libraries, development services and community centers.

The projected General Fund deficit for Fiscal Year 2011-2012 is projected to be approximately \$70 million. The 2011-2012 Preliminary General Fund Forecast will be discussed under separate cover in the Memorandum titled “2011-2012 Organizational and Budget Planning.”

Elimination of the Fiscal Year 2011-2012 General Fund shortfall, the ongoing structural deficit, and the budget rebalancing actions required in any other City funds, once again, requires the City Council to make very difficult decisions. The decisions become more difficult after nine years of General Fund budget shortfalls. Personnel costs make up approximately two-thirds of General Fund expenditures. The more savings that can be obtained through reducing per employee cost the less service reductions/eliminations will be needed to eliminate the structural budget deficit.

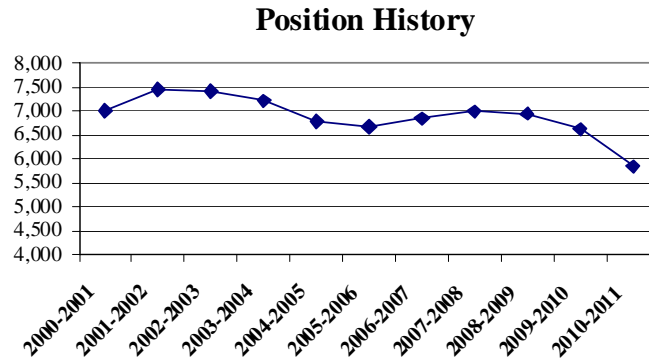
⁶ Council approved terms of 5% ongoing total compensation reduction in April 2010.

⁷ No agreement has been reached with the San Jose Firefighters.

⁸ MEF has received a 2% general wage increase per their current contract, which extends through FY 10-11.

⁹ CEO has received a 2% general wage increase per their current contract, which extends through FY 10-11.

There is a direct correlation between the cost per employee and the number of employees the City can afford. In addressing the nine years of budget shortfalls, the City has had to reduce staff and is detailed in the chart below.¹⁰



Reducing per employee costs is preferred over further reducing the number of employees for many reasons, including:

- Preserves services being provided to the community
- Keeps people working
- Avoids additional cost of providing Unemployment Insurance
- Maintains funding for the retirement systems

As the City Council is aware, compensation costs (pay and benefits) are subject to the negotiation (“meet and confer”) process with our labor unions. Since **96%** of the City workforce is represented by a bargaining unit, reducing the magnitude of service reductions or eliminations in Fiscal Year 2011-2012 will be heavily dependent on the success achieved through the negotiation process. Given the City’s fiscal challenges, negotiations in 2011 will be challenging for both the City and the unions.

Personnel Costs

As a service driven organization, the great majority of our costs pay for the employees who provide those services. Over the last several years, the City has experienced a significant increase in those costs. It is projected that increases in personnel costs will continue. From Fiscal Year 2000-2001 to Fiscal Year 2011-2012, the average cost per employee is projected to increase by 90.14% from \$73,581 in Fiscal Year 2000-2001 to \$139,905 in Fiscal Year 2011-2012. During that same timeframe, the City’s workforce has been reduced from 7,013 to 5,669. The chart below shows the difference in budgeted costs of base payroll, retirement benefits, healthcare benefits and other benefits from Fiscal Year 2000-2001 to the projected costs for Fiscal Year 2011-2012.

¹⁰ 70 of these positions were restored (8 ongoing) in August 2010 as a result of total compensation concessions by POA.

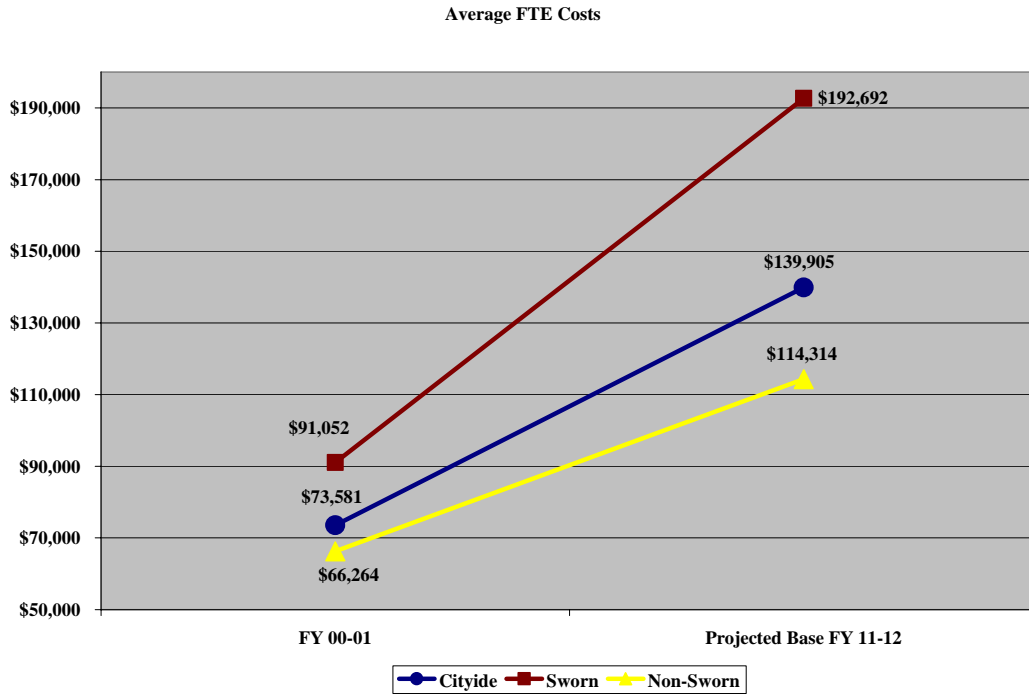
Citywide Salary & Benefits^{11 12}			
	2000-2001	2011-2012	Difference
BASE PAYROLL	\$416,010,420	\$520,021,634	25.00%
RETIREMENT BENEFITS	\$ 63,054,083	\$194,359,828	208.24%
Federated Retirement	\$39,409,193	\$85,892,178	117.95%
Police/Fire Retirement	\$23,644,890	\$108,467,650	358.74%
HEALTH/DENTAL BENEFITS	\$30,317,792	\$64,592,359	113.05%
OTHER BENEFITS (Unemployment & Other Miscellaneous Benefits)	\$ 6,608,312	\$14,162,992	114.32%
TOTAL (ALL BENEFITS)	\$ 99,980,187	\$273,115,179	173.17%
GRAND TOTAL	\$ 515,990,607	\$793,136,813	53.71%
Average Total Cost Per FTE	\$ 73,581	\$139,905	90.14%
TOTAL FTE	7,013	5,669	-19.16%

As noted in the chart above, it is projected that there will be a 359% increase in costs for Police and Fire retirement benefits compared to a 118% increase in the Federated plan covering other City employees. The City's contribution rates continue to increase significantly in both retirement plans, but more significantly for the Police and Fire retirement plan.

The chart below details the increase in the average budgeted total compensation cost for a sworn FTE (employees represented by the San Jose Police Officers' Association and the San Jose Fire Fighters) and the increase in the average budgeted total compensation costs for non-sworn FTEs over the same time period.

¹¹ **Source:** City of San Jose Salary and Fringe Benefit Costs by Bargaining Unit & Fund for 2000-2001 through 2011-2012 Base Budget.

¹² **Note:** Does not include worker's compensation cost or overtime. The figures above are budgeted costs and include the cost of providing paid time off, such as vacation, holidays, personal/executive leave, and sick leave, to the extent that paid leave is taken during the fiscal year. The actual salary and benefit costs of individual employees vary.



From Fiscal Year 2000-2001 to Fiscal Year 2011-2012, it is projected that the average budgeted total compensation costs for a sworn FTE will increase by approximately 111.63% and 72.51% for non-sworn FTEs.

Moving from increases in average budgeted total cost per FTE into the context of the upcoming Fiscal Year, using Fiscal Year 2011-2012 Base Budget figures, the cost of 1% of base pay with associated fringe benefits, which are benefits that move with pay, is noted below.

1% General Wage Increase ¹³	
Bargaining/Employee Units	Total Funds
Citywide	\$7,183,299
Sworn Only	\$3,294,340
Non-Sworn Only	\$3,888,959

It should be noted that the forecasted budget for Fiscal Year 2011-2012 does not assume any general wage increases for any employee or bargaining groups. Any pay increases are subject to negotiation and/or resources available.

¹³ Source: 2011-2012 Base Budget.

2011-2012 Labor Negotiations Cost Savings Strategies

There has been various cost savings strategies identified in recent years, which will be evaluated for the upcoming negotiations. The elimination of the structural deficit was identified by the City Council in 2007 as one of its top priorities. Since that time and as previously identified, three important reports regarding various aspects of personnel costs have been completed.

City Manager's General Fund Structural Deficit Elimination Plan

The City Manager's General Fund Structural Deficit Elimination Plan was released in November 2008. This five-year plan to reduce the City's deficit included various items that could be negotiated to reduce personnel costs over time, and can be viewed at <http://www.sanjoseca.gov/budget/FY0809/GFStructuralDeficitEliminationPlan112008.pdf>

Santa Clara County Civil Grand Jury Report- *Cities Must Rein In Unsustainable Employee Costs*

More recently, on September 21, 2010, the City responded to the Santa Clara County Civil Grand Jury Report- *Cities Must Rein In Unsustainable Employee Costs*. The primary focus of the Grand Jury's findings and recommendations are options to control personnel costs. The City has either implemented, is in the process of implementing, or is in the process of reviewing the majority of these recommendations. The Grand Jury's report and the City's response can be found at <http://www.sanjoseca.gov/employeeRelations/totalcomp/CityResponsetoSantaClaraCountyCivilGrandJuryReport09.21.10.pdf>

Pension Sustainability Audit

On September 29, 2010, the City Auditor issued an audit entitled *Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future*. The audit focused on the rising cost of City retirement benefits, identifying the major cost drivers and recommendations to achieve more sustainable retirement costs for the future. On October 26, 2010, the City Council took action to accept the City Auditor's recommendations. The Pension Sustainability Audit can be viewed at <http://www.sanjoseca.gov/auditor/AuditReports/1010/1010.pdf>

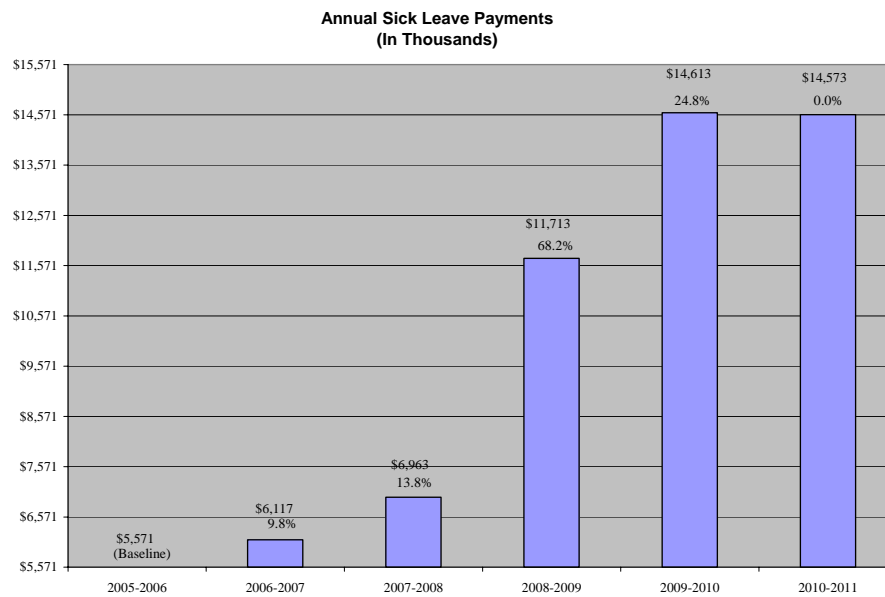
The information from these reports was utilized in the identification of the following cost savings strategies which are being evaluated for upcoming negotiations.

Compensation Structure Reform

At present, the City utilizes a traditional public sector salary schedule with five, 5% salary steps for most non-management job classifications that occur automatically unless action is taken to withhold the 5% increase based on poor performance. The typical time it takes an employee to reach the top step of the salary range is three and a half years. Police Officer and Firefighter classifications have seven 5% salary steps that occur automatically. It generally takes an employee five and a half years to reach the top step.

Sick Leave Payment Modifications Upon Retirement

Currently, employees who retire from City service are eligible to receive their accrued sick leave as a cash payment. Employees represented by the San Jose Police Officers' Association and the San Jose Fire Fighters, IAFF, Local 230 unions are eligible to receive up to 100% of their sick leave paid out at retirement, with no cap on the number of hours. Employees represented by other bargaining units are eligible to receive up to 75% of their sick leave paid out to a maximum of 1,200 hours at retirement. The City's costs for the sick leave payout benefit have grown significantly, in fact more than doubled, in the past four years as shown in the chart below.



Workers' Compensation Offset for Public Safety

In the disability program for public safety employees, there is an overlap in benefits that occurs after a disability retirement in that public safety employees can receive both Workers' Compensation benefits as well as disability retirement benefits. This overlap does not occur in most California agencies or in the Federated City Employees' Retirement System, which already has a Workers' Compensation Offset. Addressing the overlap in benefits is important given the number of disability retirements in the Police and Fire Department Retirement Plan. According to the San Jose Police and Fire Departments Impact of Working Conditions on Disability Retirement Report dated June 26, 2007, between Fiscal Year 2001-2002 and Fiscal Year 2005-2006, the Fire disability retirement rate was 67% and the Police disability retirement rate was 31%. Separate from the issue of the overlap in benefits, efforts should continue to address the high percentage of public safety disability retirements.

Overtime Eligibility Reform

The overtime eligibility for many City employees is more generous than required under the Federal Fair Labor Standards Act (FLSA). For example, paid time off is included in the calculation of overtime and results in sizeable overtime payouts even when an employee has not actually worked more than forty hours in a week. In addition, there are positions that could be deemed exempt from overtime under the law, but are currently eligible for overtime through contract provisions.

Outsourcing and Civilianization

Given the budget situation, it is imperative that the City fully maximize its current resources and look for outsourcing opportunities. This may allow for the preservation of high quality services at a lower cost.

It is also important that the City fully maximize its current sworn public safety employees in areas requiring their training and expertise and not allocate those resources to work that can be performed by civilian employees or outsourced at a lower cost. This includes allocating sworn public safety employees currently performing civilian activities to functions requiring sworn public safety employees.

Retirement Reform

The City's two retirement systems provide defined retirement benefits to eligible employees. Both retirement plans use investment income and employer and employee contributions to provide eligible retirees with pensions based on years of service and highest average annual salary. The plans also provide a 3% guaranteed annual cost of living adjustment (COLA) for all retirees, retiree healthcare benefits, survivor benefits, and permanent disability benefits to eligible members and beneficiaries.

Both the City and employees make contributions for retirement benefits which are calculated as a percentage of payroll. The City will contribute approximately \$155 million into the two retirement plans in Fiscal Year 2010-2011, \$89 million for the Police & Fire Plan and \$66 million for the Federated Plan. The City recognizes that this is a very important benefit that has significant cost implications, which is why we must ensure that the costs of retirement benefits are sustainable in the long-term.

The Fiscal Year 2010-2011 Board approved retirement contributions for the City and employees are listed below. These rates were approved by the two retirement boards. It should be noted that several employee units have agreed to pay a portion of the City's retirement contributions for Fiscal Year 2010-2011.

Fiscal Year 2010-2011 Retirement Contributions¹⁴						
	Federated		Police		Fire	
	City	Employee	City	Employee	City	Employee
Pension	23.18%	4.54%	38.32%	9.81%	40.24%	10.09%
Health	6.41%	5.76%	6.26%	5.76%	3.92%	3.61%
TOTAL	29.59%	10.30%	44.58%	15.57%	44.16%	13.70%

The City's contributions to the retirement plan are established by the retirement boards, based on actuarial reports, and are based on many factors, including the cost-sharing arrangement between the City and employees and the level of benefits provided. Increases in the City's contribution rates can occur for various reasons, including retirement benefit enhancements.

The difference between the pension liability and the value of plan assets is called the unfunded liability. The unfunded liability is calculated two ways: (1) based on the market value of assets, and (2) based on the actuarial value of assets.

The current unfunded liability under both calculations is detailed in the charts below.

Pension Unfunded Liability			
	Federated	Police and Fire	Total
Market Value	\$1.1 billion	\$1.0 billion	\$2.1 billion
Actuarial Value	\$0.7 billion	\$0.4 billion	\$1.1 billion

Retiree Healthcare (OPEB) Unfunded Liability			
	Federated	Police and Fire	Total
Market Value	\$0.7 billion	\$0.7 billion	\$1.4 billion
Actuarial Value	\$0.7 billion	\$0.7 billion	\$1.4 billion

The San Jose Municipal Code provides that the City is responsible for 100% of the unfunded liability for the pension benefit.

As a result of this significant unfunded liability, funding ratios for both plans have fallen significantly. The current funding ratios for both retirement plans are detailed in the chart below.

¹⁴ Board adopted rates. Does not include the discount rate for the City prepaying the retirement contributions.

Retirement Funding Ratios		
Pension	Federated	Police and Fire
Market Value of Assets	55%	66%
Actuarial Value of Assets	71%	87%

Retiree Healthcare (OPEB) Plans	Federated	Police and Fire
Market Value of Assets	11%	6%
Actuarial Value of Assets	11%	7%

The following chart provides the City’s projected retirement rates through 2014-2015. It should be noted that five employee units have agreed to continue to pay a portion of the City’s retirement contributions on an ongoing basis.

City’s Projected Retirement Contribution Rates				
	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Federated	34.29%	38.42%	42.71%	45.14%
Police	52.39%	60.64%	69.89%	74.89%
Fire	52.39%	60.64%	69.89%	74.89%

It is important to note the pension contribution rates shown above are projections only. The actuary for the Police and Fire Department Retirement Plan and the Federated City Employees’ Retirement System will be preparing the actuarial valuation that will lead to the actual contribution rates for 2011-2012. The rates are anticipated to be established by the boards in the next several months.

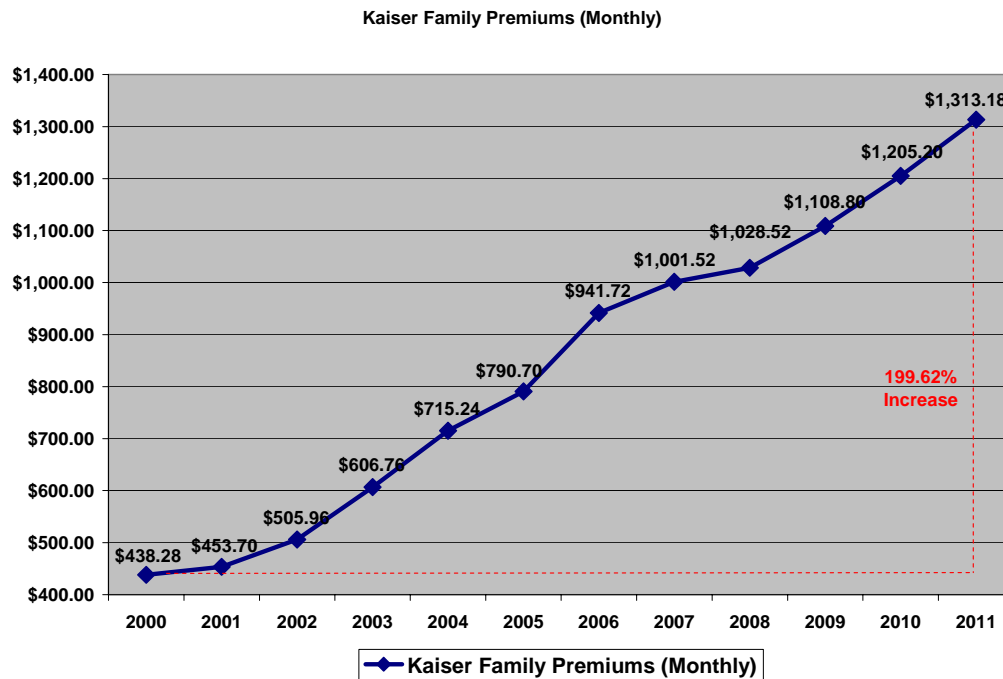
Due to the significant cost to the City, the Administration is currently engaged in retirement reform efforts. In recognition of the significant cost implications of pension and retiree healthcare and the importance of retirement reform to the long-term sustainability and availability of retirement benefits for City employees, the City has re-convened the General Fund Structural Deficit Elimination Plan (GFSDEP) Stakeholder Group. This group is charged with providing input to the City Council regarding major considerations and concerns with the existing retirement systems and priority elements for reform. The Stakeholder Group is expected to provide a summary to the City Council in November 2010. In addition, the voters of San Jose recently approved a Measure that would allow the City Council to adopt an ordinance to exclude future City officers and employees from any existing retirement plans or benefits and to establish retirement plans for future employees that do not provide for the current minimum requirements in the City Charter.

Negotiations with the majority of the bargaining groups will commence in early 2011 and the issue of retirement reform will be discussed.

Healthcare Benefits

On August 4, 2009, the City Council approved an audit of employee medical benefits conducted by the Office of the City Auditor. This audit contained several recommendations for changes to be negotiated with the City's bargaining units that are expected to result in substantial savings.

This audit stated that as medical expenses continue to rise, the City is pressured into identifying new strategies to minimize the impact of rising medical insurance costs. The following chart shows the significant rise in the Kaiser Family Monthly Premiums over the last ten years.



As shown above, from 2001 to 2011, the monthly premium has increased by 199.62%¹⁵. It is projected that the healthcare rates will increase by approximately 15% for calendar year 2012. There were several strategies identified by the audit where the City could preserve essential medical benefits while significantly reducing costs. Those are as follows:

- Prohibit employees from being simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee.
- Reduce cash in-lieu payment amounts.

¹⁵ Reflects the 2011 calendar year monthly rate for the Kaiser Family \$10 co-pay plan. Unit 99, ALP, POA, ABMEI and Unrepresented Employees will be enrolled in a \$25 co-pay plan and will pay a higher percentage of their health care premiums. The monthly Kaiser Family rate is \$617.58 for the \$25 co-pay plan.

- Prohibit participation in the Health In-Lieu Plan among City employees who are already receiving other City-provided medical benefits.
- Continue to explore an in-lieu program for qualified City retirees who suspend their medical benefits.

The City’s progress in achieving the audit recommendations are detailed in the chart below.

Progress in Achieving Healthcare Changes						
	Cost Sharing		Co-Pays		Reduction in Health/Dental In-Lieu	Elimination of Dual Coverage
	90/10	85/15	\$10	\$25		
Unit 99/Unit 82		X		X	X	X
POA		X		X	X	X
ALP		X		X	X	X
ABMEI		X		X	X	X
AEA	X		X			
CAMP	X		X			
IBEW	X		X			
AMSP	X		X			
OE#3	X		X			
IAFF, Local 230	X ¹⁶		X			
MEF	X		X			
CEO	X		X			

Labor Negotiations Background

The City negotiates in accordance with various laws, regulations and City policies, as explained below.

Guiding Principles for Labor Negotiations

In June of 2007, the City Council approved guiding principles for labor negotiations, which aligned the approach to bargaining with the priorities established by both the Council and the community. The Guiding Principles for Labor Negotiations are attached (Attachment A).

Council Policy- Labor Negotiation Guidelines

In March of 2008, the City Council approved a Council Policy on Labor Negotiation Guidelines, which applies to the Mayor, members of the City Council and Mayor and Council Staff. The purpose of the policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith and to avoid actions that would circumvent the City’s designated bargaining team. The Council Policy- Labor Negotiation Guidelines are attached (Attachment B).

¹⁶ The San Jose Firefighters is the only remaining bargaining unit that still has a \$150 monthly cap on the 90/10 cost sharing split.

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 the right to organize, sets guidelines for such things as the scope of representation and the requirement to meet and confer in good faith.

The MMBA states 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/bargaining units).

Although it is commonly referred to as an obligation to “negotiate”, the MMBA refers to the obligation to “meet and confer” in good faith. 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 MMBA defines the scope of representation as 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 Employer-Employee 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 recognized bargaining units that represent City employees.

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

Negotiation/“Meet and Confer” Process

As mentioned above, under the Meyers-Milias-Brown Act (MMBA), the City has an obligation to “meet and confer” in good faith with the City’s bargaining units regarding wages, hours and other terms and conditions of employment. The City Manager has delegated the authority to meet and confer to the Office of Employee Relations. The negotiations for a new agreement commence prior to the expiration of an existing Memorandum of Agreement (MOA). The City and the Union each establish a negotiating team. Resolution #39367 provides for paid release time for up to three bargaining unit team members for time spent during the negotiation meetings that coincide with the employees’ normal work hours.

During the negotiations, the City team meets with the union team to discuss various issues and interests for the new contract. The City's negotiating team is provided negotiation authorization by the City Council through the City Manager. Proposals are exchanged related to the issues presented during the negotiations. Tentative agreements are often reached on individual issues as part of the negotiation process and ultimately, a tentative agreement is reached on the entire contract. All tentative agreements are contingent upon ratification of the union membership and approval of the City Council in open session.

If negotiations do not result in a tentative agreement on a new contract, Resolution #39367 states that impasse procedures may be invoked by either party and provides for mediation as the impasse procedure. If mediation assists the parties in reaching an agreement, it is still contingent upon ratification of the union membership and approval of the City Council in open session.

It is the goal of both parties to reach a negotiated agreement. However, the MMBA states that a public agency may, after impasse procedures have been exhausted, implement its last, best, and final offer. In addition, after mediation has been concluded and an agreement has not been reached on a new contract, the bargaining unit has the right to strike and/or engage in other protected concerted activity, except for police officers and fire fighters who do not have the right to strike.

For the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters (IAFF, Local 230), if the parties fail to reach agreement after participating in mediation, City Charter Section 1111, provides for an Arbitration Board, comprised of a City representative, Union representative, and a neutral arbitrator to decide each issue by majority vote. The results of arbitration are binding. The voters of San Jose passed a Measure in the November 2010 election that amends the City Charter Section 1111. By passage of this Measure, the City Charter has been amended to limit outside arbitrators from basing awards to employees primarily on the City's ability to pay and creating any unfunded liability for the City, increasing police and firefighter compensation more than the rate of increase in General Fund revenues and granting retroactive benefits.

2011 Labor Negotiations

In January 2011, the City will be negotiating with the following bargaining units:

San Jose Fire Fighters, IAFF Local 230 (IAFF)

San Jose Fire Fighters, IAFF Local 230 represents approximately 647 Full Time Equivalent (FTEs), from the classifications of Firefighter to Battalion Chief. The San Jose Fire Fighter's union contract expired June 30, 2009. Negotiations began in April 2009 and are continuing as of the date of this memo. Despite those ongoing negotiations, no tentative agreements have been reached. Impasse was declared on September 10, 2009, and the City and San Jose Fire Fighters, IAFF Local 230 engaged in mediation on September 30, 2009. An agreement was not reached in mediation and the City and the San Jose Fire Fighters, Local 230 are proceeding to binding interest arbitration under the amended provision of the City Charter Section 1111.

Association of Building, Mechanical and Electrical Inspectors (ABMEI)

ABMEI represents approximately 49 Full Time Equivalents (FTEs), including the classifications of Building Inspector and Supervising Building Inspector. ABMEI's contract expired December 10, 2009, and the City Council imposed terms effective June 27, 2010. Negotiations with ABMEI are expected to begin in January 2011.

International Brotherhood of Electrical Workers (IBEW)

IBEW represents approximately 75 Full Time Equivalents (FTEs), including classifications of Electrician and Senior Electrician. IBEW's contract expires June 30, 2011, and negotiations with IBEW are expected to begin in January 2011.

Association of Legal Professionals of San Jose (ALP)

ALP represents approximately 38 Full Time Equivalents (FTEs), including the classifications of Deputy City Attorney and Senior Deputy City Attorney. ALP contract expires June 30, 2011, and negotiations with ALP are expected to begin in January 2011.

San Jose Police Officers' Association (SJPOA)

SJPOA represents approximately 1,204 Full Time Equivalents (FTEs), from the classifications of Police Recruit to Deputy Police Chief. SJPOA's contract expires on June 30, 2011, and negotiations with SJPOA are expected to begin in January 2011.

Operating Engineers, Local No. 3 (OE#3)

OE#3 represents approximately 759 Full Time Equivalents (FTEs), including the classifications of Maintenance Assistant, Park Ranger and Parking and Traffic Control Officer. OE#3's contract expires June 30, 2011, and negotiations with OE#3 are expected to begin in January 2011.

Association of Engineers and Architects, IFPTE Local 21 (AEA) – Unit 41/42 and Unit 43

AEA represents approximately 199 Full Time Equivalents (FTEs), in two different units, including the classifications of Engineer, Architect, Senior Engineer and Senior Architect. AEA's contract expires June 30, 2011, and negotiations with AEA are expected to begin in January 2011.

Association of Maintenance Supervisory Personnel (AMSP)

AMSP represents approximately 79 Full Time Equivalents (FTEs), including the classifications of Building Maintenance Superintendent and Building Services Supervisor. AMSP's contract expires June 30, 2011, and negotiations with AMSP are expected to begin in January 2011.

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

CAMP represents approximately 345 Full Time Equivalents (FTEs), including the classifications of Senior Analyst and Program Manager. CAMP's contract expires June 30, 2011, and negotiations with CAMP are expected to begin in January 2011.

Municipal Employees' Federation/AFSCME Local 101 (MEF)

MEFP represents approximately 1,850 Full Time Equivalents (FTEs), including the classifications of Librarian, Code Enforcement Inspectors and Recreation Leaders. MEF's contract expires June 30, 2011, and negotiations with MEF are expected to begin in January 2011.

Confidential Employees' Organization/AFSCME Local 101 (CEO)

CEO represents approximately 191 Full Time Equivalents (FTEs), including the classifications of Analyst and Administrative Assistant. CEO's contract expires September 18, 2011, and negotiations with CEO are expected to begin in January 2011.

Transparency/Sunshine Reform

These annual reports are to provide the public with information related to labor negotiations, prior to that authorization being given and the negotiation process being completed in order to provide an opportunity for the public to give input to the City Council.

Also as part of the Sunshine Reform, the City is providing the public with much more information on the City's internet than it has in the past. This includes information related to ongoing negotiations, costs of benefits and other payroll costs. The link to this website is: <http://www.sanjoseca.gov/employeeRelations/labor.asp>.

CONCLUSION

There is no question that in facing a tenth year of budget shortfalls in the General Fund and the fiscal difficulty facing other City funds, the City Council will be faced with very difficult decisions. A major consideration this year will be controlling or reducing personnel costs in order to lessen the elimination/reduction of City jobs and the services provided by those employees.

By continuing to partner with the City's bargaining units, we can work toward solutions that will eliminate the structural deficit and lessen service reductions/eliminations.

EVALUATION AND FOLLOW-UP

When Tentative Agreements are reached with the bargaining units during contract negotiations for a new contract, they will be brought to Council in open session for approval.

PUBLIC OUTREACH/INTEREST

- 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)**

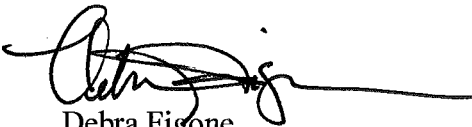
This item is being provided in accordance with the Sunshine Ordinance and is requesting acceptance by Council on a report on upcoming Labor Negotiations. In order to provide the public with information about the City's labor negotiations, this report will be posted on the internet and will be sent out in Early Distribution. Bargaining unit representatives will be notified of this agenda item in advance. A copy will be sent to them as soon as the memo has been distributed.

COORDINATION

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

CEQA

Not a project.


Debra Figone
City Manager

For questions please contact Alex Gurza, Director of Employee Relations, at 535-8155.

Attachment A: Guiding Principles for Labor Negotiations (adopted June 12, 2007)

Attachment B: Council Policy on Labor Negotiation Guidelines (approved March 4, 2008)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Les White

SUBJECT: See Below

DATE: May 31, 2007

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT: GUIDING PRINCIPLES FOR LABOR NEGOTIATIONS

RECOMMENDATION

Approve the guiding principles for labor negotiations.

OUTCOME

Adoption of the guiding principles for labor negotiations.

BACKGROUND

In accordance with the Mayor's March Budget Message, the proposed budget for Fiscal Year 2007-2008, responds to the priorities of both the community and the City Council, while addressing the sixth consecutive year of a multi-million dollar General Fund shortfall. However, projected growth in personal service costs continues to out-pace revenue growth through Fiscal Year 2011-2012.

Personal service costs account for two-thirds of the total General Fund uses. The increase of approximately 45% in the average budgeted position cost from 2000 to present can be attributed to three main cost components: salary, health care benefits and pension benefits. Along with the budget shortfalls already predicted for the next five fiscal years and the continued increases in cost for current employee salaries and benefits, liability for post-employment health care benefits for retirees has been estimated to be as high as \$1.4 billion.

Salaries and benefits are determined through the negotiation process with the City's bargaining units. In order to address the significant issues identified above, the City should be guided by principles in labor negotiations in order to remain mindful of the service needs of the City and the continued fiscal challenges.

ANALYSIS

One of the primary functions of the City is to provide services to the community. Accordingly, 2/3 of the General Fund is allocated to personal services. However, personal services costs have risen significantly during a time of serious fiscal challenges. Fiscal Year 2007-2008 marks the sixth consecutive year of budget shortfalls, with projected shortfalls in the next four years.

As the City continues to explore innovative methods to bridge the gap between revenue and expenses, it is important to partner with our bargaining units in addressing these ongoing costs. Although it is very important to work together with our employees and bargaining unit representatives on collaborative efforts on an on-going basis, the cost of salaries and benefits of bargaining unit employees are determined through the contract negotiation process. These negotiations occur prior the expiration of the eleven agreements with the bargaining units. These agreements expire at different times and in different years.

The following guiding principles are being presented for consideration related to present and future labor negotiations:

- *Focus on the cost of total compensation¹ while considering the City's fiscal condition, revenue growth, and changes in the Consumer Price Index*
- *Use short-term and long-term strategies to address increasing benefit costs such as wellness programs, cost containment initiatives, etc.*
- *Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction among City Council and City staff*
- *Remain mindful of increasing costs, including the retiree healthcare liability*
- *To the extent possible, preserve the City's market competitiveness as an employer*
- *Efficiently and effectively provide services that align with both the priorities of the community and the City Council*

These guiding principles will align the approach to bargaining with the priorities established by both the Council and the community.

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.

¹ Total Compensation includes the total costs of a position including salary, pension, and all other benefits.

HONORABLE MAYOR AND CITY COUNCIL

May 31, 2007

Subject: Guiding Principles

Page 3 of 3

- 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)**

Public Outreach does not apply to the item; however, this memorandum will be placed on the City website for the June 12, 2007 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and Office of Employee Relations. A meeting is scheduled with the City Labor Alliance (CLA) to review these principles and receive comments.

CEQA

Not a project.


LES WHITE
City Manager

For questions please contact me at 535-8111.

COUNCIL POLICY

TITLE COUNCIL LABOR NEGOTIATION GUIDELINES	PAGE 1 of 2	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 should refrain from negotiating directly with employee representatives. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith.

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.

PURPOSE

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

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 and to avoid actions that would circumvent the City's designated bargaining team.

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 José 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 shall not negotiate with the bargaining unit representatives or persons acting on their behalf.
4. Nothing in this policy shall prohibit members of the City Council or Council staff 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 not presented to the negotiating team or any confidential closed session discussion.

TITLE	PAGE	POLICY NUMBER
COUNCIL LABOR NEGOTIATION GUIDELINES	2 of 2	0-39

5. Members of the City Council and City Council staff shall disclose to the City Manager and to the entire City Council material communications regarding issues related to ongoing negotiations. (See Council Policy 0-32 regarding disclosure of material facts).
6. 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.