July 11, 2023

Sender's Email: ekamya@ifpte 21.org

Sent Via Email

Jennifer Schembri
Director of City Manager's Office of Employee Relations / Director of Human Resources
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Joint Letter from IFPTE Local 21 & MEF-AFSCME Local 101

Dear Ms. Schembri,

The Unions are in receipt of your letter dated June 26, 2023, referencing the Union's Declaration of Impasse and your concern that there were "numerous misstatements that the City wished to highlight as we embark on mediation." Unfortunately, your June 26th, 2023 letter, along with many of your other communications and statements made to Councilmembers, contained blatant inaccuracies, while others contained misleading half-truths. The City's bargaining team continues to try to obfuscate the issues, confuse City leaders with inaccurate information, and hide its own deficiencies in keeping the City adequately staffed through these tactics. The Union will continue to tell the whole truth in our effort to get this City back to having quality public service delivery.

City Misstatement #1: "*As you know, the City Council adopted the City's budget based on their priorities on June 13, 2023, and this action has designated uses for this surplus. As such, any agreement between the City and a bargaining unit that provides any kind of compensation or benefits in excess of those assumed in the budget would require reopening the budget to incorporate budget rebalancing to offset that difference. Further, as you are aware, while there was a surplus for Fiscal Year 2023-2024, a shortfall was projected in 2024-2025 with essentially no or very small incremental surpluses over*

the remaining three years of the Five-Year Forecast."

Union Response: We are, of course, aware that the City Council passed a budget on June 13th, but your statement that the City Council has already "designated uses" for the surplus is not intellectually accurate nor the whole truth. While the Council has allocated these funds already, including millions of dollars into reserves, this budget is overly conservative in its assumptions of Personal Services Expenditures. The City has, in just the last four fiscal years, realized end-of-year *Surplus General Fund* balances ranging from 47 to 75 million dollars above what was budgeted. Additionally, to our knowledge, the Council did not touch the 18.6 million dollars in the *Salary and Benefits Reserve* budgeted for this fiscal year which alone could bridge the delta between the 5% already budgeted and approved by the City Council for wage increases and the Union's offer.

Additionally, the City's letter mentioned the shortfall projected for FY 2024-2025. As you are aware, the City has projected similar shortfalls in previous years' projections. Nevertheless, it has ended up with tens of millions in surplus, largely due to salary savings and purposefully conservative forecasts.

Finally, and as you know well, the statement about reopening the budget is inaccurate. The City has employed numerous budgeting mechanisms in similar situations over the years to avoid this. The City's half-million-dollar labor law firm has also engaged in similar solutions at other agencies in the past to bridge the gap between the approved budget and a successor agreement for public workers, and they are certainly aware of that. Ironically, these are typically done through salary savings. Lastly, although the Union doesn't believe it would be necessary, open the budget back up if needed! The City's essential public services are alarmingly in danger and require its leaders' action.

City misstatement #2: *[the Union] states that the City has "forecasted 178-million-dollar salary savings this year" and that the City is "underbudgeting" vacancy savings. The City has no such forecasting, as is evidenced by the fact that this is not included in any of the City's budget documents. It is important to note that there is a certain amount of vacancy savings assumed every year within and across departments that is built into the budget. In addition, many vacancies within the City are backfilled in some manner, including, but not limited to, elevated overtime expenditures, temporary staffing, and higher-class pay. Further,* any expenditure savings beyond the assumptions included in the Fire-Year **[Sic]** Forecast are one-time savings that cannot be relied upon to fund ongoing wage increases.

Union Response: The fact that the City doesn't forecast these ongoing savings is the point the Union is trying to make. On May 29, 2023, the City provided the Union with a listing of all the current vacancies by classification and the budgeted amount for each position. It showed that at the time the information was collected, there were over 1,000 vacancies, and the budget amount for those vacancies equaled approximately 178 million dollars. While this isn't a City "forecast," it is an accurate reflection of the scope of the salary savings enjoyed by the City for multiple years. The fact that the City can't accurately explain why it has budgeted between 0.5-3% vacancy rate over the past decade is telling.

The City's next statement that back-filling vacancies somehow reduce these savings is wrong on its face. If the City backfills one position with someone else from another position, a vacant position remains –

albeit it may be a slightly lower wage rate. Not all vacant positions are back-filled, either by higher-class assignments or temporary staffing. It would benefit the Council to understand the true cost of the City's current approach to backfilling positions.

The City keeps repeatedly stating that "*any expenditure savings beyond the assumptions included in the Fire-Year* **[Sic]** *Forecast are one-time savings that cannot be relied upon to fund ongoing wage increases.".* The Union assumes the City meant "five-year forecast." Again, this is a significant point of the Union that perhaps the City missed in our last letter. **Since the City hasn't had a vacancy rate below 10% in the previous decade, and the decade before that, the City averaged an above 6% vacancy rate; the City Council should direct the City to budget a more realistic – but still extremely conservative – 5% projected vacancy salary savings. This would "free up" tens of millions of dollars in money that currently the City Council does not get to spend on its priorities – like, say, recruitment and retention.** This would allow the City to "rely upon the funds" for ongoing wage increases. The City manager's office, the City budget office, and presumably the Office of Employee Relations are well aware of the above facts. Still, it seems as though those Departments are doing everything possible not to discuss this with City leaders.

Finally, we been hearing more and more from city officials that the city of Santa Clara has a higher vacancy rate than San Jose. However, data demonstrates that when comparing the City of Santa Clara's filled positions per resident to San Jose's turnover rates, the differences couldn't be more telling. The attached data shows San Jose's turnover rate is significantly higher. Additionally, the data shows that San Jose only has 6.15 budget positions per 1,000 residents compared with Santa Clara's 7.68 positions per 1,000 residents. This means that each vacant position in San Jose has a much greater impact on residents than Santa Clara's vacancies. In either case, the Unions are confused as to why the City's team is attempting to draw so much attention to another agency or two that is also experiencing a vacancy crisis. The fact is, San Jose has had a double-digit vacancy rate for over ten years, and we need to focus inward and address it to deliver services to our residents.

Union Information Request: Please provide the Union with the actual realized salary savings from vacancies for each fiscal year for the last ten fiscal years and an explanation of how the savings were calculated.

City Misstatement #3: *The Federated Retirement System is currently 57% funded, and any wage increases or changes in pensionable pay above the amount assumed by the Board will impact the plan's unfunded liability. In fact, the City's actuary estimates that this impact would amount to approximately*

$8.5 million for MEF and $8.8 million for IFPTE before considering any further general wage increase for FY 2023-2024.

Union response and information request: We disagree with the City's costing entirely. In 2018, when the non-pensionable wage increase was agreed to, total salary experience savings to the pension plan were $9.8 million—less than 1% of the total $1.7 billion dollar pension liability at the time. Further, this $10 million will be amortized over the course of decades, leading to little annual cost savings for the city while recruitment and retention suffer (San Jose is the only Bay Area agency with a non-pensionable wage increase). It's unclear whether management is stating costs that will also be amortized over the course of many years, as management has provided no supporting documentation or explanation of these cost projections.

Union Information Request: Please provide a copy of the actuary report and any other actuary reports related to the costing of any MEF and IFPTE Local 21 proposals and the cost of the actuary studies.

City Misstatement #4: *While {the Union} has stated that the City's Paid Parental Leave Program is "wrong, discriminatory against women, anti-family, and out of touch with City values and what other regional public and private agencies provide…. What the City is proposing matches or exceeds what other public agencies are offering for Paid Parental Leave. This underscores the City's acknowledgment* **[Sic]** *of the benefits of providing such time of* **[Sic]** *for baby bonding purposes to support employees with families.*

Union Response: The City is well aware that almost every public agency in the Bay Area provides their employees with State Disability Insurance (SDI). The leave for mothers using SDI averages 12 weeks and can go as high as 16 in extreme cases. SDI works in conjunction with an employee's leave balance to, in most cases, provide the employee with fully paid family leave for twelve weeks using a mix of disability and paid family leave. SDI can be up to 16 weeks, depending on the circumstance of birth (For pregnancy disability leave, the maximum time available can be 4 months (17 1/3 weeks) if the healthcare provider certifies that the person is disabled for that time). Mothers are paid at approximately 2/3 the employee's rate of pay with the ability of the employee to use their leave accruals (sick, vacation, etc.) to supplement the SDI benefit and be "fully paid" during the employee's time off on SDI. Additionally, the employee may be able to use additional accrued time off depending on employer rules. Father, wishing to take SDI for baby bonding, receives eight (8) weeks of paid time off using the 2/3 formula outlined above.

The City also knows that many other agencies don't have a "cap" on how much leave an employee may use after any paid time off is exhausted. Nevertheless, San Jose wants to limit how much of an employee's earned time off an employee may utilize to bond with a new family member. It IS absolutely discriminatory against women, anti-family, and out of touch with our community's values. Most local tech employers offer a minimum of 12 weeks of paid parental leave, and even the federal government has implemented a 12-week fully paid parental leave program. The City's tone-deafness in this discussion is frankly embarrassing.

City's Misstatement #5: *It is important for the City Manager to maintain the discretion to determine the specifications for the MPP year-to-year, and your proposal puts the program further away from a performance-based rating system for managers where we are attempting to recognize outstanding and commendable performance.*

Union Response: In response to local 21 re and local 21 bargaining, the current MPP rating system (with its sharp drop-off in awards between 'Commendable' and 'Satisfactory') has contributed to a central tendency in ratings. If the City's goal is to recognize 'Commendable' and 'Outstanding' performance, it should implement a logical graduated scale differentiating the awards associated with these levels of performance. As it exists, the MPP program provides no tangible incentive for managers to demonstrate 'Outstanding' performance. The Union's proposal awards 2.5% as a standard for 'Commendable' performance as this is equivalent to a non-management step increase. It grants 2.0% for 'Satisfactory' to provide managers an option that recognizes 'meets standard' performance without penalizing employees to the tune of 1-1.5%.

City Misstatement #6: *"Lastly, you provided that the City's market survey was inaccurate as it included Richmond and Antioch. As you know, the City's comparator agencies are comprised of cities and counties in Santa Clara, San Mateo, Contra Costa, San Francisco, and Alameda Counties that serve populations of 100,000 or more based on population figures from the U.S. Census Bureau. These have been the City's longstanding market comparators, and while the parties have exchanged proposals related to potential changes to this list in these, no agreement has been reached."*

Union Response: We believe the crux of the issue here is that the City is defining 'within market' by percentage increases given by comparator agencies over time, whereas the Union is defining 'within market' by comparing actual compensation rates between agencies over time. As a reminder, San Jose took massive cuts at a time when many other agencies did not in the Great Recession. Example for easy math: A position in San Jose making $100,000 took a pay cut to $90,000. A position in a comparator agency stayed at $100,000. Assuming ten years of 3% increases, the position in San Jose would have a base salary of $120,952, whereas the one in the comparator agency would have a base salary of $134,392. By continuing to make the argument of 'comparable percentage increases', San Jose will continue to fall further behind.

Further, the Market Survey of percentage increases the City put together is not entirely accurate, and it's concerning that unvetted information is being communicated to the mayor and council. Specifically,

- IFPTE Local 21 units at Santa Clara County received a 3% in the fiscal year 2022-2023 and have not negotiated any wage increases for the fiscal year 2023-2024.
- In the City of Santa Clara, the wage adjustments in the survey you provided are not reported in the correct fiscal year.
- Alameda County is also incorrect, and your data has now changed to include wage increases only for the PACE chapter, which is one of many Local 21 units in the County. This also doesn't reflect newly negotiated agreements in the County, and the wage adjustments reported are in the incorrect year. There is no negotiated wage increase for 2024-2025 in the PACE contract.
- Lastly, we have a Local 21 unit in Sunnyvale, and these are not the wage adjustments we've negotiated there.

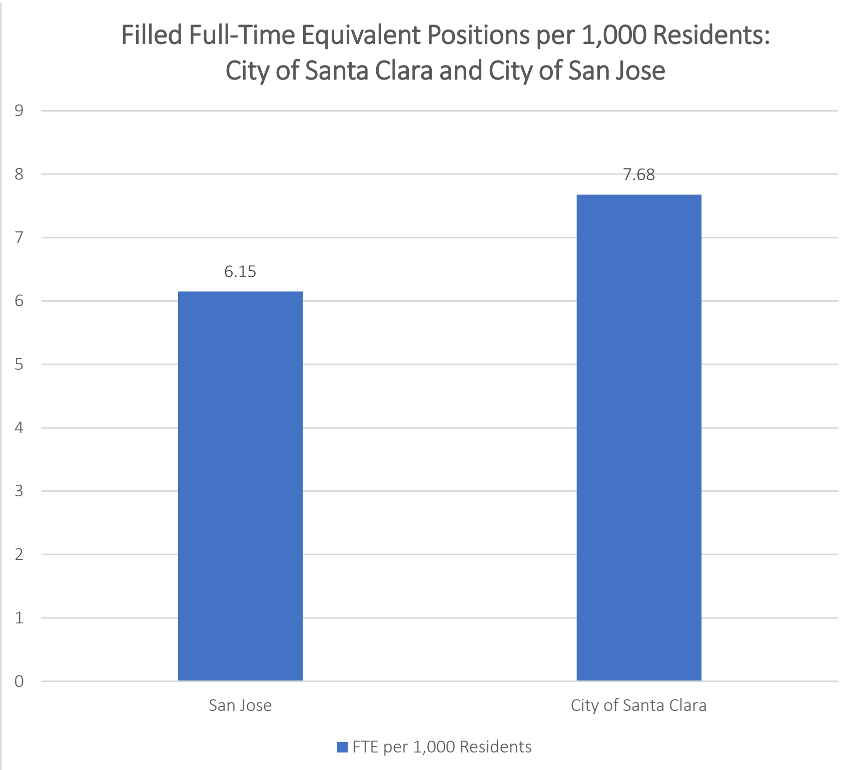
We want to ensure everyone is operating under the same set of facts as we enter this final stage of negotiations.

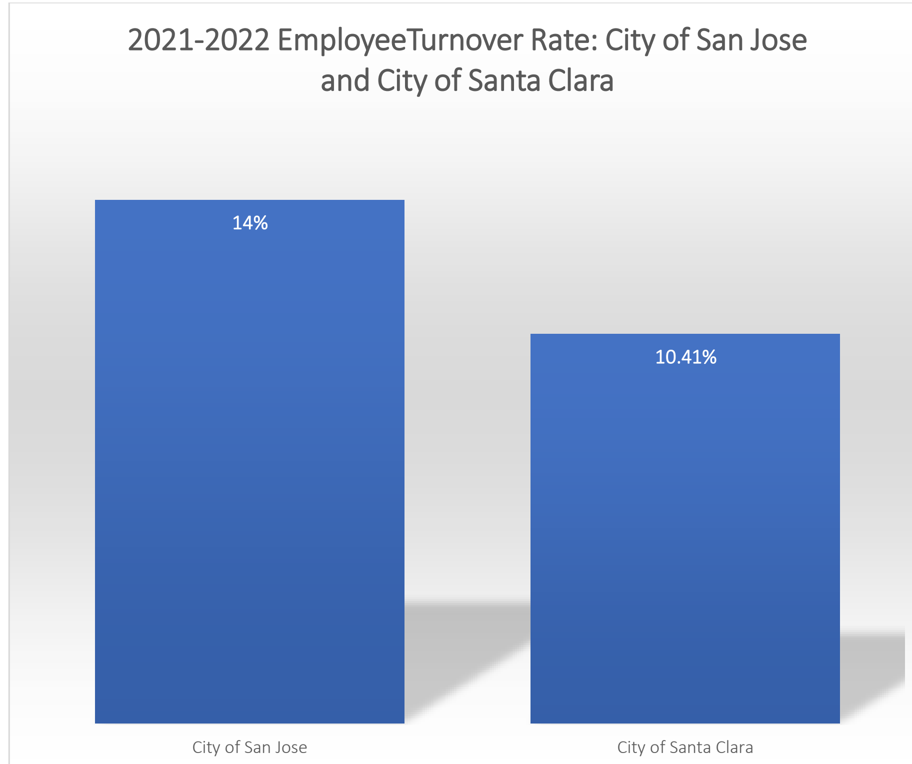
Respectfully,
IFPTE Local 21 & MEF-AFSCME Local 101

CC:

Members of IFPTE and MEF-AFSCME
Mayor and City Council
Burke Dunphy, Sloak Sakai
Jennifer Maguire, City Manager
Immediate Release

Encl: embedded documents


Filled Full-Time Equivalent Positions per 1,000 Residents:
City of Santa Clara and City of San Jose
9
8
7
6
5
4
3
2
1
0
6.15
7.68
San Jose
City of Santa Clara
FTE per 1,000 Residents


2021-2022 EmployeeTurnover Rate: City of San Jose and City of Santa Clara
14%
10.41%
City of San Jose
City of Santa Clara

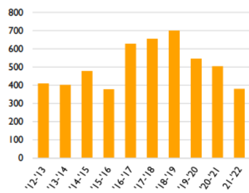
	2021-2022 EmployeeTurnover Rate
City of San Jose	14%
City of Santa Clara	10.41%

Data Sources: City of San Jose Annual Report on City Services and City of Santa Clara Proposed Budget for FY's 2023-2024 and 2024-2025

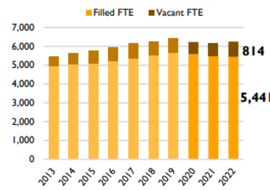
KEY FACTS (2021-22)

Benefited City employees (budgeted full-time equivalents)	6,255
Covered lives (active employees and dependents)	10,728
Percentage of employees with timely performance appraisals	
Non-management	45%
Management	94%
Turnover rate	
All employees (resignation, termination, retirements, etc.)	14%
Less retirements	11%

New Full-Time Hires (Citywide)



Citywide Full-Time Equivalent Positions (as of June 30)



Note: 2019-2022 data reflects revised methodology.

Performance and Workload Measures

Recruitment, Classification, and Staff Development Division							
Performance Measures							
	Strategic Pillar	**2020/21 Actual**	**2021/22 Actual**	**2022/23 Target**	**2022/23 Estimate**	**2023/24 Target**	**2024/25 Target**
Average employee turnover rate		8.18%	10.41%	6.0%	10.0%	10.0%	10.0%
Percent of recruitments completed within established timelines – *Delete for FY 2023/24*		100%	N/A	100%	N/A	N/A	N/A
Percent of recruitments for which a job analysis is completed – *Delete for FY 2023/24*		100%	N/A	95%	N/A	N/A	N/A
Percent of employees attending City required training classes		95%	91%	100%	95%	100%	100%
Vacancy Rate at End of Fiscal Year – *New for FY 2023/24*		13.27%	14.20%	10%	15.00%	10%	10%
Workload Measures							
Number of successor MOUs finalized after City Council Approval – *Modified for FY 2023/24*		5	5	2	2	2	6
Number of formal disciplinary actions received – *New for FY 2023/24*		4	3	N/A	5	5	5
Number of classification/ compensation projects completed– *New for FY 2023/24*		10	16	N/A	20	20	20
Number of trainings offered through the Human Resources Department – *New for FY 2023/24*		13	39	N/A	50	50	50
Number of Regular and As-Needed Hires, Promotions and Transfers Completed Annually – *New for FY 2023/24*							
Full-Time							
- New Hires/Rehires		38	110	N/A	90	90	90
- Promotions		47	103	N/A	80	80	80
- Transfers		1	4	N/A	2	N/A	N/A
As-Needed							
- New Hires/Rehires		119	215	N/A	175	175	175

City	Budgeted FTE	Vacant FTE	Filled FTE	Vacancy Rate	Residents	FTE per 1,000 Residents
San Jose	7,032.55	987	6,045.55	14%	983,489	6.15
City of Santa Clara	1,149.25	172	976.86	15%	127,151	7.68

Data Sources: San Jose data provided in response to a union request for information as of June 2023. All vacant part-time positions are assumed to be 0.5 total FTE. Santa Clara data can be found in the 2023-2024 & 2024-2025 Proposed Budget