

**SENT VIA EMAIL**

November 4, 2011

William H. Pope  
Business Representative  
International Union of Operating Engineers, Local Union No. 3 (OE#3)  
1654 The Alameda, Suite 110  
San Jose, CA 95126

**RE: Draft Proposed Ballot Measure**

Dear Bill:

We are in receipt of your letter dated November 2, 2011, in which you state,

*"Local 3 has not waived anything, specifically our right to bargain over changes to the retirement plan. We still want to negotiate over the retirement plan matters. We are waiting for the City to provide us with a response and/or counter proposal to the last proposal we made to the City."*

The City wants to clarify this statement. As you know OE#3, along with others agreed to coalition bargaining on non-charter issues, but did not agree to negotiate regarding Charter issues at the same table. OE#3 has not provided any proposal to the City related to the proposed ballot measure. The City has been clear that there is an immutable deadline given the urgency of the ballot measure and the planned special election timelines. This has been evidenced by the correspondence we have provided to OE#3, including the letters dated September 23, 2011, October 5, 2011, October 20, 2011, and October 27, 2011. Unfortunately, OE#3 was non-responsive and did not take advantage of the opportunities the City extended to discuss the proposed ballot measure.

In view of the complete lack of progress to reach a resolution, despite almost three (3) months of the City's attempt to meet and confer over the proposed ballot measure, OE#3 has either waived its right to meet and confer or the parties are at impasse. The City requested that you notify us by November 3<sup>rd</sup> by 5:00 p.m. if OE#3 was interested in participating in mediation and provide your availability for mediation through November 14<sup>th</sup>. OE#3 has failed to provide notice as to whether it wishes to participate in mediation. Again, if OE#3 is interested in mediation, we request that you provide your

OE#3  
RE: Draft Proposed Ballot Measure  
November 4, 2011  
Page 2 of 2

availability for mediation through November 14<sup>th</sup>, or we will assume that OE#3 intends to waive mediation as well. Please notify me no later than Monday, November 7<sup>th</sup> by 5:00 p.m.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina Donnelly', is written over the word 'Sincerely,'.

Gina Donnelly  
Deputy Director of Employee Relations

c: Alex Gurza, Deputy City Manager