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June 19th, 2023

Sender's Email: john.tucker@ca.afscme57.org

Sent Via Email

Jennifer Maguire
City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Declaration of Impasse

Dear Ms. Maguire,

Pursuant to the *City of San Jose's Employer-Employee Relations Resolution #39367 (EERR)*, please accept this *Declaration of Impasse* regarding our attempts to negotiate a successor *Memorandum of Agreement (MOA)* for staff represented by the Municipal Employees Federation (MEF) – AFSCME Local 101.

As you know, the parties began negotiations on March 15, 2023, and have met on thirteen (13) separate occasions in a bona fide and good-faith effort to come to an agreement. During that time, MEF has agreed to fifteen (15) different proposals or counterproposals made by the City to the Union. However, almost none of the tentative agreements reached to date will directly impact the Unions main goal of filling the more than 1,000 staff vacancies and getting vital public service delivery back to an acceptable level.

The City has failed to engage the Union beyond a surface level on issues with a significant effect on recruitment and retention issues. The City has maintained a position that obfuscates the vacancy problem by asserting that the vacancy rate is a result of the global pandemic and “the great resignation” despite the City having a double-digit vacancy rate for more than a decade. Unfortunately, the City’s team has not represented many of the Union’s core proposals and justification in the most accurate way and so we are including a position overview in this document as well in hopes that it clears up any confusion. A complete outline of our justification which we presented to the City’s bargaining team on April 19th, 2023, can be viewed [here](#).

Attached is a copy of the Union’s *Last, Best, and Final Offer*. The Union has received resounding feedback from our members that it has moved more than enough from its original position and not to accept the City’s current offer as proposed. We also believe any further meeting and conferring would be futile and therefore believe we are at an impasse.

The City's EERR calls for the parties to enter into mediation proceedings which the Union is happy to do. Please provide the Union with a list of mediators so we may attempt to come to a mutually agreeable selection and schedule a meeting.

Lastly, as you are no doubt aware, while the Union is committed in good faith to finding a resolution in post-impasse proceedings, we are also planning for a Strike of the City of San Jose should our settlement efforts not be successful. The *California State Public Employee Relations Board* (PERB) requires that the parties meet and attempt to agree on which employees would be considered essential (by PERB definition – not pandemic norms) prior to the City seeking to enjoin certain employees from being able to Strike. Please provide the Union with a list of positions in which the City believes their striking would cause an imminent threat to public health and safety so we can begin those discussions.

We look forward to coming to a resolution on a successor agreement that gets our community back to basics regarding service delivery.

AFSCME - San Jose budget analysis supporting our economic proposals and the City's ability to pay.

In justifying AFSCME's economic proposals, we analyzed the [City's current financial position](#) by looking at several factors, including General Fund Revenue; Fund Balance; Unrestricted Fund Balance; Credit Ratings, and Budget Variances. As of June 19, 2023, San Jose is in excellent financial condition and will have little difficulty paying for the proposed increases. The City has strong revenue growth, a healthy and growing fund balance, the highest credit ratings, and substantial and positive budget variances. Additionally, the City projects a 35-million-dollar surplus this fiscal year, which will continue to balloon given the significant salary savings stemming from the more than 1,000 vacancies. The 35-million-dollar surplus *already includes* a 4% wage increase for all employees, so increasing it by an additional 3% is well within the ability of the City to meet and would cost the City an additional 6.2 million dollars budgeted at a fully staffed rate but would actually cost 5.3 million dollars given current staffing levels.

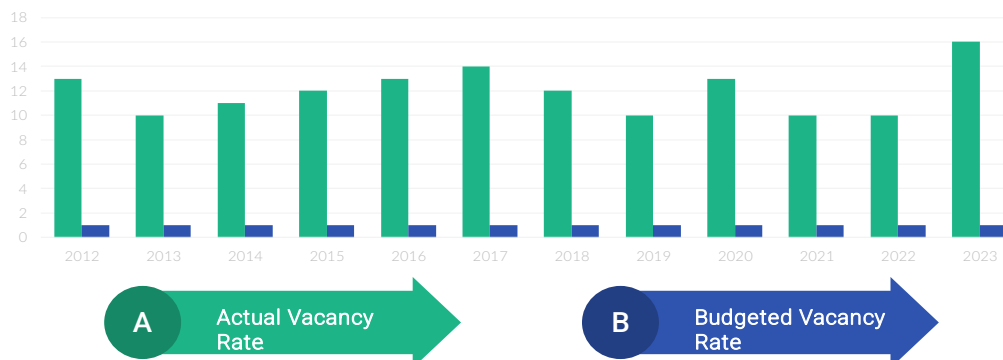
Close to two hundred million dollars are left on the table each year in salary savings.

The Union has pointed to [information provided by the City to the Union](#) on May 29th, 2023, which shows a forecasted 178-million-dollar salary savings this year. It has made calls for some of that money to be put into recruitment and retention efforts. The City has responded that those salary savings are "one-time money and can't be used to fund wage increases." However, history shows that the City has had an average vacancy rate of 12% in the last ten years – doubling the average of 6% in decades prior. The City budgets for vacancy rates by Department but averages just 1% City-wide. This deliberate "underbudgeting" of vacancies results in potentially hundreds of millions of dollars being used yearly as discretionary funds and removing it from the hands of the City Council to use for their priorities.

Vacancy Rates Over the Last Decade

2012 - 2023

The City's vacancy rate has nothing to do with the COVID -19 pandemic or "the great recession"



San Jose’s current budgeted vacancy rate.

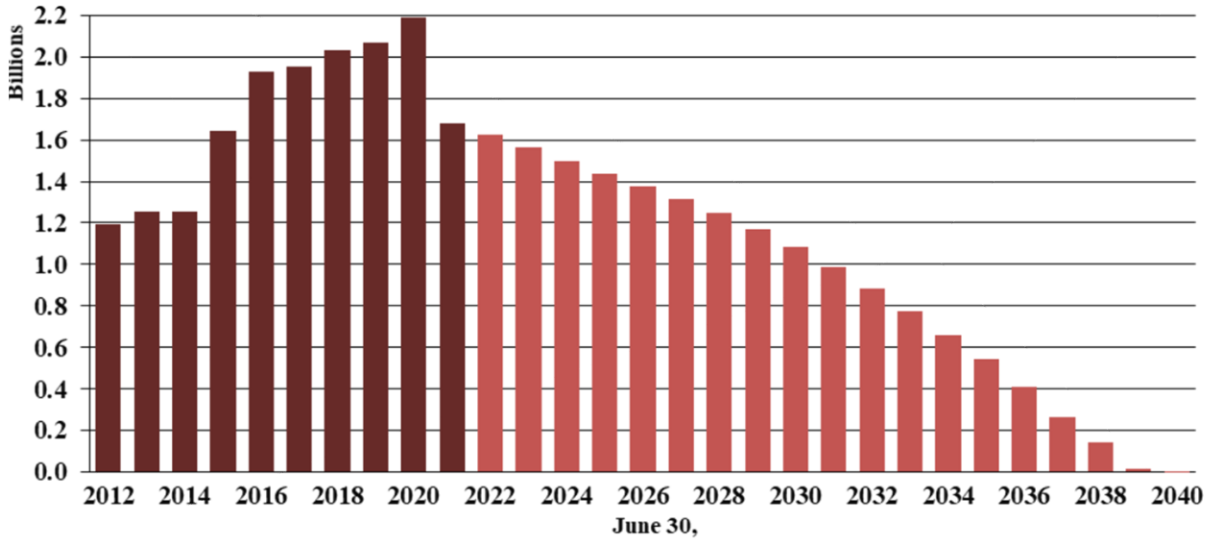
Department	Budgeted Vacancy Factor	Department	Budgeted Vacancy Factor
Airport	2%	Housing	0%
Attorney	1%	Human Resources	0.50%
Auditor	0%	Independent Police Auditor	0%
Clerk	0%	Library	2%
City Manager	1%	Mayor / Council	0%
Community Energy	2%	PRNS	2%
Economic Development & Cultural Affairs	1%	Police	1%
Environmental Services	2%	Public Works	1%
Finance	2%	Retirement Services	0%
Fire	3%	Transportation	0.70%
Average			1%

The City Council should direct the City to budget at a more realistic – but still extremely conservative – vacancy rate of 4% which would free up approximately 50 million dollars which the City Council can use on their priorities – including staffing and service delivery to the residents of San Jose rather than discretionary funds for use by City Departments with no Council approval needed.

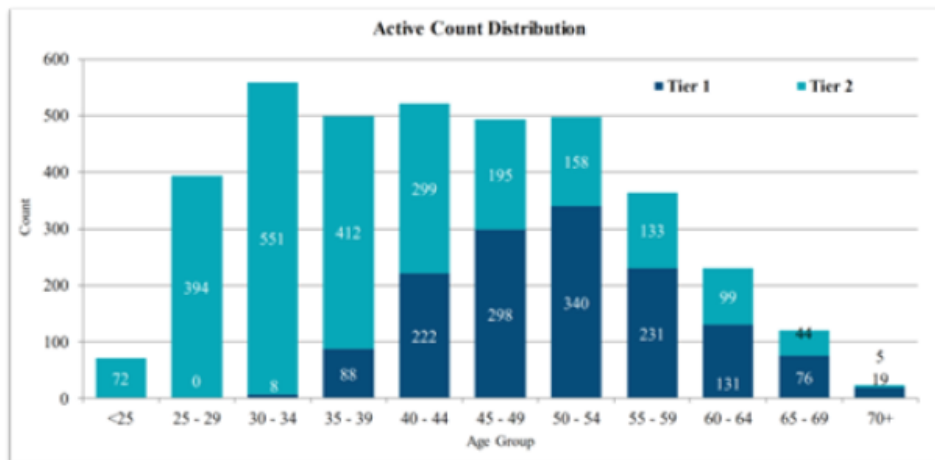
Shrinking Pension Costs

Thanks to concessions made by Union members a decade ago, the City’s unfunded liability from pension obligations peaked and is rapidly eroding. Reinstating the 5% non-pensionable, as proposed by the Union, would not significantly impact the unfunded liability. Particularly since only 60% of staff even make it to the five-year vesting requirement. San Jose is the only agency in California known by AFSCME to have bifurcated wages in that manner. It makes comparing with other agencies to establish market-competitive wages that much harder.

Historical and Projected Unfunded Actuarial Liability



Tier 2 Members are now 63% of Active Employees



Comparing San Jose to our agencies we’re losing staff to.

In the June 14th, 2023, letter attached to the City’s “Last, Best, and Final Offer,” the City falsely calls out that “in Fiscal Year 2023-2024, the City has offered a general wage increase greater than or equal to 14 of the 15 market comparators with closed contracts, and in Fiscal Year 2024-2025 the City has offered a general wage increase greater than or equal to 8 of the 10 market comparators with closed contracts.”

To begin with, the information provided by the City isn’t accurate. But even if it were, the City fails to point out what every staff person working for the City already knows, that in most cases, those agencies pay much more than San Jose, to begin with. The City is well aware that a look back in time at wage increases provided to public servants in comparable agencies shows why San Jose is struggling so much with vacancies now – inferior wages and benefits. Additionally, as pointed out earlier, none of these agencies have a portion of their staff’s pay designated as “non-pensionable.”

All we need to do is point to the City’s 1,000 vacancies as proof that the City’s compensation philosophy is broken and needs to be fixed to meet the needs of our residents.

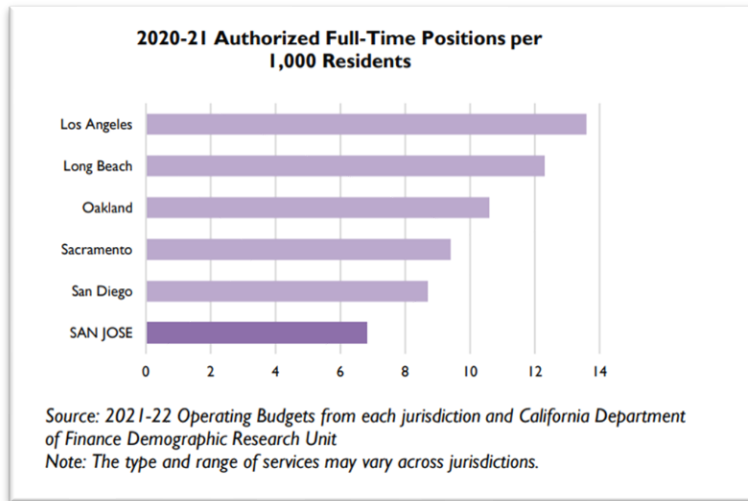
In most cases, the agencies on this list already pay much more than comparable jobs in San Jose. San Jose’s proposed increase* would put us further behind, harming recruitment and retention, and would add even more to the over 1,000 vacancies plaguing the City. We *must* do better if we’re going to get back to delivering vital public services.

Agency	2020	2021	2022	2023	2024	2025
Freemont	4.00%	3.00%	5.00%	5.00%	4.00%	TBD
Santa Clara	3.00%	3.50%	5.00%	5.00%	4.00%	TBD
San Mateo County	5.00%	3.00%	3.00%	TBD	TBD	TBD
Richmond	3.00%	4.00%	5.00%	5.00%	4.00%	4.00%
Milpitas	6.00%	3.00%	3.00%	TBD	TBD	TBD
City of Oakland	3.00%	3.00%	5.00%	5.00%	4.00%	TBD
Santa Clara County	3.00%	3.00%	3.00%	TBD	TBD	TBD
San Francisco	4.00%	4.00%	5.00%	5.00%	TBD	TBD
Contra Costa County	3.00%	3.00%	5.00%	5.00%	5.00%	5.00%
Alameda County	3.00%	3.00%	3.00%	6.00%	5.00%	TBD
San Jose	3.00%	3.25%	4.50%	*5.00%	*4.00%	*3.00%
Average	3.64%	3.25%	4.23%	5.14%	4.33%	4.50%

*As proposed by San Jose to the Union.

Recruitment and retention efforts and the cost of high turnover.

Our City already has a deficient number of budgeted City positions per resident. The graph below underscores the effect that each vacancy has on our residents. Each vacancy in San Jose has a much more significant impact on the services we deliver when compared with other big cities because we're already the most thinly staffed big city in America.



As stated by the City HR Director,

“After five years of service, the City is retaining only 60% of its employees. Said another way, the City is losing about 40% of staff after five years of service.” We have also shown that the cost of this turnover is [costing the City tens of millions of dollars per year](#) and costing residents vital public services.

The Cost of Staff Replacement

The ramifications of employee turnover are enormous. Each departure costs about one third of that worker's annual earnings. Here's where that money goes:



San Jose's Total Lost Resources Resulting from Employee Turnover

- Total Wasted Dollars in Employee Turnover Costs (non-sworn)

\$ 20,000,000 Per Year

The Union asked the City's bargaining team how much money they believed the City was spending on turnover, and they did not provide the Union with a response. This left the Union to accept that the City either agreed with the estimation from the Society for Human Resource Management (SHRM) or didn't have its own analysis.

The City Manager and HR Director have presented to the Council that they are addressing retention issues through several strategies. While listing out random functions of the Human Resources department and calling them strategies may look comprehensive at first glance, a brief look into what each item entails proves that the City is merely attempting to *appear* as though they are addressing the retention crisis when in fact there are very few fundamental strategies being implemented effectively, if any. Below are the stated strategies being utilized by the City to address the endemic retention problems.

“General Wage Increases.”

- See above.

“Special Salary Adjustments in areas where there are recruitment and retention issues (56 classifications in last year).”

- If the City had a compensation philosophy that worked, it wouldn't find itself constantly playing “whack-a-mole” with market salary adjustments. While increasing wages of 56 classifications (at least according to HR) is necessary, hundreds of classifications either have recruitment issues and/or remain significantly behind the market concerning wages and benefits. It's no surprise that classifications that the City has increased in just the last year or two needed to be raised again because they had already fallen behind in recruitment and retention efforts and their wages compared with market comparators. Half measures and band-aid approaches continue to leave the City playing catch up and hampering our efforts to retain staff.

“Flexible Workplace Policy.”

- What the City means here is that it provides flexible workplace agreements (hybrid remote/in-person work schedules) with 632 of MEFs approximately 3,500 represented staff. This equates to about 18% of front-line workers. Of course, many essential workers can't work remotely due to the nature of their work. However, the City could go much further than only providing remote work opportunities to 18% of staff and, in doing so, would lend more credibility to it as a retention strategy. This includes expanding the – four days, ten hours per shift work week (4-tens) – that the City has historically resisted.

“Mentoring Program.”

- The City claims that its staff mentoring program is a part of its retention strategy despite only 29 staff – or less than 1% of staff – participating in the program.

“New Employee Welcome (Onsite + Virtual + Engagement).”

- For the City to claim that its employee orientation process is part of its retention strategy demonstrates that the City has no real strategy and only wishes to create a seemingly exhaustive list of tactics it uses to obfuscate the issue to the City Council.

“Employee Experience Conversations (EECs)”

- The City claims it has hundreds of City leaders “trained in employee experience conversations.” These are similar to “stay interviews,” which have replaced exit interviews as Human Resource professionals with new strategies for employees to explore what is important to them as individuals, considering their satisfaction, engagement, and motivation at work. These are laudable and vital efforts, which is why the Union is frustrated that the City doesn’t track their conversations and results, nor does the City require or set any goals for managers to perform these conversations. What gets measured gets done. The City can’t be laissez-faire about these conversations and simultaneously claim they’re a legitimate retention strategy.

“Human-Centered Design Learning Lab + Innovation Academy.”

- The Learning Lab and the Innovation Academy are also laudable and important programs that develop City employees and seemingly could contribute to a sense of engagement and motivation at work. Sadly, only 38 and 79 MEF-represented employees have participated in the Learning Lab and Innovation Academy, respectively. This represents just 3% of front-line staff. It’s hard to imagine this being an effective strategy for retention, given the significant turnover the City suffers from.

“Trauma Informed and Resilience Oriented Culture Building.”

- Public employers and organizations throughout the nation working amid structural and direct violence are exploring how to trauma-inform their efforts and create more trauma-informed workplaces. Resilience-based programming is not a unique concept, and while hugely important for a City like San Jose, its effect on the workplace culture and, by extension, employee retention is being significantly overvalued here. A very limited number of staff have participated in these trainings.

“Wellness Programs and Offerings.”

- Employees understand that no matter where they choose to work in the professional world, they will be offered a wellness program. The Affordable Care Act practically requires it. City HR is reaching here by claiming that hosting a few fitness and nutrition classes or helping with financial planning for retirement is moving the needle in any meaningful way concerning retention.

Clearly, very few of the above-stated retention strategies employed by the City are working. All we need to do to observe this fact is look at the retention numbers and see that retention in San Jose has continued to worsen, contributing greatly to the 1,000 vacancies. According to a [report cited by HR Director Jennifer Schembri](#) in her February 1, 2023, *Memo on Recruitment and Retention*, the top 3 reasons for public sector employee turnover in 2021 and 2022 were higher-paying job opportunities (74%), retirement (45%), and poor management (32%). Tellingly, the reasons for employee turnover in this report cited by the HR Director don't align with the City's stated retention efforts.

Figure 4

Top Three Reasons for Employee Turnover in 2021 and 2022



For all of these reasons and more, we hope the City is willing to do more to address the needs of our residents. The City is squarely situated to finally begin to make an impact in recruitment and retention efforts and return service delivery to our residents to a level worthy of a world-class City.



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Respectfully,

The MEF-AFSCME Local 101 Bargaining Team and Executive Board

CC: Members of MEF-AFSCME Local 101
Mayor and City Council
Jean Cohen, Executive Officer of the South Bay Labor Council (SBLC)
Burke Dunphy, Sloan Sakai
Jennifer Schembri, Director of Employee Relations and Human Resources
Elsa Cordova, Assistant to the City Manager

Encl: embedded documents and links

- 1) MEFs April 19th, 2023 presentation and wage proposal justification given to City's bargaining team
- 2) MEFs Last, Best, & Final Offer dated June 19th, 2023
- 3) Operating Budget for San Jose
- 4) *Information Request* provided to Union by City on May 29th, 2023
- 5) SHRM Webpage, *To Have and to Hold: Amid one of the tightest labor markets in the past 50 years, employee retention is more critical than ever*
- 6) NEOGOV Webpage and "Top 5 HR Trends for 2023"