



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: ANNUAL SUMMARY OF LABOR
NEGOTIATIONS

DATE: March 3, 2020

RECOMMENDATION

Accept staff report and public input on the 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.

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, personnel cost information, and a summary of labor negotiations cost saving strategies.

The following chart shows the City's bargaining units, total Full Time Equivalents (FTEs¹) for the [2019-2020 Adopted Budget](#) represented by each bargaining unit and the expiration of their most recent contract. In addition to the bargaining units listed below, there are approximately 342.59 unrepresented FTEs, including unrepresented employees in Units 99, 81, and 82.

¹ Full Time Equivalents (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	Approximate FTEs²	Contract Expiration
Association of Building, Mechanical and Electrical Inspectors (ABMEI)	88	06/30/23
Association of Engineers and Architects, IFPTE Local 21 Unit 41/42 and Unit 43 (AEA)	338	06/30/21
Association of Legal Professionals of San Jose (ALP)	44	06/30/21
Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP)	114	06/30/21
City Association of Management Personnel, IFPTE Local 21 (CAMP)	487	06/30/21
San Jose Fire Fighters, IAFF, Local 230 (IAFF)	705	06/30/23
International Brotherhood of Electrical Workers, Local 332 (IBEW)	81	06/30/21
Municipal Employees' Federation, AFSCME Local 101 (MEF)	2,528	06/30/21
International Union of Operating Engineers, Local #3 (OE#3)	754	06/30/21
San Jose Police Officers' Association (POA)	1,149	06/30/20
Peace Officer Park Ranger Association (POPRA)	16	
TOTAL	6,304	

The [2021-2025 Five Year Forecast](#) (“Forecast”), released March 2020, projected a very small General Fund surplus of \$0.5 million for 2020-2021. In the remaining years of the forecast, General Fund shortfalls ranging from \$2.2 million to \$11.1 million are projected for two of the four years, with a projected surplus in the other two years (\$14.0 million in 2022-2023 and \$1.0 million in 2024-2025), for a total surplus of \$2.2 million.³ This projection is derived by comparing estimated revenues with the cost of delivering Council-approved existing services as well as the services for which the City has already committed, such as the operation of new facilities or other capital projects scheduled to come on-line over the forecast period. These margins are relatively narrow when put into the context of the size of the General Fund budget, ranging from -0.9% to 1.1% of the projected annual budget (combined total of revenues and expenditures). It is also important to note that the Forecast does not incorporate several elements that could impact the General Fund over the forecast period including: 1) costs associated with services that were funded on a one-time basis in 2019-2020; 2) costs associated with unmet/deferred infrastructure and maintenance needs; and 3) one-time revenue sources or expenditure needs. The Forecast reflects a small growth in revenues as well as lower growth in projected costs, particularly retirement costs. Looking forward, the Administration’s goal is to ensure the fiscal health of the City while delivering essential services in the most cost-effective manner.

The City currently has multi-year contracts with nine (9) bargaining units. The City’s current agreements with AEA, ALP, AMSP, CAMP, IBEW, MEF, and OE#3 are set to expire on June 30, 2021. The City’s current agreements with ABMEI and IAFF are set to expire on June 30, 2023. Additionally, the City has recently agreed to terms with POPRA on a four (4) year contract which will expire on June 30, 2023, which is on the March 17, 2020, Council agenda for

² **Source:** [2019-2020 Adopted Budget](#); does not include approximately 342.59 unrepresented positions.

³ **Source:** 2020-2021 City Manager’s Budget Request & 2021-2025 Five Year Forecast and Revenue Projections for the General Fund and Capital Improvement Program dated March 2020.

approval. The City expects to begin negotiations on a successor labor agreement with the POA soon, as the current labor agreement is set to expire on June 30, 2020.

ANALYSIS

Personnel Costs

As a service organization, the great majority of the City's costs pay for the employees who provide those services. In previous years, the City has experienced increases in those costs, such as base payroll, retirement benefits, and healthcare benefits, and it is projected that increases in personnel costs will continue. However, many of the changes made have mitigated these increased costs. The City is appreciative of the collaboration of the bargaining units who have agreed to these changes, and recognizes the sacrifices made on the part of the City's employees.

2020-2021 Cost Savings Strategies Which are Subject to Meet and Confer with the City's Bargaining Units

As noted above, in current labor negotiations with the City's bargaining units, the City continues its pursuit of bringing revenues and expenditures into alignment with the immediate service delivery needs of the community, while also being mindful of the recruitment and retention of the City's workforce.

The Auditor's Office also has open audit recommendations which have potential budget savings and are subject to meet and confer. These recommendations are attached as Attachment 1. Items that have been identified as subject to meet and confer include, but are not limited to, maximizing the City's resources by exploring further appropriate outsourcing and civilianization opportunities, continued review of the City's compensation structure, and continued examination of the City's existing layoff and bumping process.

There are other operational issues that are subject to the meet and confer process that may need to be addressed in the upcoming Fiscal year. These will continue to be discussed with the affected Departments and will be brought forward to City Council in closed session for recommendations, if applicable.

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 and which were subsequently revised in [April of 2014](#). The Guiding Principles for Labor Negotiations are attached as Attachments 2 and 3 respectively.

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 as Attachment 4.

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-Miliias-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 typically 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.

Impasse Procedures and Arbitration

As a result of the passage of Assembly Bill 646 (AB646), effective January 1, 2012, local government agencies like the City of San Jose are required to include fact finding in their impasse procedures for any bargaining unit requesting to do so that is not subject to binding interest arbitration; it is worth noting that fact finding can be requested solely by the bargaining unit and not the agency. Additionally, Assembly Bill 1606 (AB1606) was passed in 2012 and provided additional requirements regarding fact finding. Previously, if the parties reached an impasse and have exhausted any applicable impasse procedures, a public agency had the option to unilaterally implement its last, best, and final offer; however, fact finding has added additional layers of time and complexity. The notable changes created by fact finding includes the agency holding a public hearing on the impasse; a written, non-binding, findings of fact and recommended terms of settlement issued by the fact finding panel; and the prohibition on a public agency from unilateral implementation of its last, best, and final offer until certain time criteria are met. Fact finding, if invoked by a bargaining unit, will increase the costs as well as increase the use of resources and time associated with the bargaining process. In addition, revisions to Resolution #39367 are necessary to reflect the addition of fact finding to the process, and such revisions will be presented to City Council for discussion in the future.

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, including fact finding if invoked, implement its last, best, and final offer. In addition, after impasse procedures have 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 City Charter limits outside arbitrators from: basing awards to employees primarily on the City's ability to pay; creating any unfunded liability for the City; increasing police and firefighter compensation more than the rate of increase in General Fund revenues; granting retroactive benefits; and depriving or interfering with the discretion of the Police or Fire Chief to make managerial, operational, or staffing decisions.

2020 Labor Negotiations

As noted below, during Spring 2020 the City expects to begin negotiations on a successor agreement with the POA, whose current agreement expires on June 30, 2020.

- *San Jose Police Officers' Association (POA)*, represents approximately 1,149 Full Time Equivalents (FTEs), including the classifications of Police Recruit, Police Officer, Police Sergeant, Police Lieutenant, Police Captain, and Deputy Chiefs of Police.

In addition to negotiations on the successor agreement, the City and various bargaining units are also involved in other discussions. The list below includes significant items that are being discussed or will be discussed.

- Beginning in Fiscal Year 2019-2020, the City, POA, and IAFF have convened a Public Safety Wellness Improvement Committee to discuss modification to, or creation of, wellness and/or workers' compensation policies, procedures, and protocols as agreed upon in the Alternative Pension Reform Settlement Framework. This committee is expected to continue meeting throughout 2020.
- The City and the POA anticipate continuing discussions on multiple items, which may be subject to meet and confer, including but not limited to:
 - Discussions regarding the expansion of the Independent Police Auditor's review authority; and
 - Discussions regarding the modified duty/exempt officer positions.

The City and the bargaining units shall also continue to discuss issues on an ongoing basis as such issues arise.

Transparency/Sunshine Reform

These Annual Summary of Labor Negotiations reports are to provide the public with information related to labor negotiations, prior to the negotiations process 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 provides the public with information on the City's internet related to ongoing negotiations, costs of benefits and other payroll costs. This information can be found at the following locations:

Labor Negotiations	https://www.sanjoseca.gov/your-government/departments/employee-relations/labor-relations-information
Benefits	https://www.sanjoseca.gov/your-government/departments/human-resources/benefits
Payroll Costs	https://www.sanjoseca.gov/your-government/departments/employee-relations/labor-relations-information/information-resources/total-compensation-information

CONCLUSION

The restoration of City services to its citizens must be balanced with the continuing efforts to control personnel costs to create capacity to continue to restore services. While our collaborative efforts have resulted in the gradual restoration of pay and services over the last several years, there are nonetheless projected shortfalls in the coming years. It is hoped that our collaborative efforts will continue in the upcoming years, while keeping in mind the significant sacrifices City employees have previously made as well as the City's need to recruit and retain a qualified work force.

EVALUATION AND FOLLOW-UP

When Tentative Agreements are reached with the bargaining units during negotiations for a subsequent collective bargaining agreement, they will be brought to the City Council in open session for approval. Specific negotiation direction from the City Council will be received in closed session.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This item is being provided in accordance with the Sunshine Ordinance. In order to provide the public with information about the City's labor negotiations, this report will be posted on the internet in advance of the City Council meeting. 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.

COMMISSION RECOMMENDATION/INPUT

This memorandum was not coordinated with any board or commission.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.


David Sykes
City Manager

For questions, please contact Jennifer Schembri, Director of Employee Relations/Director of Human Resources, at (408) 535-8150.

Attachments