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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ITEM #208- REQUIREMENT OF THE CITY ATTORNEY' S APPROVAL OF THE LABOR
MEMORANDUM(S) OF UNDERSTANDING

INTRODUCTION

Currently before the City Council is Item #208, a proposed Resolution adopting the Memorandum(s) of Understanding between the City and the labor unions. The Resolution and MOU(s) have not been thoroughly reviewed and endorsed by the City Attorney, which is legally required.

DISCUSSION

Under San Diego City Charter section 40, the City Attorney is the “chief legal advisor of, and the attorney for the City and all Departments.” Section 40 also defines the duties of the City Attorney, which are described as mandatory. “It *shall* be the City Attorney’s duty... to perform all services incident to the legal department” and “to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, *and to endorse on each approval of the form or correctness thereof*” [emphasis added]. This section makes clear the City Attorney must draft the resolution and approve the Memorandum(s) of Understanding (MOUs) between the City and the labor unions. Therefore, for the City Council to proceed with approving the MOUs without the City Attorney’s advice and consent would be violative of Charter section 40.

Consistent with the Charter’s mandate that the City Attorney approve proposed resolutions or ordinances, San Diego Admin. Reg. 3.20 (A.R.) sets forth the process in order to obtain Council action. Section 1.1(a) of Regulation 3.20 dictates that all information be afforded to the City Attorney in order to prepare the appropriate legal documents. Affording the City Attorney the necessary time in which to complete his or her mandatory duty is a matter of common sense and historical practice. In previous years, the City Attorney was normally part of the negotiation process and at the bargaining table. This year, the City Attorney was excluded from participating in any of the labor negotiations giving rise to the MOUs. Consequently, the City Attorney was not privy to the terms and language contained in the MOUs. Therefore, the City Attorney has not been provided the information and sufficient time to review these documents. The MOUs have significant impact and legal implications over a long period of time. To expect the City Attorney to blindly sign off on the MOUs is wholly contrary to his legal duties under the Charter and his responsibility to the citizens of San Diego.

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The necessity of the City Attorney's approval of the Resolutions adopting the MOUs is further reinforced by the provisions of A.R. 3.20 section 3 requiring the City Attorney's approval as to their form and legality. In this circumstance, the City Attorney has been denied the opportunity to advise as to the form and legality of the MOUs and the Resolution implementing them. The City Attorney has not had ample time to thoroughly review these documents in order to ensure their compliance with the law.

CONCLUSION

The City Attorney must review and approve the Resolutions adopting the Memorandum(s) of Understanding between the City and the labor unions before they are approved by the City Council. In light of the foregoing, the City Council can not proceed with approval of the resolution adopting the MOUs at this time.

Respectfully submitted,

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MJA:jfm:meb
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