Binding Interest Arbitration Proposal: Potential Conflicts

The purpose of this document is to provide an non-exhaustive overview of potential conflicts between the Binding Arbitration Measure and current City documents, including the City Charter, MOUs, CMDs, and Civil Service Rules. This document should not be construed as a definitive statement as to the City's factual or legal position, now or in the future, on these matters, and the City reserves the right to raise any and all issues, and make any and all arguments. regarding the state of current law and/or the legal effect of the Binding Arbitration Measure.

Terms Used: "MMBA" refers to the Meyers-Milias-Brown Act, Government Code §3500 and following, which governs labor relations for local agencies; "EERO" refers tot eh City's adopted Employer-Employee Relations Ordinance, which sets forth the process for recognizing bargaining units and impasse procedures; "MOUs" refer to the Memoranda of Understanding which are negotiated agreements between the City and recognized employee organizations which set forth theg terms and conditions of employment for employees within the unit; "Civil Service Rules" refers to the City's Civil Service Rules which are adopted by the Civil Service Commission pursuant to their powers in the City Charter.

Proposal Clause (b): Prohibition Against Strikes	***Potential Conflict With City Documents***
If striking employee is charged for failing to report to work "as part of a strike", employee subject to dismissal "in the event the charges are sustained upon conclusion of the proceedings that are required by law for the imposition of disciplinary action"	Contrary to current standards for disciplinary action as stated in Civil Service Rules
Proposal Clause (c): Obligation to Negotiate in Good Faith	***Potential Conflict with City Documents***
City shall negotiate in good faith on "all matters relating to the wages, hours, and other terms and conditions of City employment"	Because does not contain clause regarding preservation of management rights[1], may erode or eradicate management rights as already preserved in the MMBA, EERO, MOUs, and CMDs If this applies to recruits, would require change in bargaining unit; contrary to current unit designations, and to process to amend such designations in the EERO

[1] "Management rights" are generally rights that are fundamental to the ability to manage, and are not subject to bargaining. There are explicit management rights clauses in the MOUs with Police and Fire, copies of which are attached hereto.

City shall negotiate in good faith on "the establishment of procedures for the resolution of grievances[2] concerning the interpretation or application of any negotiated agreement"	Would allow arbitrator to override Civil Service Rule Provisions and CMD 47 establishing grievance procedures
Until agreement reached through negotiations or arbitration "no existing benefits or conditions of employment . . . shall be eliminated or changed"	Would require negotiated agreement/arbitration award to change existing benefits and conditions of employment – contrary to limited meet and confer requirements of MMBA (abrogation of management rights) and EERO No management rights exception contrary to provisions in MMBA and current MOUs
Proposal Clause (d): ***Impasse Resolution Procedures***	***Legal Effect***
"All disputes and controversies pertaining to wages, hours, or terms and conditions of employment"	May be contrary to EERO provisions for impasse procedures May be contrary to Charter §400, giving authority to "exercise all powers necessary and appropriate to a municipal corporation and the general welfare of its inhabitants" by limiting or ceding such authority May be contrary to Charter §500, which establishes a Council-Manager form of government, e.g. a form of government whereby the Manager has administrative authority, by limiting or ceding such authority May be contrary to Charter §706, which vests all power of the City in the City Council, by limiting or ceding such authority May be contrary to Charter §802, which establishes a the manager as CEO and "head of the administrative branch,," who "shall have power and shall be required to" "appoint and remove employees," by limiting or ceding such authority May be contrary to Charter §906, which states "[t]he Chief of Police shall have power and be required to: (a) preserve the public peace; (b) execute and return all process issued to him/her by legal authority; and (c) exercise all the powers that are now of may hereafter be conferred upon sheriffs and other police officers by the laws of the State," by limiting or ceding such authority

[2] The word "grievances" is used in the request filed by Gary Niblock on March 3, 2006, to have a study session with the Council on binding arbitration. The term "disputes" is used in the Notice of Intent to Circulate Petition submitted to the City on March 14, 2006, by Alan Davis.

	May be contrary to Charter §907, which states "[t]he Chief of the Fire Department shall have the power and be required to: (a)supervise all matters relating to the prevention and extinguishing of fires and the protection of all property impaired thereby; and (b) make frequent inspection of all property within the City to enforce fire prevention regulations" by limiting or ceding such authority May be contrary to Charter §910, which requires Council to adopt by ordinance an administrative code "providing for a plan of administrative organization of the City government, which will cover all matters concerning the powers, duties, term of office, procedure of all the . . . employees of the City . . . . [including] all rules and regulations relating to fiscal operations, personnel management . . . , and other matters concerning the operation of the functions of the City government.," by limiting or ceding such authority May be contrary to Charter §1011, which requires Civil Service Commission to act as Board of Review for employee and applicant petitions May be contrary to Charter §1301 and §1302, which requires the City Manager to prepare and submit the annual budget to Council, and §1304, which requires the Council to adopt the annual budget. May be contrary to Charter §1305, which provides the City Council may amend or supplement the adopted budget upon the votes of five members "so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not include in the budget." May be contrary to Charter §1311, which requires establishment of a General Contingency Reserve Fund and allows City Council to transfer "as may be required for the purposes Council deems appropriate."
Hold period while sides can mediate/negotiate after receive arbitrator's decision	May violate letter and spirit of sunshine laws (Brown Act, Public Records Act.) because would require each side to maintain silence about proposals, changes in positions, and proposed ultimate agreement during hold period. Also provides that at the end of the 10-day period, the arbitrator's decision, with any modifications agreed to by the parties, shall be become public and binding – no opportunity for public input/open Council discussion.