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CONFIDENTIAL MEMORANDUM

TO: Alderwoman Marina Dimitrijevic

FROM: Robin Pederson, Deputy City Attorney

DATE: February 1, 2022

RE: Paid Parental Leave

On Thursday, January 27, 2022, you sent an email to our office in preparation for the Finance and Personnel Committee meeting scheduled Wednesday, February 2, 2022, requesting a response in writing to you regarding your sponsored proposed action unilaterally extending paid parental leave to general City employees.

You stated, "To project costs, we are working on the assumption that represented Fire and Police workers would have to bargain for the benefit at the bargaining table if they wanted it, and we seek the city attorney's confirmation that that is indeed the case." In short, we believe this to be the best and recommended course of action for the City to take regarding the current paid parental leave proposal.

You also included two questions that you directed for our attention. We respond following restating your questions:

1. Were the City to adopt this ordinance, would the represented, protective employees be able to go to court and demand this same benefit without have to go through the mediation/arbitration process? If they brought such a claim, would they be likely to prevail?

They would not be able to go to court because they would need to follow the administrative law applicable to them, here, most likely filing for a declaratory judgment with the Wisconsin Employment Relations Commission; however, they could certainly seek redress through legal process. It is our opinion though, with a relatively high degree of confidence, that the paid parental leave benefit, in its current form as applicable to general City employees only is a subject matter of mandatory bargaining for the protective service unions.

If that opinion is correct, then the unions would not prevail in a challenge. We believe that our opinion is correct because the applicable law makes matters related to wages, hours and conditions of employment, mandatory subjects; and paid parental leave, as a benefit, impacts all three.

2. Would granting this benefit unilaterally to General City Employees harm the City in any way as it conducts future negotiations with its represented, protective employees? Put another way, would they be able to make a credible case to an arbitrator that they were entitled to the benefit without having to bargain for it?

There is no particular or significant concern that offering the paid parental leave benefit, in its current form to general City employees, will in any way impair the City's future bargaining position in general or specifically as to the issue of a paid parental leave benefit for the protective service unions' members.

We do not foresee any compelling argument available to the unions, should one or all of them elect to file for declaratory judgment that the paid parental leave benefit is a benefit they should have been entitled to as a matter of right or course, were it provided to general City employees.