The Honorable Paul Fong
California State Assembly
22nd District
P.O. Box 042849
Sacramento CA 94249-0022

Dear Assembly Member Fong:

I am writing in response to your joint letter of May 20, 2011 to the Attorney General concerning the City of San Jose’s proposal to declare a “state of emergency” based upon its budget crisis to permit the city to unilaterally alter existing contracts with its employees and others. You raised two specific issues: 1) whether a city council may declare a state of emergency under the Emergency Services Act in response to a fiscal emergency experienced by the city caused by a revenue shortfall and outstanding financial obligations relating to ongoing city programmatic expenditures and contractual obligations; and 2) if a city council declares a state of emergency on this basis, whether a city may unilaterally revoke existing contractual obligations or suspend other statutes or ordinances relating to the administration of city government.

The proposed city council action you’ve described raises serious concerns. All levels of government are facing significant budget challenges, but a proposed solution that would result in the unilateral impairment of any contract—whether the contract relates to employment or business transactions—causes us deep concern. Financial problems faced by government must be resolved lawfully. To do otherwise would be irresponsible.

At the Attorney General’s direction, our office is reviewing the issues raised in your letter. Based on even a cursory review, it appears that declaring a “state of emergency” based on a financial crisis in order to justify the unilateral alteration of public contracts would be an extraordinary maneuver. Our office has previously opined on the issue of what constitutes a public “emergency” under California Constitution, article XIII B, section 3(c), which defines the circumstances under which a governmental entity may exceed the limit on appropriations set for a particular fiscal year. This office concluded then that “the inability to or difficulty in carrying out voluntarily undertaken normal governmental operations, because of financial straits, does not constitute an emergency[ .]” (65 Ops.Cal. Atty.Gen 151, 160 (1982)).