

RESPONSE TO GRAND JURY REPORT FORM

Report Title: The Need for Labor Negotiation Transparency
Report Date: June 1, 2015
Public Release: June 4, 2015
Response By: City of Novato City Council

FINDINGS

- We partially disagree with the findings numbered F1 and F3.
- We disagree with the finding numbered F2

The attached letter explains the City's response to the Findings.

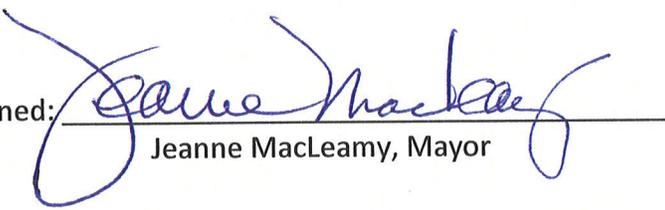
RECOMMENDATIONS

- Recommendations numbered R1 and R2 require further analysis.

The attached letter explains the City's responses to the Recommendations.

Date: 9/29/15

Signed: _____


Jeanne MacLeamy, Mayor

Attachment: Letter to The Honorable Judge Faye D'Opal and Marin County Civil Grand Jury Foreperson John Mann (6 pages)



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September 29, 2015

The Honorable Judge Faye D'Opal
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

John Mann, Foreperson
Marin County Civil Grand Jury
3502 Civil Center Dr., Rm. 275
San Rafael, CA 94903

SUBJECT: Response to Grand Jury Report, *The Need for Labor Negotiation Transparency*

Dear Judge D'Opal and Mr. Mann:

This letter serves as the Novato City Council's response to the Marin County Civil Grand Jury's report, *The Need for Labor Negotiation Transparency*, dated June 1, 2015. The City would like to sincerely thank you for the extension to submit its response.

The Novato City Council has always been fiscally prudent with regard to employee compensation. For example, the Council did not provide enhanced pension formulas in the early 2000s to its employees, when many other California public agencies did so. In addition, the City never contributed to retiree healthcare beyond the minimum amount mandated by CalPERS, so we do not have the significant unfunded liabilities of many other jurisdictions. It's also important to note that over the last six years, an extensive amount of information has been reported publicly regarding the costs and structure of compensation for Novato employees as part of the City's Fiscal Sustainability process.

As additional background for the City's response, it may also be helpful to understand more about the City's labor negotiations and employees. The City has 194 regular employees. There are six bargaining units that are represented by professional labor organizations and two units that are not formally represented by outside labor. This means 86% of the City's employees are members of a formal labor organization. In Novato, all current labor contracts, except one, expire on June 30, 2016. Typically, Novato would be preparing for negotiations in November/December, meeting with Council in January/February and initiating negotiations in March.

Lastly, it's important to note that the impetus for adopting COIN ordinances for some of the southern California agencies noted in the Grand Jury's report was adversarial labor relations. Those same conditions do not exist in Novato and other Marin agencies. For many years, Novato has used elements of "interested based

negotiations” as a means to review issues and concerns. The labor-management atmosphere is respectful and professional. The City Council strives to reach the best agreement for tax payers while also providing reasonable compensation for our employees based on the work being performed in order to attract and retain a talented work force.

The following are the City Council’s specific responses to the findings and recommendations.

RESPONSES TO FINDINGS

Finding 1: *The residents of Marin County pay taxes to support decisions made by the Board of Supervisors and City and Town Councils; however these residents have minimal opportunity to provide input into labor negotiations.*

Response: Partially Disagree.

The City Council agrees that residents pay taxes to pay for a variety of public programs and services. The residents also elect officials to make decisions on their behalf concerning those programs and services. Residents have the opportunity to communicate their desires and perspectives on programs and services and financial matters directly to the City Council in variety of ways.

The public also has an opportunity to comment before each closed session at which labor negotiations will be discussed and in Novato, residents have historically participated in this public comment opportunity. It should also be noted that the public can (and does) make comments, observations and recommendations about employee compensation throughout the year. In Novato, citizens have lobbied the Council for pension reform and actively utilized the public comment process to make their concerns heard before, during and after the negotiations process.

Finding 2: *The COIN process can be implemented without affecting the manner in which tentative agreements are negotiated but which nevertheless will ensure public awareness of the terms and cost of those agreements in advance of their being adopted.*

Response: Disagree.

While a properly constructed COIN ordinance may result in a higher level of public awareness, implementing an ordinance as recommended will absolutely change the manner in which labor agreements are negotiated. We are not making a value judgment about COIN in this context, but it introduces into the negotiations process steps that add time and cost and that frankly can become subjects of negotiations themselves. For example, the fiscal impact analysis not only injects added time, but the auditor’s determination itself could be disputed by either party to the negotiations.

The Grand Jury's report provides a list of five agencies that have adopted a COIN ordinance: Orange County and the cities of Costa Mesa, Beverly Hills, Fullerton and Rancho Palos Verdes. These are generally much larger organizations than Novato with greater resources. In addition, only one agency, the City of Costa Mesa, has executed a labor agreement using COIN. We believe the COIN process is still too new and untested to use as a basis for drawing the conclusion in the Grand Jury's finding.

The City Council would like more information about the bargaining experience from other public agencies under a COIN ordinance before committing to implementing into its current negotiations process. The City Council has concerns that implementation of a COIN ordinance could result in added costs to labor negotiations and delay the negotiations process considerably.

Finding 3: *The COIN process mandates transparency in government decision-making, allowing residents to be informed and participate in public discussion of how their tax dollars are spent.*

Response: Partially Disagree.

The City Council believes the COIN process is well-intentioned and that certain concepts of COIN have merit. However, some of the specific recommendations of the Grand Jury are not practical and may be costly and create extensive time delays. The City Council believes that there are opportunities for the public to participate and provide input and recommendations concerning labor negotiations through the public comment process. The public's right to be informed and to participate in discussions about any matter before the City Council, including labor negotiations, is guaranteed and protected by the City's rigorous adherence to the Brown Act.

The negotiations process in Novato begins with City staff providing detailed presentations of the City's budget, five-year forecast, cost of employee pensions and unfunded liabilities, to both the City Council and bargaining units. Consistent with the Brown Act, City staff provides extensive information to the City Council in closed sessions prior to the start of negotiations to provide background and to develop City's interests. All closed sessions of the City Council are required to be noticed under the Brown Act so that the public knows when the topic will be on the agenda and can speak to their elected officials beforehand. Historically, members of the public have actively participated during public comment prior to Council deliberations to express their concerns and thoughts.

Negotiations are a multi-faceted and complex process with parallel discussions occurring with multiple bargaining units simultaneously. The Novato City Council has always taken an active role in labor negotiations and regards tax-payers' interests of paramount importance as it considers proposals and their value and costs. While not present in closed sessions, the public's interests are well-represented by their elected officials.

RESPONSES TO RECOMMENDATIONS

Recommendation 1: *Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance prior to June 1, 2016, or prior to the next round of negotiations, whichever comes first.*

Response: This recommendation requires further analysis.

The Novato City Council believes that concepts within COIN could have value, but also believes it would be premature to adopt an ordinance or implement it by other means until the Orange County Employee Association complaint is resolved and there is a better understanding of how COIN has worked for the other agencies that have adopted it. In the meantime, Novato will continue to use an independent labor negotiator and will maintain the rigorous process it has developed for ensuring the Council is kept up-to-date on all aspects of labor negotiations and that it is making well-informed decisions.

The provisions of COIN, including the provision that mandates, "make public each proposal, after it is accepted or rejected by either Party, and publically verify the costs of that accepted or rejected proposal by an independent auditor" attempt to modify the negotiating relationship between the parties and change the manner in which tentative agreements are negotiated. Such a modification would likely need to be negotiated with each labor union prior to implementation.

On June 16, 2015, an Administrative Law Judge from the Public Employment Relations Board determined that implementing this provision of COIN was illegal without meeting and conferring in good faith. "While the ground rules used during negotiations do not, on their face, directly affect employees' wages, hours, or working conditions, the application of ground rules through the bargaining process would have a significant and adverse effect on wages, hours and working conditions," according to the ruling, written by Chief Administrative Law Judge Shawn B. Cloughesy. "If a public agency is able to exercise overall control over the ground rules of bargaining, it can short circuit and frustrate bargaining to the point it ceases to be a bilateral process."

Recommendation 2: *Marin County Board of Supervisors and each City Council and Town Council in Marin County in Marin County adopt and implement a COIN ordinance that includes, but is not limited to the following:*

Response: This recommendation requires further analysis.

The City of Novato already utilizes one recommended element of COIN, which is the use of an independent labor negotiator. Other elements have potential consequences that at this point have not been fully analyzed and for which there is very limited practical experience. For example, while requiring that a tentative agreement be placed on two consecutive public meeting agendas seems reasonable, there may be circumstances where this requirement conflicts with section 3505.1

of the Meyers-Milias-Brown Act, which requires tentative agreements be accepted or rejected within 30 days of the date it is first considered at a duly noticed public meeting. A variety of factors, such as meeting frequency and meeting cancellations, could impact the ability to comply with this requirement.

1. Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.

The City of Novato has retained an independent negotiator for its negotiation process for almost 15 years and anticipates it will continue to do so in the future. The independent negotiator meets with the City Council and staff in all closed sessions. In addition the independent negotiator is the lead negotiator in four out of the six bargaining units that have professional labor representatives.

2. Hire an independent auditor to determine the fiscal impact of each provision in the current contract, and make this analysis available for public review.

Prior to beginning negotiations, City staff provide detailed presentations of the City's budget, five-year forecast, cost of employee pensions and unfunded liabilities, to both the City Council and bargaining units. The City's budget, labor agreements and salary schedules are available on the City's website, as are the comprehensive annual financial audits (CAFR). The City's Fiscal Sustainability Plan has extensive cost and both salary plus benefit information outlined. The City's annual adopted budget contains a summary breakdown showing the compensation components of each work unit within the City (see page 71 of the adopted FY 14/15 budget; the adopted FY 15/16 budget will have a similar page and will be released at the end of September).

The City does not believe that the hiring of an "independent auditor" to determine the fiscal impact for each provision in each contract is necessary. The City's Finance Division is an active participant in the labor negotiations process and provides timely and accurate information to the City Council, the independent labor negotiator and Human Resources staff. The City Council believes this provisions would create an added cost to labor negotiations and delay the process considerably.

It's also important to note that the City utilizes the services of an independent actuary to review its pension plans and OPEB liabilities, and if a pension enhancement is contemplated, the same actuary prepares an analysis. All of this information is made public. There is also detailed documentation and analysis of the City's financial records, including benefit costs and liabilities, required by the Governmental Accounting Standards Board (GASB).

3. Make public each proposal after it is accepted or rejected by either Party, and publically verify costs of that accepted or rejected proposal by an independent auditor.

The bargaining process, which is governed by the Meyers Milias Brown Act, is complex as it involves many topics, proposals and counter proposals made by each party. Auditing every single proposal, with no distinction for whether or not the proposal was agreed to, is not fiscally prudent,

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particularly since many of the proposals go through an iterative development process before being included in the final tentative agreement or they can ultimately be abandoned.

There are various approaches to labor negotiations, including the one inferred in this recommendation, which is to consider each proposal independently and tentatively agree or reject each and every proposal over the course of negotiations. Novato and its labor groups, like many agencies and their unions, use a different approach in which tentative agreement is reached on a comprehensive package of proposals. As such, this recommendation may not be practical in Novato given our current approach to bargaining.

4. *Make public seven days prior to a Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.*

The City will implement this recommendation in part by making tentative agreements public a minimum of seven days prior to the City Council meeting at which they are considered for approval. The City already provides a statement of fiscal impact for every item that is formally presented for approval on the City Council agenda. The City will continue this practice with the tentative agreements when they are made public. The City will not, however, seek independent verification of the fiscal impact. The City has well-qualified internal staff to determine the fiscal impact and has always endeavored to provide the an accurate estimate of the cost of the agreements.

5. *After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agenda: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.*

While on the surface this recommendation seems to make sense and the City supports additional time for public review, we believe it needs to be considered in conjunction with the above recommendation and an agency's ability to comply with the time frame mandated in MMBA Section 3505.1.

The City applauds the Grand Jury for its interest and commitment to public sector transparency and appreciates the opportunity to respond to the report.

Sincerely,



Jeanne MacLeamy
Mayor