



Kenneth R. Wachtel
Mayor

Garry Lion
Vice Mayor

John McCauley
Councilmember

Jessica Jackson
Councilmember

Stephanie Moulton-Peters
Councilmember

James C. McCann
City Manager

September 14, 2015

The Honorable Faye D'Opal
Judge of the Marin County Superior Court
Post Office Box 4988
San Rafael, CA 94913-4988

Mr. John Mann, Foreperson ✓
Marin County Grand Jury
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

Re: Response to Grand Jury Report June 1, 2015, *The Need for Labor Negotiation Transparency*

Dear Honorable Judge D'Opal and Mr. Nixon:

This letter provides the City of Mill Valley's response to the Grand Jury Report dated June 1, 2015. The Report directs the City of Mill Valley to respond to Findings Nos. 1-3 and Recommendations Nos. 1-2. The Findings involve conclusions of fact that the City of Mill Valley has little or no independent basis to evaluate. In responding to these Findings, the City of Mill Valley assumes that the information in the Report is correct and relies on that information.

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.*

City's Response to Finding 1:

The City of Mill Valley does not agree that Mill Valley residents have minimal opportunity to provide input into labor negotiations.

The City of Mill Valley is a small town in Marin with 143 permanent, full-time employees, with 81 of these employees belonging to one of our four recognized labor associations which bargain collectively. The other 62 employees are unrepresented. Mandatory subjects of bargaining include wages (and other forms of compensation, i.e. fringe benefits), hours and working conditions. Current labor agreements, salary schedules and the City of Mill Valley's budget outlining personnel costs are available for review by the public at City Hall or on the City's website. Additionally, labor negotiations in Mill Valley always begin by being placed on a City Council closed session agenda; this serves to notify the public that discussions are commencing; the public has the option to address the City Council at any public meeting about labor negotiations and labor relations during the Public Open Time period at any City Council meeting. Proposed labor agreements are always placed on the City Council agenda and the opportunity for public comment is always available prior to Council consideration.

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 costs of those agreement in advance of their being adopted.

City's Response to Finding 2:

The City of Mill Valley does not agree that the COIN process can be implemented without affecting the manner in which tentative agreements are negotiated. In City of Mill Valley, the negotiation process is not lengthy. The City Manager and Director of Finance and Human Resources first meet with the City Council in a noticed closed session. The Director of Finance and Human Resources together with the City's independent labor negotiator then conducts meetings with the bargaining unit representatives to seek agreement on terms. Pausing during negotiations to call for an independent audit of a proposal then circulating that proposal for public discussion even if it has already been rejected by one side or the other is a significant change and would affect the manner as well as the timing and tone of labor negotiations.

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

City's Response to Finding 3:

The City of Mill Valley agrees that the COIN process does provide for transparency, and with transparency, residents potentially would participate more in public discussions on the information presented through that process.

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 earlier.*

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

- 1. Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.*
- 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.*
- 3. Make public each proposal, after it is accepted or rejected by either Party, and publicly verify the costs of that accepted or rejected proposal by an independent auditor.*
- 4. Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.*
- 5. After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: 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.*

City's Response to Recommendations:

The Grand Jury's recommendation that the City of Mill Valley adopt a COIN ordinance attempts to address a perceived lack of transparency regarding the City's labor negotiation process and the reporting of fiscal impact of the resulting labor agreement. Transparency in government is an ideal and goal shared by the City's elected officials and management staff. While we appreciate and agree with the Grand Jury's position that information regarding the negotiation process and employee compensation should be easily accessible by the public, we believe the City of Mill Valley already provides sufficient notice and an opportunity to comment when tentative agreements have been reached, and makes available detailed cost information regarding current and anticipated labor costs. Therefore we believe the recommendation that Mill Valley adopt a COIN ordinance and incur the costs associated with its implementation is not warranted.

The City of Mill Valley will commit to providing additional time (not less than seven days) for public review of the tentative agreements and supporting materials as suggested by the Grand Jury to provide a longer review period. In addition, the City will seek analysis from an

in a broad or “me too” fashion to other employee groups including non-represented employees including department heads and the City Manager. Therefore, it is understandable for the concern of a perception of some conflict of interest to be expressed as negotiated benefits are applied to other employee groups. However, it should be noted that the City Council receives independent and objective advice from the City’s independent labor negotiator. Additionally, the independent action by the City Council to review recommendations, provide direction and to consider the terms and financial implications of labor agreements in open public City Council session provides oversight and insures independent control over labor and monetary decisions.

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.*

The fiscal impact of the current labor agreement with the City’s organized bargaining groups, as well as the cost of salaries and benefits for unrepresented employees, is outlined in detail in the City’s annual operating budget. Department budgets include employees’ salaries, as well as line item detail (cost) for each City paid benefit (health premiums, retirement, specialty pay, uniform allowance, etc.). The City of Mill Valley’s budget, labor agreements and salary resolutions are available on the City of Mill Valley’s website, as are the comprehensive annual audits and actuarial reports identifying the City’s pension liabilities. Additionally, City of Mill Valley has had a well-established practice of third party audits of the liabilities associated with our employment costs, specifically pension and other post-employment benefit costs. These third-party audits are presented to the public at our regular public City Council meetings (which are televised and archived for public review) and members of the public are welcome to address the City Council about their content and findings.

The literature on COIN implies that governing boards are poorly informed about the financial impacts of employment agreements when they approve them. This is not the case with City of Mill Valley. Our practice is to fully brief the City Council of the financial implications, both immediate and long-term, of employment agreements in closed session as negotiations are underway and then in full detail again in staff reports, for the City Council meeting where the employment agreements will be consider for authorization. The staff reports and tentative employment agreements are available to the general public prior to the public meeting and are posted and archived on the City website for public use. Additionally, the City will negotiate with the labor groups to include in the adopted ground rules for labor negotiations a provision to allow, in the case that impasse is reached in negotiations, the reporting of the fiscal analysis of the final rejected proposal.

The City of Mill Valley does not need to hire an “independent auditor” to determine the fiscal impact of each provision in the current contract and would find that additional cost an unnecessary and undue public expense.

3. *Make public each proposal, after it is accepted or rejected by either Party, and publicly verify the costs of that accepted or rejected proposal by an independent auditor.*
4. *Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.*

Labor negotiations are an iterative process in Mill Valley where proposals and counter proposals are exchanged and discussed in a fairly informal way until a tentative agreement is reached. This can happen in as little as two or three meetings if both sides have clear authority from those they represent. The tentative agreement is then presented to the City Council (at a regular City Council meeting) for their consideration along with a staff report that includes a statement as to the total cost of the proposal. The Director of Finance and of Human Resources, who does not benefit from the outcome, prepares this cost analysis and is responsible for its accuracy. The City does not need to hire an independent auditor to cost out the tentative agreement. The City will seek analysis from an independent actuary of long-term costs or savings associated with any changes proposed through labor agreements affecting Other Post-Employment Benefits (OPEBs) for existing employees. Further, the City will continue our practices of reporting in the written staff report the costs (direct and indirect as well as immediate and future) associated with changes to salaries or benefits proposed through labor agreements. Pursuant to state law, the tentative agreement, staff report and all other agenda materials are made public at least 72 hours before the Council meeting. However, it is City of Mill Valley's practice to publish and make available to the public agenda items and supporting materials generally five full days before the City Council meeting. City of Mill Valley will commit to providing additional time (not less than seven days) for public review of the tentative agreements and supporting materials as suggested by the Grand Jury to provide a longer review period. Additionally, the City will negotiate with the labor groups to include in the adopted ground rules for labor negotiations a provision to allow, in the case that impasse is reached in negotiations, the reporting of the fiscal analysis of the final rejected proposal.

5. *After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: 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.*

The City of Mill Valley City Council holds regular meetings twice a month. At those meetings, discussion of any and all agenda items is welcome. If concerns are raised by the public that suggest additional time is needed to fully analyze the proposal, the City Council has the discretion to continue the item to the next meeting. To require that a tentative labor agreement be placed on two consecutive agendas would unnecessarily extend the review and approval process and is not warranted. It should

Hon. Faye D'Opal
Mr. John Mann
September 14, 2015
Page 7

be noted however, that the City Council may on a case-by-case basis, continue a labor agreement item to a subsequent meeting should they determine that additional review time is appropriate.

* * * * *

The City of Mill Valley City Council reviewed and approved this response on September 8, 2015 at a duly noticed and agendized public meeting. If you have further questions on this matter, please do not hesitate to call.

Very truly yours,



James C. McCann
City Manager

cc: City Council
City Attorney
file