

FORM FOR RESPONDING TO GRAND JURY REPORT

Report Title: The Need for Labor Negotiation Transparency

Report Date: June 1, 2015

Public Release Date: June 4, 2015

Response by: September 4, 2015

FINDINGS

- I (we) agree with the findings numbered: 3
- I (we) disagree wholly or partially with the findings numbered: 1, 2

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered _____ have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered _____ have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered 1, 2 require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 9/3/15 Signed: 
Mayor, City of Sonoma

Number of pages attached 5



CITY OF SAUSALITO

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September 3, 2015

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

SUBJECT: Response to 2014-15 Civil Grand Jury Report --
The Need for Labor Negotiation Transparency

Dear Judge D'Opal:

Pursuant to California Penal Code Section 933, et seq., please accept the response of the City Council to the Grand Jury Report submitted by the 2014-15 Marin County Grand Jury to the City of Sausalito, entitled "The Need for Labor Negotiation Transparency." The City Council approved this response on September 1, 2015.

Introduction

The Sausalito City Council has a longstanding commitment to transparency in government and appreciate the efforts made by the Grand Jury to evaluate the impact of transparency in labor negotiations, specifically with respect to the Civic Openness in Negotiations (COIN) ordinances which have recently been approved in some jurisdictions.

The City Council feels strongly that its labor negotiations have met the spirit and intention of the COIN ordinance in providing information and an opportunity for public comment prior to the adoption of changes to wages, hours, or other terms and conditions of employment. To that end, the City has enacted a number of steps to increase public knowledge and engagement in the labor negotiations process. For instance, the City performs third-party audits of the liabilities associated with its employment costs, specifically pension costs and retiree medical benefits. These third-party audits, which include actuarial analyses of the City's pension and retiree medical liabilities are publicly available on the City's website. In addition, for a number of years, the City has utilized an outside labor attorney and negotiator as a consultant on matters involving labor negotiations. This consultant has made presentations to the City Council in both closed sessions and public meetings prior to the start of negotiations, including a public presentation on labor negotiations on February 27, 2015.

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City staff also provides detailed information on the fiscal impact of labor negotiations to the City Council, both in closed sessions dedicated to the labor negotiations process as well as in public meetings surrounding adoption of the City's annual budget and public meetings adopting labor agreements. City staff provides detailed staff reports outlining the fiscal impact of negotiated agreements to the public prior to the adoption of any tentative agreement by the City Council.

During the past few years, the City has successfully negotiated informally with its labor unions, providing them an opportunity to agree to terms consistent with the City's publicly-adopted budget rather than engage in a more formal negotiations process. Because this informal process has been successful (even during concessionary bargaining), the City has not needed to engage in a more formal process. While these informal negotiations have been handled internally, it should be noted that the City's negotiators are all unrepresented employees. However, it has been City policy to link Management and Confidential employees with the SEIU bargaining group for purposes of determining wage and benefit changes. The City Council will consider naming an outside consultant as lead negotiator to avoid this issue in the future.

Grand Jury Findings, Recommendations, and the City's Response

Grand Jury 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.*

The City Council agrees in part and disagrees in part with this finding. There is no question that the residents of Marin County pay taxes or that those taxes provide the revenues to support the City's provision of services to the community.

However, the City Council does not agree that residents have only minimal opportunity to provide input into labor negotiations. As noted above, the City Council routinely provides information, in the form of staff reports and third party audits, to the public. In addition, the City Council has held public meetings focused on the subject of labor negotiations, the most recent of which was a February 27, 2015 presentation by outside labor counsel on the labor negotiations process. Members of the public are encouraged to provide input on issues of employee compensation and benefits and often do so, either during public comment at Council or committee meetings or directly to City staff or elected officials.

Grand Jury 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.*

The City Council disagrees with this finding. Labor negotiations can be a lengthy and difficult process. However, the City of Sausalito, like many California Cities has found success in recent years in negotiating with the labor unions in an informal manner, providing Union leadership with informal proposals consistent with the publicly-adopted City Budget and allowing employees to accept these informal proposals rather than entering into a full-blown negotiations process.

While this process may not be wholly incompatible with some elements of COIN, especially if the informal process is allowed to proceed prior to the COIN process, the COIN process envisions a more robust and expensive process for negotiations, including the use of an outside negotiator and mandated posting of proposals on the City's website.

In addition, because of the newness of COIN in other jurisdictions, the City Council does not believe there have been sufficient negotiations under the provisions of COIN to determine whether the COIN process sufficiently changes the manner and timing of the negotiations process. The City Council would recommend that the Grand Jury continue its study of the impact of COIN as those jurisdictions which have adopted COIN gain more experience with the process.

Finally, the City Council notes that the recent decision by the Chief Administrative Law Judge for the Public Employment Relations Board (PERB) concluded that elements of the COIN ordinance, including whether or not proposals and counter proposals would be posted on the agency's website, would have to be negotiated with each labor union before implementation.¹ While the County of Orange has appealed this decision to the full PERB Board, the requirement that the City bargain over groundrules implementing the sunshine provisions of the COIN ordinance prior to bargaining over substantive issues would negatively impact the timeline of negotiations.

Grand Jury 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.*

The City Council agrees that the COIN process mandates transparency in government decision-making and that the increased information available to the public could stimulate additional discussion regarding the wages and benefits of our public servants. However, the City already provides several opportunities for members of the public to provide input to the City Council on matters of public interest, including matters which are mandatory subjects of bargaining. As stated above, the City Council held a public meeting on the subject of labor negotiations in February of this year, in advance of the beginning of the negotiation process.

Grand Jury 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.*

This recommendation requires further analysis. First and foremost, the City Council believes that it is prudent to wait for the resolution of current legal challenges to various aspects of existing COIN Ordinances prior to committing to a COIN process. Second, this would also allow time for other agencies which have adopted the COIN to complete negotiation using the COIN and to identify concerns or changes which may make the COIN more effective.

¹ *Orange County Employees Association v. County of Orange* (2015) Proposed Dec. on LA-CE-934-M, LA-CE-935-M, and LA-CE-944-M at p. 26.

Finally, the legislature is currently considering SB 331 (Mendoza), which as amended on August 17, 2015, would "enact the Civic Reporting Openness in Negotiations Efficiency Act to establish specific procedures for the negotiation and approval of certain contracts valued at \$250,000 or more for goods or services by cities, counties, cities and counties, or special districts that have adopted a civic openness in negotiations ordinance, or COIN ordinance." This bill would create a substantial additional obligation on negotiations with vendors and other outside contractors for cities which have adopted a COIN ordinance.

Given the foregoing, the City Council believes it is appropriate to wait for conditions to stabilize and allow further analysis of the impact of COIN ordinances in other cities before considering adoption.

Grand Jury 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.*

Recommendation # 2 significantly overlaps with Recommendation #1. Therefore, the City Council's response to Recommendation # 2 incorporates its response to Recommendation # 1 as if fully set forth in this response.

In addition, the City Council believes that its labor relations philosophy embraces the spirit and intention of the COIN ordinance in providing information and an opportunity for public input prior to the adoption of changes to wages, hours, or other terms and conditions of employment. In addition, the City has hired an experienced outside labor negotiator and attorney to advise the Council on matters of labor relations and to make presentations in open session prior to the start of negotiations; makes public audits of the City's financial liabilities, especially with respect to pension and retiree medical benefits; and provides detailed analyses in the form of staff reports prior to the adoption of any new Memorandum of Understanding with a labor union. Once the PERB and legislative processes have been completed, the City Council will consider whether to adopt any or all of the above terms, including the hiring of an independent negotiator to avoid any appearance of conflict.

Conclusion

In conclusion, the City Council appreciates the hard work of the Grand Jury in exploring issues of concern to the residents of Marin County and would like to thank the Grand Jury for the extension of time to respond to this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Theodore", written in a cursive style.

Thomas Theodores
Mayor

c: Marin County Grand Jury

Enclosures

1. Sausalito retiree medical valuation
(<http://www.ci.sausalito.ca.us/Modules/ShowDocument.aspx?documentid=13849>)
2. Sausalito PERS valuation
3. February 27, 2015 presentation to the City Council on Labor Relations
4. SB 331 (Mendoza)



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September 8, 2015

Jack Nixon, Foreperson
Marin County Civil Grand Jury
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

RE: Grand Jury Response – “The Need for Labor Negotiation Transparency”

Dear Mr. Nixon:

At their meeting of September 1, 2015, the Sausalito City Council reviewed and approved the response to the Grand Jury Report “The Need for Labor Negotiation Transparency.”

Enclosed you will find our response. By copy of this letter, Judge D’Opal will also receive one copy of the report.

If you have any questions, please feel free to contact me.

Respectfully,

Lilly Whalen
Deputy City Clerk

cc: Honorable Judge Faye D’Opal

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