



# City of Palo Alto

## Finance Committee Staff Report

(ID # 9549)

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**Report Type: Action Items**

**Meeting Date: 9/4/2018**

**Summary Title: Colleague's Memo on Fiscal Transparency in Labor Negotiations**

**Title: Review and Discussion of the Colleagues' Memo From Council Members DuBois, Filseth, Scharff, and Tanaka on Fiscal Transparency in Labor Negotiations**

**From: City Manager**

**Lead Department: City Manager**

### **Recommendation**

Staff recommends the Finance Committee review and discuss next steps in regards to the Colleagues' memo from Councilmembers DuBois, Filseth, Scharff, and Tanaka on Fiscal Transparency in Labor Negotiations.

### **Discussion**

At the February 26, 2018 City Council meeting, four Councilmembers brought forward a colleagues' memo in regards to transparency during the labor negotiation process. The following motion was unanimously approved by the City Council.

MOTION: Vice Mayor Filseth moved, seconded by Council Member Wolbach to:

- A. Refer the proposal regarding Fiscal Transparency in Labor Negotiations to the Finance Committee for refinement and to develop the fiscal and actuarial analysis template;
- B. Direct Staff to, at the appropriate time, initiate Meet and Confer discussions with the City's bargaining groups regarding this proposed Policy; and
- C. Return the final proposal to Council.

In accordance with the first step in this action, the attached memo is presented to the Finance Committee for review. Staff has also attached the transcribed minutes for this item during the February 26, 2018 City Council meeting for ease of reference as well.

### **Resource Impact**

No implications on resources are anticipated as a result of this item; however, once a final proposal is determined, significant staff and potentially consultant resources may be necessary to both discuss this proposed policy and meet the requirements of a final policy.

**Attachments:**

- Attachment A: Colleagues' Memo on Fiscal Transparency in Labor Negotiations from February 26, 2018
- Attachment B: Excerpt Minutes From 02-26-2018 Special City Council Meeting



# City of Palo Alto

## COLLEAGUES MEMO

**DATE:** February 26, 2018

**TO:** City Council Members

**FROM:** Council Member Filseth, Councilman Tanaka, Mayor Scharff, Council Member DuBois

**SUBJECT:** COLLEAGUES' MEMO FROM COUNCIL MEMBERS DUBOIS, FILSETH, SCHARFF, AND TANAKA ON FISCAL TRANSPARENCY IN LABOR NEGOTIATIONS

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### Goals:

Decisions on Staff wages, benefits, and future pension and retiree-medical obligations have significance both to the community's fiscal circumstances and to its ability to recruit and retain highly qualified employees. Yet these wage, benefit and pension decisions are currently reached through essentially private negotiations, without meaningful opportunity for public examination. The goal of this Council Policy is appropriate transparency: to provide timely and meaningful fiscal and actuarial information about labor negotiations to the public, while protecting the fairness and integrity of the bargaining process.

### Background and Discussion:

In general in Palo Alto, as in the majority of California cities, unless otherwise agreed to by the City and the bargaining unit, collective bargaining negotiation sessions under state law -- the Meyers-Milias-Brown Act (MMBA) -- are confidential. While Council is briefed and gives direction in closed sessions, virtually no information becomes available to the public until a tentative Memorandum of Agreement (MOA) has been negotiated between the City and the bargaining unit and is presented to the Council for final approval, by which time public review and comment are essentially irrelevant to the outcome of the process.

These outcomes, such as those affecting the City's unfunded liabilities (pension and retiree medical), are public concerns which will be borne by the community for decades, and merit meaningful public review.

A handful of California cities have adopted practices providing for greater fiscal and actuarial transparency during the bargaining period, without fundamentally transforming the negotiation process. This Council Policy proposal borrows relevant elements from the City of San Jose's existing Council Policy 0-39 (2008)<sup>1</sup>, along with one or two ideas from the City of Fullerton's Council Resolution 2016-41 (2016)<sup>2</sup>.

### **Proposal:**

1. This Policy is meant to apply to contract negotiations between the City and a Bargaining Unit during the time from the first negotiating session to approval of an MOA. It is not intended to cover a range of other circumstances such as administrative or judicial dispute resolution processes. [San Jose Policy]
2. The City shall prepare a baseline fiscal summary of the costs and liabilities associated with the bargaining unit; this summary will be posted on the City's website for public review together with the agenda for the first Council closed session with the City's labor negotiators. The fiscal data should normally be collated from other existing city documents. [Public Information]
3. Formal written proposals made or received by City negotiators shall be posted for public review on the City's website within two days after transmittal to the other party's designated negotiators. [San Jose Policy]
4. Public posting of written proposals made by the City shall be accompanied by a fiscal analysis, including impact on the unfunded actuarial liability (UAL) for pension and "other post-employment benefits" (OPEB) associated with the bargaining unit. [Fullerton Policy]
5. The City shall also post on the City's website a fiscal analysis of any MOA proposed for adoption by Council; and in the event of an impasse, of both parties' last best and final offers.
6. Council may authorize and direct City negotiators in open or closed session. If done in closed session, the closed session discussions themselves are to remain confidential. [San Jose Policy]

### **Recommendations:**

1. The City Council should refer this proposal to the Finance Committee for refinement and to develop the fiscal and actuarial analysis template; and,
2. At the appropriate time, Staff should initiate Meet and Confer discussions with the City's bargaining groups regarding this proposed Policy.

### **Resource Impact:**

The primary impact will be on staff time, especially during the development of the proposal, its vetting, discussions with labor representatives, and committee and Council sessions to discuss and approve. Subject to specific requirements for fiscal analyses, the ongoing operational

impacts should be small, as these analyses are already standard factors in negotiation strategies and bargaining itself.

**Appendices:**

- A. Comparison of Other Cities' Procedures
- B. Example Web Site and Public Written-Proposal Posting (City of Fullerton)

**References:**

1. City of San Jose Council Policy 0-39  
<https://www.sanjoseca.gov/DocumentCenter/View/3834>
2. City of Fullerton Council Resolution 2016-41  
[https://www.cityoffullerton.com/gov/opengov/labor\\_negotiations/default.aspprivate](https://www.cityoffullerton.com/gov/opengov/labor_negotiations/default.aspprivate)

**Appendix A: Comparison of Other Cities' Procedures**

Issue	Civic Openness ("COIN") Ordinances		Transparency Policies	
	Costa Mesa COIN Ordinance	Orange County COIN Ordinance	Fullerton Council Resolution	San Jose Council Transparency Policy
Negotiating parties	Independent Negotiator	<i>(not specified)</i>	<i>(not specified)</i>	City Manager/Staff; Council members specifically enjoined.
Fiscal analysis	For Opening Proposal; by Independent Auditor	For Opening Proposal; generated internally	For all written offers by City; generated internally	<i>(not specified)</i>
Actuarial analysis as part of fiscal analysis?	Required	Required	<i>(not specified)</i>	<i>(not specified)</i>
Opening proposal posted	30 days before Council consideration; including Fiscal Analysis	30 days before Board consideration; including Fiscal Analysis	<i>(not specified)</i>	Posted on City web site after submission to designated negotiators
Counter-proposals - public disclosure	Proposals discussed in Closed Session must be reported "once they are no longer being considered." Surrounding discussion may remain confidential.	Counter-proposals must be disclosed; timing not specified	Written offers which have been rejected in Closed session must be reported in Open session. "Rejection" defined as written counteroffer.	Written proposals made or received to be posted after submission to designated negotiators. "Periodic" summary in open session by City Manager.
Final MOU - advance public disclosure	Can be adopted by Council after 2 council meetings where public may comment. Proposal details must be posted 7 days in advance of first such meeting.	Can be adopted by Board after 2 Board meetings where public may comment. Proposal details must be posted 7 days in advance of first such meeting.	<i>(not specified)</i>	<i>(not specified)</i>
Other public disclosure	Any contacts between council members and bargaining-unit representatives	Dates, durations, locations, names of participants in negotiating sessions. Contacts between Board members and bargaining-unit representatives.	Any ex-parte communication between council members and bargaining-unit representatives.	<i>(not specified)</i>

## Additional Comments on Other-Cities Procedures Not Included in the Proposal

Other cities' policies included a variety of other elements; these were deemed of lower relevance to Palo Alto and left out of this proposal, but could be discussed.

1. **Negotiation Agents.** Both the San Jose and Fullerton policies contain provisions discouraging side discussions between Council members and the bargaining unit. This has not recently been a concern in Palo Alto, so these provisions were left out of the Proposal.
  - a. *San Jose Policy:* Unless requested by the City Manager, members of the City Council or other Council appointees should not discuss with any bargaining unit representative any matter that is a subject of negotiations during the bargaining process.
  - b. *Fullerton Policy:* City Council members will report any ex parte communications, with any and all employee association representatives regarding subject matter of a pending meet and confer process.
2. **Open-Session Review.** San Jose's policy includes an additional provision for regular open-session reviews of offers during the bargaining period. Potential concerns would be (1) a potentially large numbers of such open sessions, given the number of bargaining units in Palo Alto; and (2) potential to distract focus onto direct lobbying of Council and public, and away from core negotiation process.
  - a. *San Jose Policy:* The City Manager will provide periodic updates on labor negotiations to the Council in open session. These updates shall include a summary of proposals exchanged since the last update. Bargaining unit representatives may comment on the City Manager's open session update; the City Council may listen but not respond.
3. **Independent Financial Auditors required.** No strong evidence this is needed in Palo Alto at this time.
  - a. *Costa Mesa Policy:* The city shall have prepared on its behalf, by an independent auditor in co-operation with the Finance Director, a study and supplemental data upon which the study is based, determining the fiscal impacts attributed to each term and condition made available to the members of all recognized employee organizations.
4. **Fully-Open Bargaining Sessions.** One model used in some districts in the United States, notably school boards, is a requirement that all bargaining sessions be open to the public and noticed. Supporters note full transparency aspect; some critics charge that it distorts the bargaining process towards public lobbying vs actual negotiation.
  - a. *Colorado State Proposition 104 (passed Nov-2014):* No adoption of any proposed policy, position, resolution, rule, regulation, or formal action ... shall occur at any executive session

that is not open to the public ... any meeting of a Board of Education at which a collective bargaining agreement is discussed shall be open to the Public, and any notice required by Section 24-6-403(2)(C), C.R.S., shall be given prior to the meeting.

(Applies to all Colorado public school districts)



## Labor Negotiations

- Government Home
- Departments >
- City Council >
- Fullerton Community Center
- Library >
- Government Officials >
- Fullerton Sister City Association
- Commissions, Committees & Boards
- Open Government >
- City News

In 2016, the Fullerton City Council updated Municipal Code Title 2, Chapter 2.33 regarding transparency and accountability in labor negotiations.

- An annual analysis of cost and liabilities associated with each bargaining unit agreement must be completed, audited, and published.
- Outside negotiators are required under circumstances set out in the Ordinance.
- Tentative agreements require a public review period before Council consideration and a two Council meeting review process before approval.

Resolution No. 2016-41, adopted on July 19, 2016, established additional instructions that include:

- Reporting out of any rejected offers.
- Post rejected offers, subsequent to reporting out, on the City of Fullerton website.
- City Council members will report any ex parte communications, with any and all employee representatives, that are regarding a pending meet and confer process.



### Annual Fiscal Analysis Reports

**Current Negotiations** - follow link for up to date negotiations information



# CITY OF FULLERTON

## FIRE DEPARTMENT

To: Gretchen Beatty, Julia James, and Steve Berliner  
 From: Adam Loeser, Jamie Newton, John Stokes, and Ben Garrett  
 Subject: Fullerton Fire Management Association (FFMA) Contract Negotiations  
 Date: July 21, 2016

The FFMA respectfully submits our second proposal to the City:

- Two year contract with a salary adjustment of 5% the first year with retroactivity to July 3, 2015 and a step increase the second year with retroactivity to July 1, 2016.
- Amend Article 6: Schedule of Base Salary Rates & Allocation of Classes to Salary Ranges to read "not less than a 5% increase over his/her current salary rate, including all PERS-based incentives." Member's paycheck will then show a true 5% promotional pay increase.
- Amend Article 6: Delete reference to Appendix A1.
- Amend Article 10.F.: In the event that the Command Staff Agreement is terminated during the term of this Agreement, Education Incentive Pay-Plan 1 and Plan 2 will be reopened for discussion between the City and the Association.

Thank you for your consideration.

Attachment B

**Excerpt Minutes from the  
Special City Council Meeting  
on February 26, 2018**

Special Meeting  
February 26, 2018

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:10 P.M.

Present: DuBois, Filseth, Fine, Holman, Kniss, Kou, Scharff, Tanaka, Wolbach

Absent:

13. Colleagues' Memo From Council Members DuBois, Filseth, Scharff, and Tanaka on Fiscal Transparency in Labor Negotiations.

Council Member Scharff returned to the meeting at 10:33 P.M.

Mayor Kniss: Let's move forward with one last item we're taking up tonight. This is a Colleagues' Memo from Council Members DuBois, Filseth, Scharff and Tanaka on fiscal transparency in labor negotiations. Whomever is going to introduce this.

Vice Mayor Filseth: This is about fiscal transparency. It's a proposed policy modeled after an existing San Jose Council policy, which says that during the bargaining process formal offers and counteroffers should be posted to the City's website along with a fiscal analysis including any impact on long-term liabilities. It's not intended to change the bargaining process itself. It introduces public visibility at key checkpoints during the process. The current practice is there is no public information at all during the bargaining process until a tentative Memorandum of Understanding (MOU) is reached and presented to Council for an up or down vote. By that time, it's essentially too late for public review and comment to have any bearing on the outcome of the process. City finances and pension liabilities in particular are a major public concern. With decisions affecting pensions, we're talking about hundreds of millions of dollars in public debt that will take the community many decades to pay off. Currently, those decisions are very opaque. The City is a public agency. This is a major public concern that merits public review and input and transparency. Matters of serious public concern done entirely in Closed Session are what we have today. There's no compelling reason that so much of it needs to be done out of sight. Again, this is not intended to change the bargaining process itself. It introduces

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public visibility at key checkpoints during the process. What's proposed here is a Council policy, not an actual ordinance, with discussions from legal. Because it's not proposed as a formal Ordinance, Council would still be allowed to make exceptions if it deemed fit. Finally, this is about good governance. Beyond that, eventually cities all over the State of California are going to be asking the public to make a real sacrifice over these outstanding liabilities. Government and labor are going to have to work together to bring everybody along with this. I believe that California residents are not going to be happy as the full import of this comes home. If we're going to bring everybody along with this, then all of the State agencies are going to need to be very transparent and inclusive with the public about this top to bottom. This a tide that is coming in. Let me make a Motion as well.

Mayor Kniss: Wait a second, a public speaker. Thank you, Vice Mayor. Lynn Krug. Welcome.

Lynn Krug: Good evening, however late in the evening. It's Lynn Krug. I am the former Chapter Chair of Service Employees International Union (SEIU). I'm here on behalf of SEIU members this evening to take notes. I'd like to say that many of us are listening from home tonight, all those people that commute an hour or 2 hours each way to work. We want to have a respectful conversation with you in the future. Those responses will be forthcoming. I'd like to see that we maintain a relationship—this is from me personally—that is welcoming to future employees. As Jim Keene mentioned earlier, staffing issues are real. Maintaining an environment for future employees and existing employees that is welcoming, that shows respect, and honors the need for having a high level of skill for many jobs here in the City is very important given the economic and housing issues we now face. Our hiring problems are real. It makes it even difficult for existing employees to be able to work if they cannot work for Staff that have the skills that are needed for those jobs. I highly encourage you in the face of your Colleagues' Memo to also consider how you can make things more copacetic, how the City can run better for the citizens itself, and they get their money's worth for those employees that are hired. They need to be employees who are well skilled and serve the City well. I hope it goes well. In the future, SEIU will come back with a response. Thanks.

Mayor Kniss: Thank you for coming at this late hour. Back to you, Vice Mayor Filseth, for a Motion.

Vice Mayor Filseth: I'd like to make a three-part Motion. This is on Page 169 of the Staff Report. One, the City Council should refer this proposal to the Finance Committee for refinement and to develop the fiscal and actuarial

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analysis and reporting template. Two, at the appropriate time, the City Manager should initiate meet and confer discussions with the City's bargaining groups regarding this proposed policy. Three, the final proposal should return to Council for full discussion and approval.

Council Member Scharff: Second.

Council Member Wolbach: Second.

Council Member Fine: Don't steal someone else's memo.

Council Member Wolbach: I'll defer to former Mayor Scharff.

**MOTION:** Vice Mayor Filseth moved, seconded by Council Member Wolbach to:

- A. Refer the proposal regarding Fiscal Transparency in Labor Negotiations to the Finance Committee for refinement and to develop the fiscal and actuarial analysis template;
- B. Direct Staff to, at the appropriate time, initiate Meet and Confer discussions with the City's bargaining groups regarding this proposed Policy; and
- C. Return the final proposal to Council.

Mayor Kniss: Are you speaking to your Motion now that you have a second?

Vice Mayor Filseth: I believe I've already spoken to it.

Mayor Kniss: Would the seconder like to speak?

Council Member Wolbach: Part C is the Amendment I was going to offer. You beat me to it. I like the Motion. Transparency is helpful. Being thoughtful as a community, as a Council about some of the big fiscal decisions we face is important. When this goes to Finance, there will be some good discussions. I look forward to seeing how it looks when it comes back to Council. I appreciate SEIU sending somebody here tonight.

Mayor Kniss: Council Member Fine and then Council Member DuBois.

Council Member Fine: Two quick comments. One, thank you, gentlemen, for bringing this forward. This is well thought out and balanced. In my limited experience in labor negotiations, I really do have some hope that this can help us going forward and also help our bargaining units as well. Two quick comments. One, thank you for including the City of Fullerton's labor

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negotiations profile. This is really informative. It's super basic. If we can attain something like this, we will have made progress. The second thing is just a broad comment. In some ways Letter B is the most important. I was researching this, it came to my attention that we would only be able to move forward with this through a meet and confer process. I would put forth that Letter B may be the most important movement here. Otherwise, I'm happy to support this. Thank you all for bringing it forward.

Mayor Kniss: Council Member DuBois.

Council Member DuBois: This was a carefully considered memo. We really tried to model it on existing policies in other cities. We looked at many cities, but San Jose and Fullerton in particular. It's good for the public. It's good for the City. I actually think this is really good for our employees. It helps the public understand what's needed to support the level of services we have in our City, what's needed to attract and retain employees, and what the cost of those employees are in the Bay Area. Having some transparency on this process will help bring the public along so that everyone will understand why labor agreements are made the way they are.

Mayor Kniss: Council Member Holman and then Scharff.

Council Member Holman: I also want to thank the Colleagues who brought this forward. I look forward to it creating a more collaborative environment. Getting some sunshine on this process is helpful and healthy for Council Members, Staff, and bargaining units. I appreciate you all bringing it forward. Thank you.

Mayor Kniss: Council Member Scharff.

Council Member Scharff: I figured I had to speak since I came back for this. I'm looking forward to the meet and confer process. I hope our friends in labor feel that this is a positive step. Transparency is good for everyone. It's good for the residents. They have a sense of what's going on. They see the progress and the initiation, and they're not surprised when they see an MOU finally on the calendar. There are updates. The community gets brought along in the process. It forces people to start at more reasonable positions. Who knows where people start because it's all Closed Session. You can see people giving thoughtful offers that they would put in the public eye. Hopefully all of that makes the whole process work better. We are starting labor negotiations right around now. I would say to our friends in labor that how long the meet and confer process takes is up to both parties on this. We could do this quickly and see how it goes and see if it's a real positive in the steps. I'm hoping it will be. I'm hoping we all come together on this and work together on it.

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Mayor Kniss: Thanks in particular to Vice Mayor Filseth because I know he drove this from behind even if he wouldn't take credit for it. The rest of you have agreed; I know you have. This is a very creative proposal. It's going to take some time, some energy. You've worked closely with City Council on this. I'm delighted you brought it forward. I think we're ready to vote. Actually we might go home. That passes unanimously. Thanks to the four of you who brought that forward.

**MOTION PASSED:** 9-0