



City of Palo Alto

COLLEAGUES MEMO

DATE: February 26, 2018

TO: City Council Members

FROM: Council Members DuBois, Filseth, Scharff, and Tanaka

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

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)¹, along with one or two ideas from the City of Fullerton's Council Resolution 2016-41 (2016)².

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

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.