CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 5, 2019 **ITEM NUMBER: CC-6**

SUBJECT: SECOND READING OF THE ORDINANCE TO REPEAL ARTICLE 2 OF CHAPTER VI OF TITLE 2 OF THE COSTA MESA MUNICIPAL CODE RELATED TO CIVIC OPENNESS IN NEGOTIATIONS

DATE: JANUARY 17, 2019

FROM: CITY MANAGER'S OFFICE

PRESENTATION BY: TAMARA S. LETOURNEAU, ACTING CITY MANAGER/ASSISTANT CITY MANAGER

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RECOMMENDATION:

Staff recommends that the City Council:

1. Give second reading and adopt the ordinance repealing Article 2 (Civic Openness in Negotiations) of Chapter VI (Personnel) of Title 2 (Administration) of the Costa Mesa Municipal Code (Attachment 1).

BACKGROUND:

In August 2012, the City Council adopted Ordinance Number 12-7, adding Article 2 (Civic Openness in Negotiations) (COIN) to Chapter VI of Title 2 to the Costa Mesa Municipal Code (Attachment 3). COIN provisions include:

- Designation of an independent negotiator;
- Completing a fiscal analysis on the contract terms of each proposal;
- Posting the proposals and counteroffers on the website during the negotiation process; and,
- Disclosure when members of the governing body have communication with representatives of employee associations.

On October 9, 2015, SB 331, the Civic Reporting Openness in Negotiations Efficiency Act, also known as CRONEY, was enacted to apply specifically to jurisdictions that have adopted a COIN ordinance. CRONEY imposes requirements for authorizing a variety of public contracts over $250,000. Costa Mesa is the only known remaining jurisdiction that, as a result of having a COIN ordinance, must adhere to the regulations set forth by CRONEY.

Changing the COIN requirements from the municipal code into a modified City Council Transparency in Labor Negotiations policy will relieve the City of the time and overly burdensome requirements of CRONEY while still providing COIN's transparency during the negotiation process.

At the January 15, 2019 City Council meeting the Council adopted the urgency ordinance to remove COIN from the municipal code. At the same meeting, the City Council adopted the new transparency in the labor negotiations City Council policy (Attachment 2)

ANALYSIS:

COIN

Since COIN has been in place, the City has completed seven negotiations utilizing the COIN process. While COIN does provide transparency by posting offers/counteroffers and financial analysis on the City's website, COIN increases the cost and length of the negotiation process, and extends the contract approval time. For example, COIN requires a 30-day waiting period after the City Council designates a chief negotiator. During that 30-day waiting period the City is not allowed to talk to the union's negotiating team and the City Council is not allowed to discuss the negotiations.

COIN requires that the City Council designate an independent negotiator to be the principal negotiator. The proposed policy allows the City Council to designate executive staff as the lead negotiator. Legal counsel would still be consulted and assist the negotiating team, but they would not be required to attend all labor negotiation meetings. This would significantly reduce the cost of negotiations.

The City has the ability to maintain transparency in the negotiation process and eliminate elements of the COIN ordinance that extend negotiations by repealing the COIN ordinance and adopting a policy that includes the transparency elements. Adopting a policy means that the City would not have to comply with the CRONEY regulations. Attachment 2 is the newly adopted City Council policy that includes all of the elements in the current municipal code section with the exception of the following:

- Elimination of the 30-day waiting period to start negotiations after the City Council designates a chief negotiator;
- Elimination of the requirement that the lead negotiator be outside labor counsel and allowing the City Council to designate an executive staff member as the lead negotiator; and,
- Only requiring one public meeting to adopt a Memorandum of Understanding (MOU) instead of two.
- A minor language change clarifying the reporting out of actions taken in closed session regarding negotiations and the process in which staff reports out from closed session regarding negotiations to comply with the Meyers-Milias-Brown Act.

CRONEY

While there are already certain procedures and requirements that govern public contracting, SB 331 (CRONEY) imposes additional procedures on agencies with a COIN ordinance on contract negotiations for certain public contracts valued at $250,000 or more.

Specifically, the City is required to follow the SB 331 procedures when involved in contract negotiations where a contract has a value of at least two hundred fifty thousand dollars ($250,000), or where multiple contracts with the same or related parties have a cumulative value of at least $250,000 within a fiscal year, when those contracts seek to provide services or goods to the City in the following areas:

> Accounting, financing, hardware and software maintenance, health care, human resources, human services, information technology, telecommunications, janitorial maintenance, legal services, lobbying, marketing, office equipment maintenance, passenger vehicle maintenance, property leasing, public relations, public safety, social services, transportation, or waste removal.

Therefore, any agency with a COIN ordinance, as defined in SB 331, except in limited circumstances where contracts are needed to respond to temporary public safety emergencies or a state of war, is required to do each of the following for public contracts subject to SB 331:

- Designate an independent auditor to review and report on the cost of any proposed contract.

- Disclose all offers and counteroffers to the public within 24 hours on the agency's website.

- Before approving any contract, an agency must release the following information about each negotiation session regarding the contract: a list of names of those in attendance, the date, the length of the meeting, the location and any pertinent facts regarding that session.

- Each governing body member and staff members of governing body officers must disclose publicly all communications regarding the negotiations they have had with any official or unofficial representative of the private entity involved in negotiations, within 24 hours of communication.

- The governing body may not make a final determination regarding approval of any contract until the matter has been heard at a minimum of two public meetings of the governing body.

There are a number of concerns regarding the impacts of SB 331. The contract negotiation requirements come with financial impacts to the City, yet the act specifically excludes such mandated expenses from potential recovery from the State. Imposing a rather onerous 24 hour reporting of actions or communications relating to contract negotiations consumes extra hours of staff time for compliance.

Contracts subject to these regulations take an additional 3-6 months to be approved and implemented. Any amendments are subject to the same process. For example, having to follow the requirements of CRONEY delayed implementation of the ambulance transport model for approximately five months and cost the City in potential additional revenue. In addition, the City's contract with Keller/Anderle went through the CRONEY process, which could have jeopardized the law firm's willingness to go forward with the engagement. Fortunately, the firm agreed to defer payment until the CRONEY process could be completed. In summary, the legislation requires extra costs and lengthy delays when entering into large contracts.

The application of CRONEY would delay and increase the costs related to contracts for the operation of a homeless shelter that is under consideration due to the litigation brought against the City (*Orange County Catholic Workers, et al. v. County of Orange, et al.)* Ninth Circuit cases effectively prevent the City from enforcing restrictions on the use of public rights of way and parks, including *Jones v. City of Los Angeles* and *Martin v. City of Boise*. Changing aspects of COIN into a policy increases the efficiency of moving forward with City projects, programs and services because the requirements of CRONEY will not apply.

The action taken by the City Council on January 15, 2019 to adopt the urgency ordinance officially removed the City's requirement to follow the burdensome regulations of CRONEY. The adoption of the new Transparency in Labor Negotiations City Council Policy (Attachment 2), which was also adopted by the City Council at that meeting maintains the transparency in labor negotiations and makes the process more efficient. It is important to point out that under the new policy the following will occur during labor negotiations in the future:

- The city council will designate a chief negotiator(s);
- An independent economic analysis of every offer and counter offer will be completed and posted on the City's website;
- A detailed description of all offers and counteroffers will be posted on the City's website;
- Prior to the adoption of a Memorandum of Understanding (MOU) between the City and the bargaining group, the proposed MOU will be posted on the City's website at least 7 days in advance of the public meeting in which the MOU will be considered.
- The MOU will be brought to the City Council at a public meeting to be considered.

Thus, staff recommends that the City Council conduct the second reading and adopt the ordinance which repeals Article 2 (Civic Openness in Negotiations) of Chapter VI (Personnel) of Title 2 (Administration) of the Costa Mesa Municipal Code.

FISCAL REVIEW:

Making this change will reduce legal expenses during the negotiation process. Each negotiation process is unique so the exact savings are difficult to determine. In addition to a fiscal savings, there is also a savings in the length of time it takes to complete the process for labor negotiations. The recommended actions will also eliminate future significant potential costs related to the costs associated with implementing the requirements of SB 331.

LEGAL REVIEW:

The City Attorney's Office has reviewed this agenda report, and prepared the attached ordinance.

CONCLUSION:

Staff recommends that the City Council conduct the second reading and adopt the ordinance which repeals Article 2 (Civic Openness in Negotiations) of Chapter VI (Personnel) of Title 2 (Administration) of the Costa Mesa Municipal Code.

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ATTACHMENTS:

1. Ordinance No. 19-XX
2. City Council Transparency in Labor Negotiations Policy