



STAFF REPORT

Meeting Date: December 1, 2015
To: Honorable Mayor & City Council
From: David Snow, Interim City Attorney
Lolly Enriquez, Assistant City Attorney
Subject: Discussion Regarding CRONEY Act
Attachments: 1. CRONEY Act
2. Beverly Hills Municipal Code – Labor Negotiations Ordinance

INTRODUCTION

In October 2015, Governor Jerry Brown signed Senate Bill 331, known as the Civic Reporting Openness in Negotiations Efficiency Act (“CRONEY”). The CRONEY Act becomes effective on January 1, 2016, and applies to cities, counties, and special districts that have adopted a Civic Openness in Negotiations ordinance or “COIN ordinance” as defined in the Act. The CRONEY Act expressly states that it would not apply to any city, county, or special district that suspends, repeals, or revokes its COIN ordinance.

DISCUSSION

The CRONEY Act will amend the California Public Contract Code to impose on agencies with a COIN ordinance (as defined by the Act) additional procedures for contract negotiations applicable to all public contracts valued at \$250,000 or more 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.

As discussed in more detail below, the provisions of the CRONEY Act may be costly to implement and may significantly slow the process for approval of contracts subject to the CRONEY Act.

The CRONEY Act states that its provisions are only applicable to cities, counties or special districts that have adopted a COIN ordinance, as defined in the Act. The Act defines the term “COIN ordinance” as follows:

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“COIN ordinance” means an ordinance adopted by a city, county, city and county, or special district that *requires* any of the following as a part of any collective bargaining process...

(a) The preparation of an independent economic analysis describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization, as defined in Section 3501 of the Government Code.

(b) The completion of the independent economic analysis prior to the presentation of an opening proposal by the public employer.

(c) Availability for review by the public of the independent economic analysis before presentation of an opening proposal by the public employer.

(d) Updating of the independent economic analysis to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization.

(e) Updating of the independent economic analysis to reflect any absolute amount or change from the current actuarially computed unfunded liability associated with the pension or postretirement health benefits.

(f) The report from a closed session of a meeting of the public employer's governing body of offers, counteroffers, or supposals made by the public employer or the recognized employee organization and communicated during that closed session.

(g) The report from a closed session of a meeting of the public employer's governing body of any list of names of persons in attendance during any negotiations session, the date of the session, the length of the session, the location of the session, or pertinent facts regarding the negotiations that occurred during a session.”

The City's labor negotiations ordinance contains the following language regarding an economic analysis:

“2-5-505: ECONOMIC ANALYSIS:

Unless reported as provided below, the city council shall obtain from a consultant who is not an employee, a fiscal impact analysis of the proposed memorandum of understanding or amendment to a memorandum of understanding. If a statement of actuarial impact is required by California Government Code section 7507 or its successor for any change to retirement or other postemployment benefits, then the fiscal analysis required by this section need not address the benefit changes analyzed in the statement of actuarial impact.

If a fiscal impact analysis is not obtained as required by this section, then this fact must be reported orally at the meetings of the city council at which the memorandum of understanding or amendment is considered.”

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The City's labor negotiations ordinance appears to fall outside of the CRONEY Act's definition of a "COIN ordinance", and thus the CRONEY Act would be inapplicable to Beverly Hills. First, Beverly Hills' ordinance does not require preparation of an independent economic analysis *describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization*. The fiscal impact requirement of Section 2-5-505 only contemplates analysis of the "*proposed memorandum of understanding or amendment to a memorandum of understanding*". Further, the second paragraph of Section 2-5-505 allows a proposed memorandum of understanding ("MOU") to proceed without an economic analysis, provided that fact is orally reported at a Council meeting in which the MOU is considered.

Even if the City's ordinance is read to *require* the economic analysis (which, as stated above is arguable), the City's ordinance does not fall squarely within the CRONEY Act's definition of "COIN ordinance." For example, Beverly Hills' ordinance does not require the independent economic analysis be completed or made available for review by the public before presentation of an *opening proposal by the City*. Nor does the City's ordinance require *updating of the independent economic analysis* to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization. Further, the City's ordinance does not require reporting of any information out of closed session.

The City of Beverly Hills is mentioned in each of the bill analysis written by the Senate and the Assembly Committees as an agency that has adopted an ordinance imposing some or all of the requirements of a COIN ordinance. Nonetheless, for the reasons noted above, the City's ordinance does not fall within the Act's definition of a COIN ordinance.

Procedures Imposed by the CRONEY Act on Cities with COIN Ordinances (as defined in the Act).

Except when contracts are needed to respond to temporary public safety emergencies, a state of war, or other state or local emergency, agencies with a COIN ordinance will be required to do each of the following for all public contracts covered by the CRONEY Act:

1) The agency must designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor must prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

- (a) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.
- (b) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

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- (c) Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract.

(2) The agency must disclose all offers and counteroffers to the public within 24 hours on its website.

(3) Before approving any contract, the agency must release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date, location and length of the session, and any pertinent facts regarding the negotiations that occurred in that session.

(4) Representatives of the governing body shall advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city representatives participating in negotiations regarding any contract.

(5) Each governing body member and staff members of governing body offices shall disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.

(6) A final vote by the City Council regarding approval of any contract shall be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.

The text of the CRONEY Act provides that it would not apply in the event that a city with a COIN ordinance (as defined in the Act) opted to suspend, repeal, or revoke its ordinance.

Options for the Council to Consider

1) Take the Position that the CRONEY Act does not apply to the City.

As described above, the City's labor negotiations ordinance does not clearly fit within the CRONEY Act's definition of a "COIN Ordinance." The City could take this stance and not comply with the CRONEY Act's additional procedural requirements for contracts valued at \$250,000 or more in the specified areas.

2) Amend the City's Labor Negotiations Ordinance.

The City Council could amend its labor negotiations ordinance to delete any references to economic analysis, which would remove any argument that the CRONEY Act requirements apply to the City. An amendment of this type would not preclude the City from still obtaining an independent economic analysis as part of its discussions, as was done in the past before the City adopted its labor negotiations ordinance.

3) Comply with the CRONEY Act.

The City could choose to comply with the CRONEY Act. This option would entail some additional expense for the City due to the requirement to designate an unbiased independent auditor to review and report on the cost of any proposed contract. In addition, the process for approval of those contracts subject to the CRONEY Act

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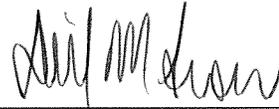
procedure would be slowed as a result of the requirement to make the report available to the public at least 30 days before the issue can be heard before the Council and at least 60 days before any action to approve or disapprove the contract by the governing body. In addition, the item must be agendaized at two council meetings before approving any applicable contract.

FISCAL IMPACT

If the City were to hire an independent auditor to review and prepare a report on the cost of any proposed contract exceeding \$250,000 that may be subject to the CRONEY Act, there would be costs associated with paying the independent auditor, which would vary depending upon the number of contracts in a fiscal year that could arguably be subject to the CRONEY Act.

RECOMMENDATION

Staff and the City Attorney's office are seeking City Council direction regarding next steps.



David M. Snow, Interim City Attorney

ATTACHMENT 1
CRONEY ACT

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

BILL TEXT

The people of the State of California do enact as follows:

SECTION 1.

Chapter 4.5 (commencing with Section 22175) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 4.5. Civic Openness in Negotiations

22175.

This chapter shall be known, and may be cited, as the Civic Reporting Openness in Negotiations Efficiency Act, or CRONEY.

22176.

As used in this chapter, "civic openness in negotiations ordinance" or "COIN ordinance" means an ordinance adopted by a city, county, city and county, or special district that requires any of the following as a part of any collective bargaining process undertaken pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code):

- (a) The preparation of an independent economic analysis describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization, as defined in Section 3501 of the Government Code.
- (b) The completion of the independent economic analysis prior to the presentation of an opening proposal by the public employer.
- (c) Availability for review by the public of the independent economic analysis before presentation of an opening proposal by the public employer.
- (d) Updating of the independent economic analysis to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization.
- (e) Updating of the independent economic analysis to reflect any absolute amount or change from the current actuarially computed unfunded liability associated with the pension or postretirement health benefits.

(f) The report from a closed session of a meeting of the public employer's governing body of offers, counteroffers, or supposals made by the public employer or the recognized employee organization and communicated during that closed session.

(g) The report from a closed session of a meeting of the public employer's governing body of any list of names of persons in attendance during any negotiations session, the date of the session, the length of the session, the location of the session, or pertinent facts regarding the negotiations that occurred during a session.

22177.

(a) This chapter applies only to a city, county, city and county, or special district that has adopted a COIN ordinance, which is effective and operative. This chapter shall not apply if the city, county, city and county, or special district suspends, repeals, or revokes its COIN ordinance.

(b) This chapter shall not apply to a contract if the contract is required to respond to, recover from, or mitigate the effects of any of the following:

(1) A temporary public safety emergency declared by the chief law enforcement officer of a city, county, city and county, or special district.

(2) A state of war emergency, state of emergency, or local emergency, as those terms are defined in Section 8558 of the Government Code.

(c) This chapter shall not apply to a renewal of a contract if the employees performing the services are covered by a collective bargaining agreement that is governed by the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.).

22178.

(a) This chapter shall apply to any contracts with a value of at least two hundred fifty thousand dollars (\$250,000), and to any contracts with a person or entity, or related person or entity, with a cumulative value of at least two hundred fifty thousand dollars (\$250,000) within the fiscal year of the city, county, city and county, or special district, being negotiated between the city, county, city and county, or special district, and any person or entity that seeks to provide services or goods to the city, county, city and county, or special district, 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.

(b) The city, county, city and county, or special district shall designate an unbiased independent auditor to review the cost of any proposed contract. The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:

(1) The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.

(2) The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.

(3) Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met.

(c) The city, county, city and county, or special district shall disclose all offers and counteroffers to the public within 24 hours on its Internet Web site.

(d) Before approving any contract, the city, county, city and county, or special district shall release a list of names of all persons in attendance, whether in person or by electronic means, during any negotiation session regarding the contract, the date of the session, the length of the session, the location where the session took place, and any pertinent facts regarding the negotiations that occurred in that session.

(e) Representatives of the governing body shall advise the governing body of all offers, counteroffers, information, or statements of position discussed by the contracting person or entity and city, county, city and county, or special district representatives participating in negotiations regarding any contract.

(f) Each governing body member and staff members of governing body offices shall disclose publicly all verbal, written, electronic, or other communications regarding a subject matter related to the negotiations or pending negotiations they have had with any official or unofficial representative of the private entity within 24 hours after the communication occurs.

(g) A final governing body determination regarding approval of any contract shall be undertaken only after the matter has been heard at a minimum of two meetings of the governing body wherein the public has had the opportunity to review and comment on the matter.

SEC. 2.

The Legislature finds and declares that Section 1 of this act, which adds Chapter 4.5 (commencing with Section 22175) to Part 3 of Division 2 of the Public Contract Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act ensures that members of the public have the opportunity to be informed of, and meaningfully participate in, the negotiation and approval of contracts for goods and services by a city, county, city and county, or special district that has adopted a civic openness in negotiations (COIN) ordinance, thereby furthering the purposes of Section 3 of Article I of the California Constitution.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

ATTACHMENT 2
BEVERLY HILLS MUNICIPAL CODE
LABOR NEGOTIATIONS ORDINANCE

Article 5. Labor Negotiations

2-5-501: APPLICABILITY:

This article shall apply when the city council considers adopting or amending a memorandum of understanding. (Ord. 13-O-2651, eff. 1-17-2014)

2-5-502: DEFINITION:

For the purposes of this article, the following words and phrases shall be defined as follows:

MEMORANDUM OF UNDERSTANDING: A formal signed agreement between the city and an exclusively recognized employee organization. (Ord. 13-O-2651, eff. 1-17-2014)

2-5-503: ADOPTION OF A MEMORANDUM OF UNDERSTANDING:

A. The city council may adopt or amend a memorandum of understanding only after conducting two (2) public meetings. The purpose of the first meeting shall be to solicit public input early in the negotiation process concerning potential terms of the proposed memorandum or amendment. The purpose of the second meeting shall be to place a proposed memorandum or amendment on an agenda, after concluding the negotiation process, for the city council to consider adoption. The foregoing requirements shall not preclude the city council from conducting more than one public meeting before or during the negotiation process.

B. A proposed memorandum of understanding or amendment to a memorandum of understanding, as well as any fiscal impacts analysis prepared pursuant to section 2-5-505 of this chapter, shall be posted on the city's official website at least two (2) weeks before the city council meeting at which the proposed memorandum of understanding or amendment is considered for approval.

C. The adoption or amendment of a proposed memorandum of understanding shall not be placed on the city council's consent calendar. (Ord. 15-O-2679, eff. 6-18-2015)

2-5-504: CITY REPRESENTATIVE:

Unless reported as provided below, the lead negotiator on behalf of the city during the negotiation of a memorandum of understanding or amendment to a memorandum of understanding shall not be an employee of the city and shall have demonstrated expertise in negotiating labor and employment agreements on behalf of municipalities.

If the principal representative of the city does not meet the requirements of this section, then this fact must be reported at the meetings of the city council at which the memorandum of understanding or amendment is considered. (Ord. 13-O-2651, eff. 1-17-2014)

2-5-505: ECONOMIC ANALYSIS:

Unless reported as provided below, the city council shall obtain from a consultant who is not an employee, a fiscal impact analysis of the proposed memorandum of understanding or amendment to a memorandum of understanding. If a statement of actuarial impact is required by California Government Code section 7507 or its successor for any change to retirement or other postemployment benefits, then the fiscal analysis required by this section need not address the benefit changes analyzed in the statement of actuarial impact.

If a fiscal impact analysis is not obtained as required by this section, then this fact must be reported orally at the meetings of the city council at which the memorandum of understanding or amendment is considered. (Ord. 13-O-2651, eff. 1-17-2014)