

# County of Sonoma's Measure P

## September, 2022

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### **Updated Frequently Asked Questions**

The FAQ is offered by the County of Sonoma in response to community questions/concerns regarding the County's agreements with its labor organizations over the implementation of Measure P.

#### **Q: Why did the County negotiate with labor unions regarding Measure P?**

A: Three reasons:

- First, Measure P requires the Independent Office of Law Enforcement Review and Outreach ("IOLERO") and the County Sheriff to create written protocols for the implementation of Measure P. (Measure P: sec. 2-394 (d)). Because the protocols concern working conditions, state law requires the County to negotiate with the affected labor organizations over those working conditions before the protocols are implemented. (Calif. Government Code sec. 3500 et.seq.; ("MMBA"))
- Second, last year, the California Public Employment Relations Board ("PERB") invalidated 11 amendments to IOLERO's authority under Measure P as to two of the County's labor organizations. The County was required to negotiate with those two labor organizations in order to reinstate Measure P's invalidated provisions.
- Third, Measure P is ambiguous in certain areas and silent in others as to how it is to be implemented by IOLERO. The negotiated agreements provide needed clarity on implementation of IOLERO's expanded powers and duties under Measure P.

#### **Q: Who participated in the negotiations?**

A: The County's leadership caucus for the negotiations included representatives of the County's Labor Relations Department, County Counsel's office, IOLERO, the Sheriff's Office and outside labor relations counsel.

**Q: Why weren't members of the public and/or IOLERO's Citizen Advisory Committee part of the negotiations?**

A. The MMBA and the County's labor relations rules require negotiations be conducted exclusively by and between the designated labor relations representatives of the County and the affected labor organizations.

**Q: How do the negotiated agreements impact the way Measure P is implemented?**

A: The negotiated agreements implement each and every provision of Measure P that was invalidated by PERB. *(See attached chart showing where and how the negotiated agreements implement the invalidated provisions of Measure P.)*

**Q: Do the negotiated agreements change or limit in any way IOLERO's authority to conduct independent investigations as authorized by Measure P?**

A: No. The negotiated agreements confirm IOLERO's authority to independently investigate matters deemed by IOLERO to have been deficiently or incompletely investigated by the Sheriff's Office and/or death-in-custody investigations. *(See attached chart.)*

**Q: Why do the negotiated agreements provide that IOLERO's ability to independently investigate death in custody matters is conditioned on first receiving the Sheriff Office's investigation into the matter?**

**A:** Measure P specifies that "where *an investigation* involves an incident resulting in the death of a person in custody of the sheriff-coroner or results from the actions of an employee, [IOLERO may] conduct an independent investigation of the matter." (Measure P: sec. 2-394 (b) (5) (h).) This provision falls under Measure P's grant of authority for IOLERO to "review, audit and analyze administrative and public complaint *investigations* in mutual coordination and cooperation with the sheriff-coroner." (Measure P: sec. 2-394 (b) (2) Also, Measure p provides that IOLERO is not authorized to "[i]nterfere with the performance of the powers and duties of the sheriff-coroner." (Measure P: sec. 2-394 (c) (1).) Read together, these provisions

preclude IOLERO from independently investigating death in custody matters without first receiving the Sheriff Office's investigation into the matter.

**Q: Do the negotiated agreements change or limit in any way IOLERO's whistleblower authority established by Measure P?**

A: No. The negotiated agreements confirm that IOLERO acts as a receiving and investigative agency for whistleblower complaints involving the Sheriff's Office. (*See attached chart.*) Because Measure P provides no procedures for IOLERO's new whistleblower authority, the negotiated agreements outline the steps IOLERO will take in responding to a whistleblower complaint. This detail was necessary in order to implement this area of Measure P. (*See attached chart.*)

**Q: Why do the negotiated agreements provide that conflicts between Measure P and the agreements will be resolved in favor of the agreements, "as permitted by law"?**

A: The County's duty to bargain with its labor organizations under the MMBA is considered to be a "matter of statewide concern." This means that under certain circumstances the duty to negotiate will control over a local ballot measure. However, this principle also provides that the ballot measure may prevail to the extent there is a conflict between the substance of the ballot measure and the duty to bargain. (See, *People ex. Rel. Seal Beach Police Officers Association v. City of Seal Beach* (1984) 36 Cal.3d 591.) As applied to Measure P, the required negotiated procedures in the negotiated agreements may control over conflicting provisions of Measure P, so long as the conflict does not concern substantive terms of the Ordinance. The "as permitted by State law" provision in the negotiated agreements affirms and preserves the County's rights in this area.

- It is important to note that there are no substantive conflicts between Measure P and the negotiated agreements.

**Q: What impact does the Court of Appeal's recent decision on the County's appeal of the PERB decision have on Measure P?**

A: The Court of Appeal agreed with the County that PERB committed legal error in its analysis of Measure P. The Court also agreed with the County that PERB exceeded its authority by invalidating Measure P's provisions. However, the Court agreed with PERB and the labor organizations that the County has a duty to negotiate over Measure P's impact on working conditions and ordered the matter back to PERB for further proceedings to identify those impacts. Also, PERB has filed a petition with the California Supreme Court seeking further review of the Court of Appeal's decision.

PERB's appeal, combined with the Court of Appeal's remand order, means that a final resolution of the County's appeal could be anywhere from six months to a year away. Once the litigation process is completed, even if the County prevails, negotiations with the affected labor associations over implementation of Measure P would still be required.

**Q: What impact does the Court of Appeal's decision have on the negotiated agreements?**

A: The Court of Appeal's decision does not impact the negotiated agreements. By operation of those agreements, IOLERO is authorized to fully implement Measure P, effective now.