



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Response to Grand Jury Report – *The Need for Labor Negotiation Transparency*

RECOMMENDED MOTION:

Review and Approve the City's response to the Marin County Civil Grand Jury Report – *The Need for Labor Negotiation Transparency*

SUMMARY/BACKGROUND

The Marin County Civil Grand Jury issued the attached report titled "*The Need for Labor Negotiation Transparency*". Staff, in conjunction with the city's labor attorney and advisor, Charles Sakai, has prepared the attached draft response for the Council's review.

Analysis of the issue and the City Council response to the Civil Grand Jury is found in the draft letter which is attached to the Council Report.

FISCAL IMPACT

There is no fiscal impact to the Budget in responding to the report from the Marin County Civil Grand Jury.

STAFF RECOMMENDATIONS

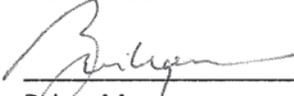
Staff recommends that the City Council authorize Mayor Theodores to sign the draft response to the report from the Civil Grand Jury on behalf of the City of Sausalito City Council.

ATTACHMENTS

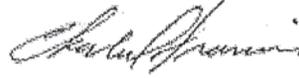
1. Civil Grand Jury Report – Labor Negotiations - Part I (June 4, 2015)
2. Civil Grand Jury Report – Labor Negotiations - Part II (June 17, 2015)
3. Draft Letter from the Mayor - City of Sausalito Response to Civil Grand Jury Report
4. Responses to the Civil Grand Jury from Other Cities in Marin County
 - a. Larkspur (July 15, 2015 – Draft)
 - b. San Anselmo (July 28, 2015)
 - c. Fairfax (August 6, 2015)

PREPARED BY: Charles Sakai

REVIEWED BY:

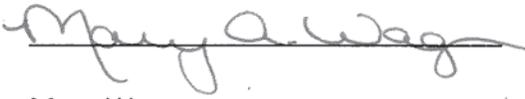


Brian Moura
Interim Administrative Services Director



Charlie Francis
Administrative Services Advisor

REVIEWED BY:



Mary Wagner
City Attorney

SUBMITTED BY:



Adam Politzer
City Manager

September 4, 2015

The Honorable Judge Faye D'Opal
Marin County Superior Court
PO Box 4988
San Rafael, CA 94913-4988

SUBJECT: Response to 2014-15 Civil Grand Jury Report
The Need for Labor Negotiation Transparency – Parts I and II

Dear Judge D'Opal:

Pursuant to California Penal Code Section 933, et seq., please accept the response of the City Council to the Grand Jury Report submitted by the 2014-15 Marin County Grand Jury to the City of Sausalito, entitled "*The Need for Labor Negotiation Transparency.*" The City Council approved this response on September 4, 2015.

Introduction

The Sausalito City Council has a longstanding commitment to transparency in government and appreciates the efforts made by the Grand Jury to evaluate the impact of transparency in labor negotiations, specifically with respect to the Civic Openness in Negotiations (COIN) ordinances which have recently been approved in some jurisdictions.

The City Council feels strongly that its labor negotiations have met the spirit and intention of the COIN ordinance in providing information and an opportunity for public comment prior to the adoption of changes to wages, hours, or other terms and conditions of employment. To that end, the City has enacted a number of steps to increase public knowledge and engagement in the labor negotiations process. For instance, the City performs third-party audits of the liabilities associated with its employment costs, specifically pension costs and retiree medical benefits.

These third-party audits, which include actuarial analyses of the City's pension and retiree medical liabilities are publicly available on the City's website. In addition, for a number of years, the City has utilized an outside labor attorney and negotiator as a consultant on matters involving labor negotiations. This consultant has made presentations to the City Council in both closed sessions and public meetings prior to the start of negotiations, including a public presentation on labor negotiations on February 27, 2015.

City staff also provides detailed information on the fiscal impact of labor negotiations to the City Council, both in closed sessions dedicated to the labor negotiations process as well as in public meetings surrounding adoption of the City's annual budget and public meetings adopting labor agreements. City staff provides detailed staff reports outlining the fiscal impact of negotiated agreements to the public prior to the adoption of any tentative agreement by the City Council.

During the past few years, the City has successfully negotiated informally with its labor unions, providing them an opportunity to agree to terms consistent with the City's publicly-adopted budget rather than engage in a more formal negotiations process. Because this informal process has been successful (even during concessionary bargaining), the City has not needed to engage in a more formal process. While these informal negotiations have been handled internally, it should be noted that the City's negotiators are all unrepresented employees and that none of them would directly benefit from any changes made to the wages and benefits of the rank and file employees during this time period.

Grand Jury Findings, Recommendations, and the City's Response

Grand Jury Finding 1: *The residents of Marin County pay taxes to support decisions made by the Board of Supervisors and City and Town Councils; however these residents have minimal opportunity to provide input into labor negotiations.*

The City Council agrees in part and disagrees in part with this finding. There is no question that the residents of Marin County pay taxes or that those taxes provide the revenues to support the City's provision of services to the community.

However, the City Council does not agree that residents have only minimal opportunity to provide input into labor negotiations. As noted above, the City Council routinely provides information, in the form of staff reports and third party audits, to the public. In addition, the City Council has held public meetings focused on the subject of labor negotiations, the most recent of which was a February 27, 2015 presentation by outside labor counsel on the labor negotiations process. Members of the public are encouraged to provide input on issues of employee compensation and benefits and often do so, either during public comment at Council or committee meetings or directly to City staff or elected officials.

Grand Jury Finding 2: *The COIN process can be implemented without affecting the manner in which tentative agreements are negotiated but which nevertheless will ensure public awareness of the terms and cost of those agreements in advance of their being adopted.*

The City Council disagrees with this finding. Labor negotiations can be a lengthy and difficult process. However, the City of Sausalito, like many California Cities has found success in recent years in negotiating with the labor unions in an informal manner, providing Union leadership with informal proposals consistent with the publicly-adopted City Budget and allowing employees to accept these informal proposals rather than entering into a full-blown negotiations process.

While this process may not be wholly incompatible with some elements of COIN, especially if the informal process is allowed to proceed prior to the COIN process, the COIN process envisions a more robust and expensive process for negotiations, including the use of an outside negotiator and mandated posting of proposals on the City's website.

In addition, because of the newness of COIN in other jurisdictions, the City Council does not believe there have been sufficient negotiations under the provisions of COIN to determine whether the COIN process sufficiently changes the manner and timing of the negotiations process. The City Council would recommend that the Grand Jury continue its study of the impact of COIN as those jurisdictions which have adopted COIN gain more experience with the process.

Finally, the City Council notes that the recent decision by the Chief Administrative Law Judge for the Public Employment Relations Board (PERB) concluded that elements of the COIN ordinance, including whether or not proposals and counter proposals would be posted on the agency's website, would have to be negotiated with each labor union before implementation.¹ While the County of Orange has appealed this decision to the full PERB Board, the requirement that the City bargain over ground rules implementing the sunshine provisions of the COIN ordinance prior to bargaining over substantive issues would negatively impact the timeline of negotiations.

Grand Jury Finding 3: *The COIN process mandates transparency in government decision-making, allowing residents to be informed and to participate in public discussion of how their tax dollars are spent.*

The City Council agrees that the COIN process mandates transparency in government decision-making and that the increased information available to the public could stimulate additional discussion regarding the wages and benefits of our public servants. However, the City already provides several opportunities for members of the public to provide input to the City Council on matters of public interest, including matters which are mandatory subjects of bargaining. As stated above, the City Council held a public meeting on the subject of labor negotiations in February of this year, in advance of the beginning of the negotiation process.

Grand Jury Recommendation 1: *Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance prior to June 1, 2016, or prior to the next round of negotiations, whichever comes earlier.*

This recommendation requires further analysis. First and foremost, the City Council believes that it is prudent to wait for the resolution of current legal challenges to various aspects of existing COIN Ordinances prior to committing to a COIN process. Second, this would also allow time for other agencies which have adopted the COIN to complete negotiation using the COIN and to identify concerns or changes which may make the COIN more effective.

¹ *Orange County Employees Association v. County of Orange* (2015) Proposed Dec. on LA-CE-934-M, LA-CE-935-M, and LA-CE-944-M at p. 26.

Finally, the legislature is currently considering SB 331 (Mendoza), which as amended on August 17, 2015, would "enact the Civic Reporting Openness in Negotiations Efficiency Act to establish specific procedures for the negotiation and approval of certain contracts valued at \$250,000 or more for goods or services by cities, counties, cities and counties, or special districts that have adopted a civic openness in negotiations ordinance, or COIN ordinance." This bill would create a substantial additional obligation on negotiations with vendors and other outside contractors for cities which have adopted a COIN ordinance.

Given the foregoing, the City Council believes it is appropriate to wait for conditions to stabilize and allow further analysis of the impact of COIN ordinances in other cities before considering adoption.

Grand Jury Recommendation 2: *Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance which includes, but is not limited to the following.*

1. *Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.*
2. *Hire an independent auditor to determine the fiscal impact of each provision in the current contract, and make this analysis available for public review.*
3. *Make public each proposal, after it is accepted or rejected by either Party, and publicly verify the costs of that accepted or rejected proposal by an independent auditor.*
4. *Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.*
5. *After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.*

Recommendation # 2 significantly overlaps with Recommendation #1. Therefore, the City Council's response to Recommendation # 2 incorporates its response to Recommendation # 1 as if fully set forth in this response.

In addition, the City Council believes that its labor relations philosophy embraces the spirit and intention of the COIN ordinance in providing information and an opportunity for public input prior to the adoption of changes to wages, hours, or other terms and conditions of employment. In addition, the City has hired an experienced outside labor negotiator and attorney to advise the Council on matters of labor relations and to make presentations in open session prior to the start of negotiations; makes public audits of the City's financial liabilities, especially with respect to pension and retiree medical benefits; and provides detailed analyses in the form of staff reports prior to the adoption of any new Memorandum of Understanding with a labor union.

Conclusion

In conclusion, the City Council appreciates the hard work of the Grand Jury in exploring issues of concern to the residents of Marin County and would like to thank the Grand Jury for the extension of time to respond to this report.

Sincerely,

Thomas Theodores
Mayor

cc: Marin County Grand Jury

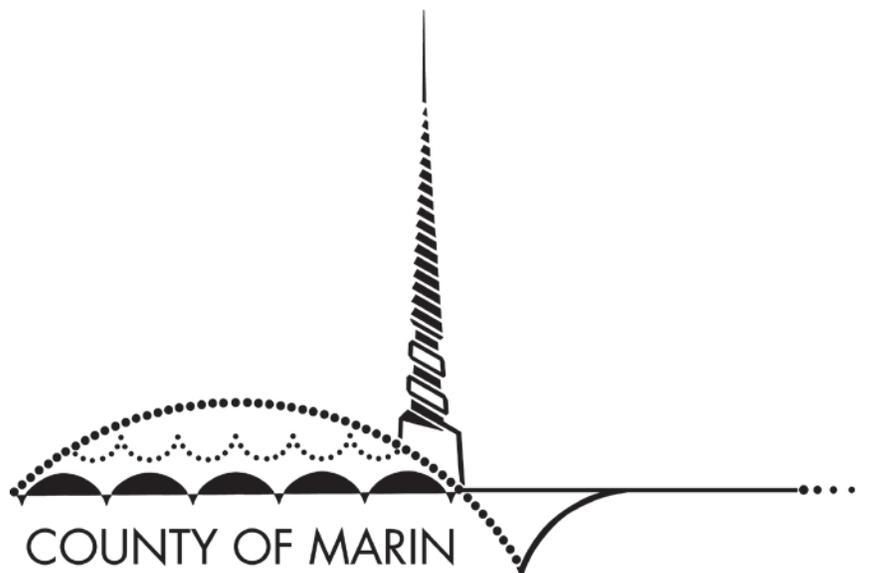
Enclosures

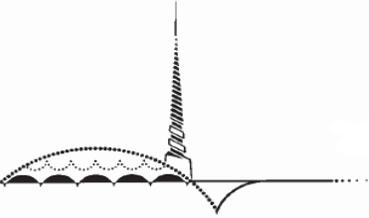
1. Sausalito Retiree Medical Valuation
(<http://www.ci.sausalito.ca.us/Modules/ShowDocument.aspx?documentid=13849>)
2. Presentation to the City Council on Labor Relations – February 27, 2015
(http://sausalito.granicus.com/MetaViewer.php?view_id=2&clip_id=199&meta_id=2375
[1](http://sausalito.granicus.com/MetaViewer.php?view_id=2&clip_id=199&meta_id=2375))
(http://sausalito.granicus.com/MetaViewer.php?view_id=2&clip_id=199&meta_id=2375
[2](http://sausalito.granicus.com/MetaViewer.php?view_id=2&clip_id=199&meta_id=2375))
3. SB 331 (Mendoza) – As Amended on August 17, 2015
(http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB331)

2014/2015 MARIN COUNTY CIVIL GRAND JURY

The Need for Labor Negotiation Transparency

Report Date: June 1, 2015
Public Release Date: June 4, 2015





Marin County Civil Grand Jury

The Need for Labor Negotiation Transparency

SUMMARY

During the 2014-2015 Marin County Grand Jury investigation leading to its 2015 report, *Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency*, the Grand Jury learned that negotiations between Marin County, and the cities and towns therein, and their respective unions (hereafter collectively referred to as the “Parties”) are conducted in private, without transparency, and removed from the scrutiny of the Marin community. Although Marin County residents pay taxes to support decisions made by the Marin County Board of Supervisors (BOS) and the City and Town Councils, (hereafter collectively referred to as “Employer(s)”), there are numerous times when no transparency into the background of those decisions is made to the public.

The Grand Jury learned that the public is notified of a negotiated tentative labor agreement only when the agenda, which schedules consideration of the agreement, is posted—some three to four days prior to the Employers' public meetings. This is also the meeting at which the Employers vote to approve or disapprove the agreement. Prior to the agenda posting, little or no detailed information is made public about the terms of the tentative agreement or what it will cost. Without this information, there is no full public disclosure of the terms and cost of an agreement during the negotiation process and prior to its being voted upon. With no transparency, the public is excluded from input until it is too late for a reasoned public dialogue.

During its investigation, the Grand Jury also learned that various California cities and Orange County adopted a formal negotiation process, Civic Openness In Negotiations (COIN), which allows for community review of not only what is being negotiated, but also what a tentative agreement will cost to implement. One key element of the COIN process is the stipulation that the Employer hire an experienced, independent Lead Negotiator for all negotiations. This requirement precludes any city or county employee from negotiating terms that may benefit that employee, thus avoiding any conflict of interest.

The common elements of the COIN process are as follows:

1. The Employer hire an experienced, independent Lead Negotiator for all negotiation of wages, hours, and terms and conditions of employment.

2. The Employer hire an independent auditor to assess the fiscal impacts of each provision in the current labor contract. This fiscal impact is made available for public study.
3. After each proposal is accepted or rejected by either of the Parties, it is publicly disclosed (generally on the Employer's website). The costs for the implementation of the proposal are verified by an independent auditor and also publicly disclosed.
4. Seven days prior to the Employer's public meeting, the final tentative agreement is made public (generally on the Employer's website), including all associated costs, which are independently verified.
5. After seven days, the final tentative agreement is placed on two consecutive Employer's public meeting agendas: at the first meeting, the agreement is a discussion item; at the second meeting, the Employer votes on the agreement.

The Grand Jury recommends that the Employers adopt an ordinance implementing the COIN process to ensure transparency and prior public review of all proposals and final tentative labor agreements.

BACKGROUND

During the 2014-2015 Marin County Grand Jury investigation leading to the 2015 Grand Jury report, *Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency*, the Grand Jury learned that labor negotiations in Marin County and the cities and towns therein are conducted without transparency, and are thereby removed from the scrutiny of the community. During this time, the Grand Jury also learned that various California cities and Orange County had adopted a transparent negotiation process, Civic Openness in Negotiations (COIN), which allows for community review of tentative proposals being negotiated and also what those proposals will cost if accepted or rejected. As a result, the Grand Jury decided to investigate whether a more transparent negotiation process might be appropriate for Marin County and its cities and towns.

APPROACH

The Grand Jury interviewed representatives of the Orange County Management of Government Affairs, various Marin County officials directly involved with labor contract negotiations, and officials from Costa Mesa who are engaged in the implementation of COIN. Orange County and Costa Mesa COIN ordinances were reviewed along with numerous websites of various cities and counties involved in the use of COIN. Additionally, Grand Jury members attended multiple Marin County Board of Supervisors meetings at which the public brought COIN to the attention of the Board of Supervisors. Grand Jury members also attended the April 28, 2015, BOS meeting where COIN was agendized for discussion; they later viewed the video of the meeting and read the staff report relating to COIN as presented at that meeting.

DISCUSSION

The Need for Civic Openness in Labor Contract Negotiations (COIN)

Although Marin County residents pay taxes to fund decisions made by the Marin County Board of Supervisors and the City and Town Councils, often there is no transparency into the background of those decisions. One specific area that lacks transparency is labor negotiations between the Parties. In general, the public is notified of the Parties' tentative agreements only three to four days prior to the Employers' public vote; it is only then that the meeting agenda is posted for public view. Prior to the agenda posting, little or no detailed information is made public about the terms of the tentative agreement or what it will cost. In sum, there is no transparency before the vote on the tentative agreement.

This short time period (three to four days) gives the residents of Marin little time to review the tentative agreement in order to provide input at an Employers' public meeting—the meeting at which the tentative agreement is presented for approval. Furthermore, the public receives no information regarding any proposal made by either Party or the associated costs of those proposals, which leads to the question: *What should be disclosed to the residents of Marin and when?*

COIN Started In Costa Mesa

The Grand Jury learned that a newly elected Costa Mesa City Council had discovered the financial strain placed on their city by their unfunded pension liabilities. This discovery, coupled with the realization that opaque labor negotiations had created an environment devoid of public oversight, review or input, motivated the Council to adopt a more transparent process for all labor negotiations. Accordingly, the City of Costa Mesa adopted a COIN ordinance in September of 2012, the first municipality in California to do so.

Subsequently, Beverly Hills, Fullerton and Rancho Palos Verdes also adopted variations of COIN, as did Orange County (Appendix A)¹. For all these entities, the principal objective of the COIN process is to allow the public to review and to provide input during negotiations. One person interviewed stated, "...it occurred to the Council that the public's full understanding of what they are being asked to pay for is good governance."

Learning this, the Grand Jury investigated various existing COIN ordinances and procedures to determine what the COIN process might mean for Marin Country and its cities and towns.

¹ Orange County Employee Association has made an unfair practice charge to the Public Employment Relations Board concerning how COIN was adopted, not the implementation of COIN. This is not yet resolved.

What COIN Is: Key Components

The common elements of the COIN process are as follows:

1. The Employer hire an experienced, independent Lead Negotiator for all negotiation on wages, hours, and terms and conditions of employment. This requirement precludes having a city or county employee negotiate terms of an agreement that could directly benefit such employee.
2. The Employer hire an independent auditor to assess the fiscal impacts of each provision in the current labor contract. This fiscal impact is made available for public study.
3. Labor contract negotiations begin.
4. After each proposal is accepted or rejected by either Party to the negotiation, the proposal is publicly disclosed (generally on the Employer's website). The long-term and short-term costs of the proposal are verified by an independent auditor and also publicly disclosed.
5. Negotiations conclude with a final tentative agreement.
6. Seven days prior to the Employer's public meeting, the final tentative agreement is made public (generally on the Employers' website), including all associated costs that are independently verified.
7. Following these seven days, the final tentative agreement is placed on the following two consecutive Employer's public meeting agendas: at the first meeting, the tentative agreement is a discussion item; at the second meeting, the Employer(s) vote on the tentative agreement.

The above process is used in a number of municipalities. For more details see Appendix A.

What COIN Is Not: Misconceptions

The Grand Jury learned that there are many misconceptions about the COIN process, as follows:

Misconception #1: The public negotiates.

COIN does NOT involve the public in actual negotiations, nor does it disclose what occurs at the negotiation table. Fair-minded taxpayers recognize that such an attempt would lead to an unproductive bargaining environment at best and would likely evolve into intractable positions by both sides that would prevent a constructive outcome.

Misconception #2: Negotiations are held open for public observation.

In none of the cities or Orange County are COIN negotiations open for public view or public participation. Negotiations occur in private, but the decisions on proposals are made available for public review.

Misconception #3: COIN slows down the negotiation process.

The Grand Jury has learned that, during the first round of negotiations using the COIN process, there is a learning curve, since COIN provides a new framework within which to operate. However, after learning the new process, those interviewed noted that negotiations proceeded in a timeframe similar to prior negotiations.

Misconception #4: Not all types of negotiation methods can adapt to the COIN processes.

The COIN process is about transparency and not about the negotiation method. Commonly used negotiation practices, such as interest-based or adversarial, can still be the norm while using the COIN process.

The COIN process is about the transparency of decisions made during negotiations that lead to a tentative agreement – the agreement that is recommended to the Employer for approval. It is through the COIN process that the public is made aware of the terms and associated costs of tentative agreements well before they are adopted, thereby giving taxpayers opportunity to provide timely public review and input.

FINDINGS

- F1. The residents of Marin County pay taxes to support decisions made by the Board of Supervisors and City and Town Councils; however these residents have minimal opportunity to provide input into labor negotiations.
- F2. The COIN process can be implemented without affecting the manner in which tentative agreements are negotiated but which nevertheless will ensure public awareness of the terms and cost of those agreements in advance of their being adopted.
- F3. The COIN process mandates transparency in government decision-making, allowing residents to be informed and to participate in public discussion of how their tax dollars are spent.

RECOMMENDATIONS

- R1. Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance prior to June 1, 2016, or prior to the next round of negotiations, whichever comes earlier.

- R2. Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance which includes, but is not limited to the following:
1. Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.
 2. Hire an independent auditor to determine the fiscal impact of each provision in the current contact, and make this analysis available for public review.
 3. Make public each proposal, after it is accepted or rejected by either Party, and publicly verify the costs of that accepted or rejected proposal by an independent auditor.
 4. Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.
 5. After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- Marin County Board of Supervisors: All Findings and Recommendations.
- City Council of Belvedere: All Findings and Recommendations.
- Town Council of Corte Madera: All Findings and Recommendations.
- Town Council of Fairfax: All Findings and Recommendations.
- City Council of Larkspur: All Findings and Recommendations.
- City Council of Mill Valley: All Findings and Recommendations.
- City Council of Novato: All Findings and Recommendations.
- Town Council of Ross: All Findings and Recommendations.
- Town Council of San Anselmo: All Findings and Recommendations.
- City Council of San Rafael: All Findings and Recommendations.
- City Council of Sausalito: All Findings and Recommendations.
- Town Council of Tiburon: All Findings and Recommendations.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

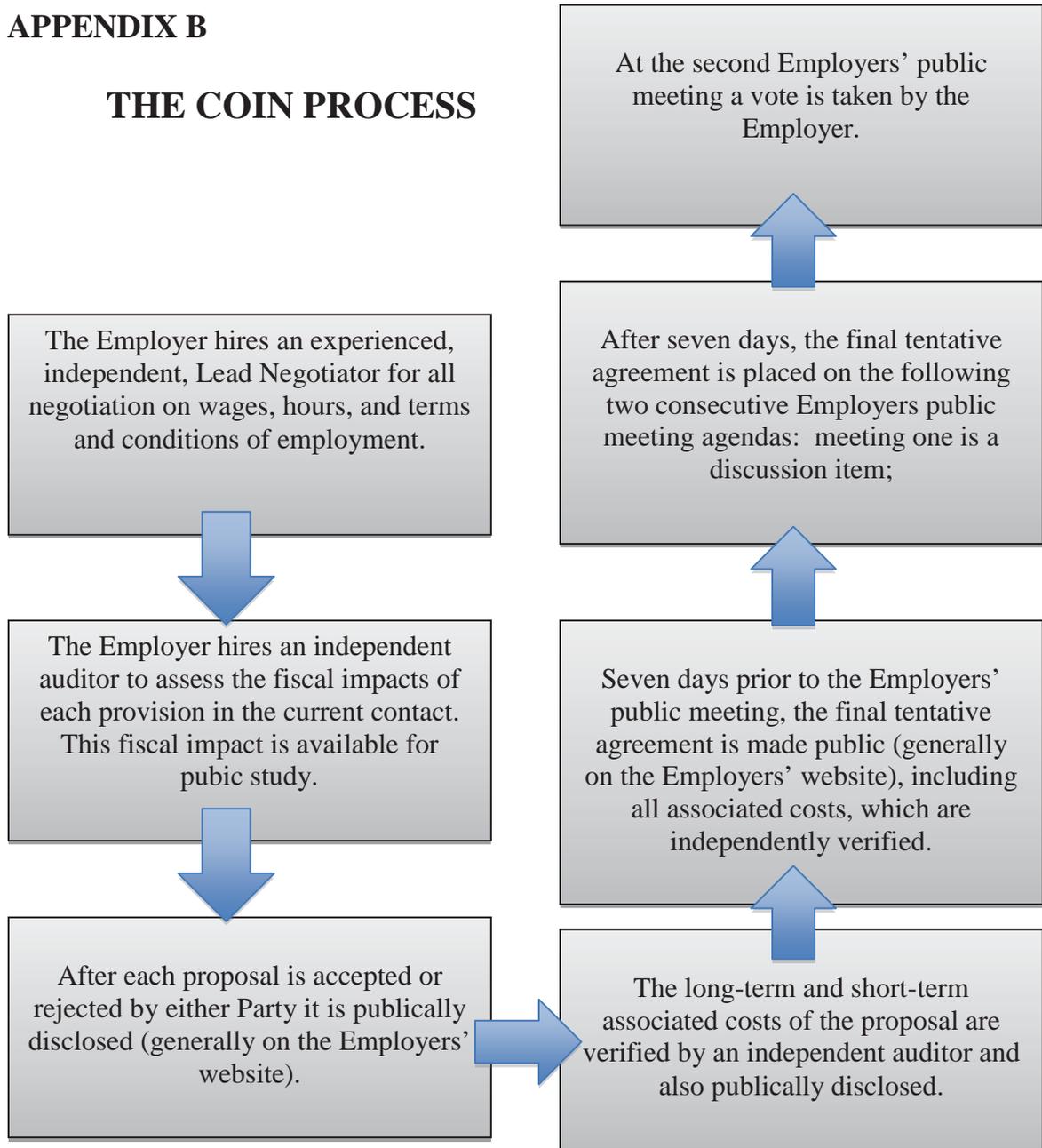
APPENDIX A

Summary of “COIN” Requirements Adopted by City/ County

Requirement	Costa Mesa	Beverly Hills	Fullerton	Rancho Palos Verdes	Orange County
Applies to all negotiations between the Parties.	Yes	Yes	Must include Salary Changes	Yes	Yes
Independent Negotiator	Yes	Yes	May be Waived by Council	Yes	Yes
Executive Employee Involved in Bargaining	Yes	Yes	Yes	Yes	Yes
Pre-Negotiation Economic Analysis (Baseline)	Yes	Yes	Yes	Yes	Yes
Each Accepted or Rejected Proposal plus the Economic Analysis made public	Yes	Yes	Yes	Yes	Yes
Proposals Verified Independently	Yes	Yes	Yes	May be Waived by Council	Yes
Tentative Agreement an Agenda Item on 2 Meetings Prior to Adoption	Yes	Yes	Yes	Meetings must be 2 Weeks Apart	Yes

APPENDIX B

THE COIN PROCESS



BIBLIOGRAPHY

"02 Transparency and Accountability in Labor Negotiations - Laserfiche WebLink." - Laserfiche WebLink. Accessed April 27, 2015. <http://docs.cityoffullerton.com/weblink8/2/doc/544710/Page1.aspx>.

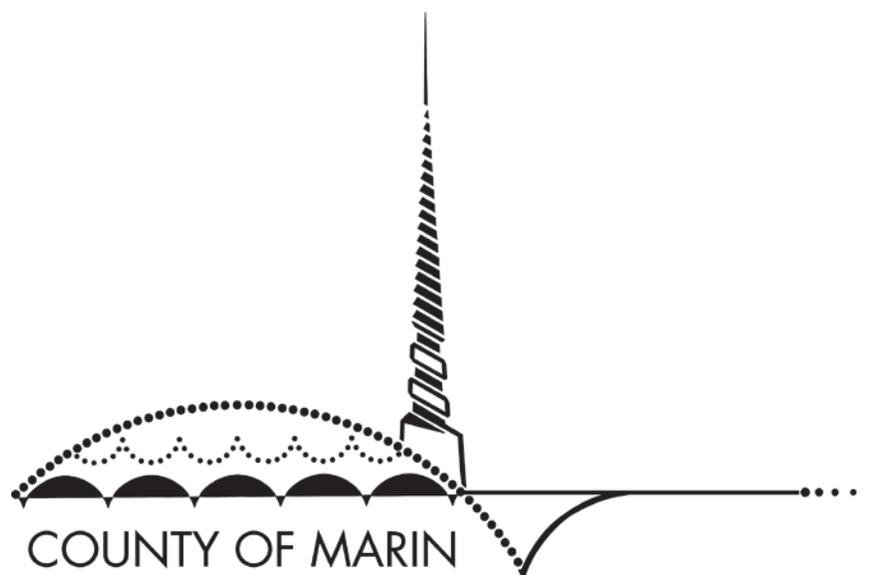
"Beverly Hills Ordinance 13-O-2657." December 18, 2013. Accessed April 15, 2015. <http://www.beverlyhills.org/cbhfiles/storage/files/851941061213138018/13-O-2651.pdf>.

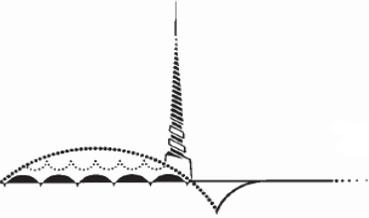
- Brouillette, Mathew. "At Last Scrutiny for Public Union Deals." *Wall Street Journal* (New York), May 21, 2015, Opinion sec.
A growing movement is opening labor negotiations so taxpayers can see how their money is being spent.
- City Council of Costa Mesa. City Council. *COIN ORDINANCE - Ordinance No. 12-7*. Accessed April 13, 2015.
<http://www.costamesaca.gov/ftp/chartercommittee/agenda/2014/2014-01-22/coin.pdf>.
- Johnson, Nels "Open Labor Talks Spurs County Review." *Marin Independent Journal* (San Rafael), April 30, 2015. Accessed April 30, 2015.
<http://www.marinij.com/general-news/20150430/open-labor-talks-plan-pits-pension-critics-unions>.
- "Minutes, Rancho Palos Verdes City Council." May 7, 2014. Accessed April 30, 2015.
http://www.palosverdes.com/rpv/citycouncil/minutes/2014_Minutes/city_council/20140506_CC_MINS.pdf.
- Nicholson, Angela. *Discuss the Civic Openness (COIN) Ordinance Enacted in Costa Mesa, CA*. Report. Marin Board of Supervisors Meeting, April 28, 2015.
- Orange County Board of Supervisors. *Ordinance No 14-005*. 3rd ed. Vol. 1. Series 21. Orange County: Board of Supervisors, 2014.
http://cams.ocgov.com/Web_Publisher/Agenda07_15_2014_files/images/O00514-000844A.PDF.
- "Search or Watch a Meeting." – Marin County Board of Supervisors Public Comment. March 03, 2015. Accessed May 22, 2015.
<http://www.marincounty.org/depts/bs/meeting-archive>.
- "Search or Watch a Meeting." Marin County Board of Supervisors, April 28, 2015. Electronically Published April 29, 2015. Accessed May 20, 2015.
<Http://www.marincounty.org/depts/bs/meeting-archive>.

2014/2015 MARIN COUNTY CIVIL GRAND JURY

The Need for Labor Negotiation Transparency – Part II

Report Date: June 12, 2015
Public Release Date: June 17, 2015





Marin County Civil Grand Jury

The Need for Labor Negotiation Transparency – Part II

SUMMARY

During the 2014-2015 Marin County Grand Jury investigation leading to its 2015 report, *Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency*, the Grand Jury learned that negotiations between Marin County, the cities and towns therein, Special Districts and their respective unions (hereafter collectively referred to as the “Parties”) are conducted in private, without transparency, and removed from the scrutiny of the Marin community. Although Marin County residents pay taxes to support decisions made by the Marin County Board of Supervisors (BOS) and the City and Town Councils and Special Districts, (hereafter collectively referred to as “Employer(s)”), there are numerous times when no transparency into the background of those decisions is made to the public.

The Grand Jury learned that the public is notified of a negotiated tentative labor agreement only when the agenda, which schedules consideration of the agreement, is posted—some three to four days prior to the Employers' public meetings. This is also the meeting at which the Employers vote to approve or disapprove the agreement. Prior to the agenda posting, little or no detailed information is made public about the terms of the tentative agreement or what it will cost. Without this information, there is no full public disclosure of the terms and cost of an agreement during the negotiation process and prior to its being voted upon. With no transparency, the public is excluded from input until it is too late for a reasoned public dialogue.

During its investigation, the Grand Jury also learned that various California cities and Orange County adopted a formal negotiation process, Civic Openness In Negotiations (COIN), which allows for community review of not only what is being negotiated, but also what a tentative agreement will cost to implement. One key element of the COIN process is the stipulation that the Employer hire an experienced, independent Lead Negotiator for all negotiations. This requirement precludes any city or county employee from negotiating terms that may benefit that employee, thus avoiding any conflict of interest.

The common elements of the COIN process are as follows:

1. The Employer hire an experienced, independent Lead Negotiator for all negotiation of wages, hours, and terms and conditions of employment.

2. The Employer hire an independent auditor to assess the fiscal impacts of each provision in the current labor contract. This fiscal impact is made available for public study.
3. After each proposal is accepted or rejected by either of the Parties, it is publicly disclosed (generally on the Employer's website). The costs for the implementation of the proposal are verified by an independent auditor and also publicly disclosed.
4. Seven days prior to the Employer's public meeting, the final tentative agreement is made public (generally on the Employer's website), including all associated costs, which are independently verified.
5. After seven days, the final tentative agreement is placed on two consecutive Employer's public meeting agendas: at the first meeting, the agreement is a discussion item; at the second meeting, the Employer votes on the agreement.

The Grand Jury recommends that the Employers adopt an ordinance implementing the COIN process to ensure transparency and prior public review of all proposals and final tentative labor agreements.

BACKGROUND

During the 2014-2015 Marin County Grand Jury investigation leading to the 2015 Grand Jury report, *Pension Enhancements: A Case of Government Code Violations and A Lack of Transparency*, the Grand Jury learned that labor negotiations in Marin County and the cities and towns therein are conducted without transparency, and are thereby removed from the scrutiny of the community. During this time, the Grand Jury also learned that various California cities and Orange County had adopted a transparent negotiation process, Civic Openness in Negotiations (COIN), which allows for community review of tentative proposals being negotiated and also what those proposals will cost if accepted or rejected. As a result, the Grand Jury decided to investigate whether a more transparent negotiation process might be appropriate for Marin County and its cities and towns.

APPROACH

The Grand Jury interviewed representatives of the Orange County Management of Government Affairs, various Marin County officials directly involved with labor contract negotiations, and officials from Costa Mesa who are engaged in the implementation of COIN. Orange County and Costa Mesa COIN ordinances were reviewed along with numerous websites of various cities and counties involved in the use of COIN. Additionally, Grand Jury members attended multiple Marin County Board of Supervisors meetings at which the public brought COIN to the attention of the Board of Supervisors. Grand Jury members also attended the April 28, 2015, BOS meeting where COIN was agendized for discussion; they later viewed the video of the meeting and read the staff report relating to COIN as presented at that meeting.

DISCUSSION

The Need for Civic Openness in Labor Contract Negotiations (COIN)

Although Marin County residents pay taxes to fund decisions made by the Marin County Board of Supervisors and the City and Town Councils and Special Districts, often there is no transparency into the background of those decisions. One specific area that lacks transparency is labor negotiations between the Parties. In general, the public is notified of the Parties' tentative agreements only three to four days prior to the Employers' public vote; it is only then that the meeting agenda is posted for public view. Prior to the agenda posting, little or no detailed information is made public about the terms of the tentative agreement or what it will cost. In sum, there is no transparency before the vote on the tentative agreement.

This short time period (three to four days) gives the residents of Marin little time to review the tentative agreement in order to provide input at an Employers' public meeting—the meeting at which the tentative agreement is presented for approval. Furthermore, the public receives no information regarding any proposal made by either Party or the associated costs of those proposals, which leads to the question: *What should be disclosed to the residents of Marin and when?*

COIN Started In Costa Mesa

The Grand Jury learned that a newly elected Costa Mesa City Council had discovered the financial strain placed on their city by their unfunded pension liabilities. This discovery, coupled with the realization that opaque labor negotiations had created an environment devoid of public oversight, review or input, motivated the Council to adopt a more transparent process for all labor negotiations. Accordingly, the City of Costa Mesa adopted a COIN ordinance in September of 2012, the first municipality in California to do so.

Subsequently, Beverly Hills, Fullerton and Rancho Palos Verdes also adopted variations of COIN, as did Orange County (Appendix A)¹. For all these entities, the principal objective of the COIN process is to allow the public to review and to provide input during negotiations. One person interviewed stated, "...it occurred to the Council that the public's full understanding of what they are being asked to pay for is good governance."

Learning this, the Grand Jury investigated various existing COIN ordinances and procedures to determine what the COIN process might mean for Marin Country and its cities and towns.

¹ Orange County Employee Association has made an unfair practice charge to the Public Employment Relations Board concerning how COIN was adopted, not the implementation of COIN. This is not yet resolved.

What COIN Is: Key Components

The common elements of the COIN process are as follows:

1. The Employer hire an experienced, independent Lead Negotiator for all negotiation on wages, hours, and terms and conditions of employment. This requirement precludes having a city or county employee negotiate terms of an agreement that could directly benefit such employee.
2. The Employer hire an independent auditor to assess the fiscal impacts of each provision in the current labor contract. This fiscal impact is made available for public study.
3. Labor contract negotiations begin.
4. After each proposal is accepted or rejected by either Party to the negotiation, the proposal is publicly disclosed (generally on the Employer's website). The long-term and short-term costs of the proposal are verified by an independent auditor and also publicly disclosed.
5. Negotiations conclude with a final tentative agreement.
6. Seven days prior to the Employer's public meeting, the final tentative agreement is made public (generally on the Employers' website), including all associated costs that are independently verified.
7. Following these seven days, the final tentative agreement is placed on the following two consecutive Employer's public meeting agendas: at the first meeting, the tentative agreement is a discussion item; at the second meeting, the Employer(s) vote on the tentative agreement.

The above process is used in a number of municipalities. For more details see Appendix A.

What COIN Is Not: Misconceptions

The Grand Jury learned that there are many misconceptions about the COIN process, as follows:

Misconception #1: The public negotiates.

COIN does NOT involve the public in actual negotiations, nor does it disclose what occurs at the negotiation table. Fair-minded taxpayers recognize that such an attempt would lead to an unproductive bargaining environment at best and would likely evolve into intractable positions by both sides that would prevent a constructive outcome.

Misconception #2: Negotiations are held open for public observation.

In none of the cities or Orange County are COIN negotiations open for public view or public participation. Negotiations occur in private, but the decisions on proposals are made available for public review.

Misconception #3: COIN slows down the negotiation process.

The Grand Jury has learned that, during the first round of negotiations using the COIN process, there is a learning curve, since COIN provides a new framework within which to operate. However, after learning the new process, those interviewed noted that negotiations proceeded in a timeframe similar to prior negotiations.

Misconception #4: Not all types of negotiation methods can adapt to the COIN processes.

The COIN process is about transparency and not about the negotiation method. Commonly used negotiation practices, such as interest-based or adversarial, can still be the norm while using the COIN process.

The COIN process is about the transparency of decisions made during negotiations that lead to a tentative agreement – the agreement that is recommended to the Employer for approval. It is through the COIN process that the public is made aware of the terms and associated costs of tentative agreements well before they are adopted, thereby giving taxpayers opportunity to provide timely public review and input.

FINDINGS

- F1. The residents of Marin County pay taxes to support decisions made by the Board of Directors of Special Districts; however these residents have minimal opportunity to provide input into labor negotiations.
- F2. The COIN process can be implemented without affecting the manner in which tentative agreements are negotiated but which nevertheless will ensure public awareness of the terms and cost of those agreements in advance of their being adopted.
- F3. The COIN process mandates transparency in government decision-making, allowing residents to be informed and to participate in public discussion of how their tax dollars are spent.

RECOMMENDATIONS

- R1. The Special Districts listed as Respondents adopt and implement a COIN ordinance prior to June 1, 2016, or prior to the next round of negotiations, whichever comes earlier.

- R2. The Special Districts listed as Respondents adopt and implement a COIN ordinance which includes, but is not limited to the following:
1. Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.
 2. Hire an independent auditor to determine the fiscal impact of each provision in the current contact, and make this analysis available for public review.
 3. Make public each proposal, after it is accepted or rejected by either Party, and publicly verify the costs of that accepted or rejected proposal by an independent auditor.
 4. Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.
 5. After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- Golden Gate Bridge, Highway and Transportation District: All Findings and Recommendations.
- Marin Municipal Water District: All Findings and Recommendations.
- North Marin Water District: All Findings and Recommendations.
- Novato Fire Protection District: All Findings and Recommendations.
- Southern Marin Fire Protection District: All Findings and Recommendations.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

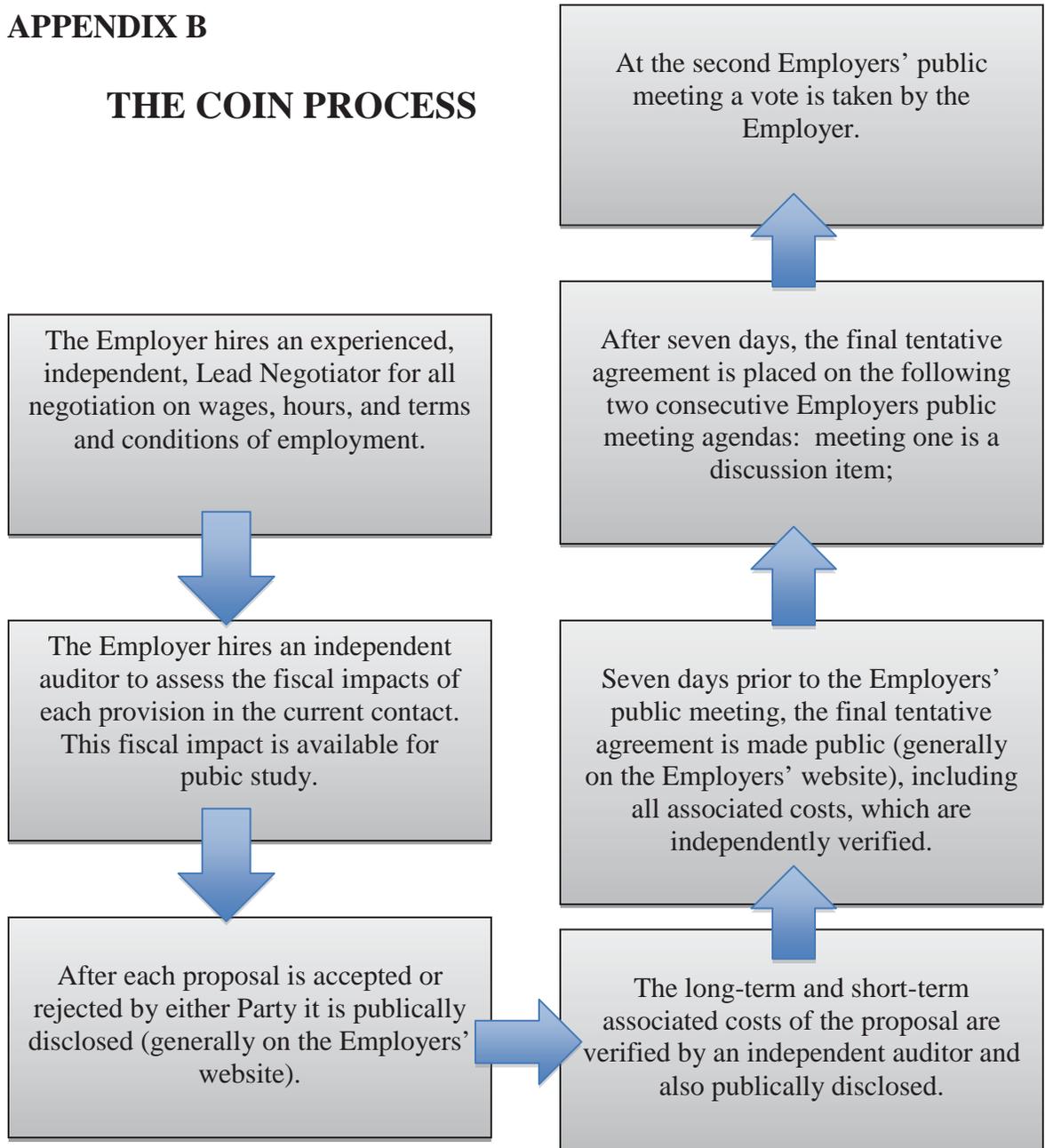
APPENDIX A

Summary of “COIN” Requirements Adopted by City/ County

Requirement	Costa Mesa	Beverly Hills	Fullerton	Rancho Palos Verdes	Orange County
Applies to all negotiations between the Parties.	Yes	Yes	Must include Salary Changes	Yes	Yes
Independent Negotiator	Yes	Yes	May be Waived by Council	Yes	Yes
Executive Employee Involved in Bargaining	Yes	Yes	Yes	Yes	Yes
Pre-Negotiation Economic Analysis (Baseline)	Yes	Yes	Yes	Yes	Yes
Each Accepted or Rejected Proposal plus the Economic Analysis made public	Yes	Yes	Yes	Yes	Yes
Proposals Verified Independently	Yes	Yes	Yes	May be Waived by Council	Yes
Tentative Agreement an Agenda Item on 2 Meetings Prior to Adoption	Yes	Yes	Yes	Meetings must be 2 Weeks Apart	Yes

APPENDIX B

THE COIN PROCESS



BIBLIOGRAPHY

- "02 Transparency and Accountability in Labor Negotiations - Laserfiche WebLink." - Laserfiche WebLink. Accessed April 27, 2015.
<http://docs.cityoffullerton.com/weblink8/2/doc/544710/Page1.aspx>.
- "Beverly Hills Ordinance 13-O-2657." December 18, 2013. Accessed April 15, 2015.
<http://www.beverlyhills.org/cbhfiles/storage/files/851941061213138018/13-O-2651.pdf>.
- Brouillette, Mathew. "At Last Scrutiny for Public Union Deals." *Wall Street Journal* (New York), May 21, 2015, Opinion sec.
A growing movement is opening labor negotiations so taxpayers can see how their money is being spent.
- City Council of Costa Mesa. City Council. *COIN ORDINANCE - Ordinance No. 12-7*. Accessed April 13, 2015.
<http://www.costamesaca.gov/ftp/chartercommittee/agenda/2014/2014-01-22/coin.pdf>.
- Johnson, Nels "Open Labor Talks Spurs County Review." *Marin Independent Journal* (San Rafael), April 30, 2015. Accessed April 30, 2015.
<http://www.marinij.com/general-news/20150430/open-labor-talks-plan-pits-pension-critics-unions>.
- "Minutes, Rancho Palos Verdes City Council." May 7, 2014. Accessed April 30, 2015.
http://www.palosverdes.com/rpv/citycouncil/minutes/2014_Minutes/city_council/20140506_CC_MINS.pdf.
- Nicholson, Angela. *Discuss the Civic Openness (COIN) Ordinance Enacted in Costa Mesa, CA*. Report. Marin Board of Supervisors Meeting, April 28, 2015.
- Orange County Board of Supervisors. *Ordinance No 14-005*. 3rd ed. Vol. 1. Series 21. Orange County: Board of Supervisors, 2014.
http://cams.ocgov.com/Web_Publisher/Agenda07_15_2014_files/images/O00514-000844A.PDF.
- "Search or Watch a Meeting." – Marin County Board of Supervisors Public Comment. March 03, 2015. Accessed May 22, 2015.
<http://www.marincounty.org/depts/bs/meeting-archive>.
- "Search or Watch a Meeting." Marin County Board of Supervisors, April 28, 2015. Electronically Published April 29, 2015. Accessed May 20, 2015.
<Http://www.marincounty.org/depts/bs/meeting-archive>.

FORM FOR RESPONDING TO GRAND JURY REPORT

Report Title: The Need for Labor Negotiation Transparency

Report Date: June 1, 2015

Public Release Date: June 4, 2015

Response by: September 4, 2015

FINDINGS

- I (we) agree with the findings numbered: n/a
- I (we) disagree wholly or partially with the findings numbered: F1, F2, F3

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

Letter attached.

RECOMMENDATIONS

- Recommendations numbered n/a have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered R2.5 have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered n/a require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered R2.1-4 will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 8/6/15 Signed: [Signature]

Number of pages attached 3



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

August 6, 2015

The Honorable Judge Faye D'Opal
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

RE: RESPONSE TO GRAND JURY REPORT: THE NEED FOR LABOR TRANSPARENCY

Dear Honorable Judge D'Opal:

This serves as the Town of Fairfax's response to the subject Grand Jury Report which was released to the public on June 4, 2015. We have also enclosed the Response Form as per the instructions.

Introduction

The Fairfax Town Council has great respect for the work conducted by the County Civil Grand Jury. Its efforts have frequently focused long overdue attention on countywide and local governance that may appear to fall short of the high standards our elected and appointed bodies work diligently to provide. In this case, however, the Grand Jury's concern over the transparency afforded labor negotiations by the County and the eleven cities and towns is unwarranted as it applies to the Town of Fairfax. In fact, the Town of Fairfax and its elected Councilmembers adhere to the principles of openness and transparency in all our actions taken on behalf of our citizens, ranging from our budget process, to our employee negotiations, to all aspects of our decision-making through our Town Council and Town Boards/Commissions meetings.

Findings and Recommendations – Response

The Fairfax Town Council disagrees with Findings F1, F2, F3, and Recommendations R1 and R2.1-4 for the following reasons:

- There is no lack of transparency in the manner in which the Town of Fairfax conducts its labor negotiations. Negotiations concluded with all of our current employees reflects the taxpayers' demands that the Town Council hire and promote personnel consistent with the constraints of our very conservative budget, while ensuring that the compensation paid honors the extraordinary work of the public employees who provide dedicated service and protection to our community. During the negotiation process, the Council closely examines the fiscal impacts of all proposals. Based on years of experience successfully negotiating contracts that fit within

the Town's budget *over the short and long term*, Councilmembers (with the assistance of the Town Manager and Finance Director), are effectively managing negotiations with our employees. Given the Town's limited budget, and as the negotiations are conducted effectively and the fiscal impacts are clearly delineated during the process, it is unnecessary and would be fiscally irresponsible to divert funds to hire a negotiator and an independent auditor to conduct these activities.

- The Fairfax Town Council believes that most Fairfax residents would agree that the Town embraces and promotes a robust democracy. No issue raised by the public is left unexamined by its Council, public outreach by Town staff on issues of public concern is extensive, and individual councilmembers actively address individual and community-wide concerns raised by constituents. Town Council meetings are well attended, and are viewed widely on both the Government Channel and via the Town's website (where meetings are streamed and archived). Any member of the community who has a concern about any issue on the Town's agenda has the absolute right to raise questions and demand answers (and, under the Town Code, the community has the further right to petition the Council to place items on its agenda). In the event concerns over an issue are not resolved when raised, it is the Council's practice to continue the item for further review, study, and consideration. As to labor negotiations specifically, in the event the public has concerns with any contract agendized for consideration by the Council, the public has the right and the opportunity to question the Council on all terms of labor contracts and the financial basis upon which the Town intends to satisfy its short and long term financial obligations.
- The Fairfax Town Council welcomes the public's oversight on all aspects of its finances – in particular the more than 70% of the budget expended on salaries and benefits. The Council holds a minimum of three public meetings to consider the budget, including a budget-dedicated workshop, annually to assure the public that every taxpayer dollar is accounted for and every allocation is made only after full disclosure and public comment. Comprehensive monthly financial statements are reported to Council and the community, and a midyear budget review is conducted to ensure the Town is addressing the challenges of staying on its disciplined financial course. Our small town cares for its budget like that of any Fairfax family and knows that the trust of the community will endure only so long as we are able guardians of their hard earned tax dollars. This trust is regularly confirmed in the review of our Town finances provided by annual independent financial audits.
- The Fairfax community, in addition to all of the above, has two ultimate checks on all Council decisions: (i) the biennial election of councilmembers; and (ii) voting for or against parcel tax and sales tax increases regularly conducted (all of which have been overwhelmingly approved) over the past decade – taxes that directly support employee compensation and benefits. In tandem, they provide the Fairfax community with direct and forceful opportunities to debate

and consider the manner and approach through which the Town Council budgets their funds. To date, however, there is an absence of community sentiment that they suffer "minimal" or "insufficient opportunity to provide input" and oversight in matters relating to labor negotiations, nor have there been community requests to the Council to adopt the COIN process.

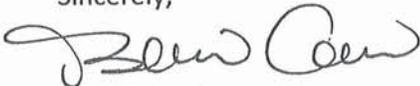
Conclusions

For the foregoing reasons, the Fairfax Town Council does not agree that our community "has minimal opportunity to provide input into labor negotiations" (F1), that the COIN process "will ensure public awareness of the terms and costs of [labor] agreements in advance of their being adopted" (F2), and/or COIN will further "allow residents to be informed and to participate in public discussion of how their tax dollars are spent" (F3). Further, the Town of Fairfax will not adopt and implement a COIN ordinance (R1, R2.1-4).

Notwithstanding the above, the Town of Fairfax will, consistent with the example of adopting ordinances after an initial and second reading, place final tentative employee agreements on two successive Town Council agendas - the first for discussion of the agreement, the second for Council vote (R2.5). We will begin implementation commencing in Fiscal Year 2016/2017.

Thank you for the opportunity to review and respond to the Report.

Sincerely,



Barbara Coler
Mayor

Enclosure – *Form for Responding to the Grand Jury Report*

cc: Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903



City of Larkspur

400 Magnolia Avenue, Larkspur, California 94939
Telephone: (415) 927-5110 Fax: (415) 927-5022
Website: www.cityoflarkspur.org

July 15, 2015

The Honorable Judge Faye D'Opal
Marin County Superior Court
PO Box 4988
San Rafael, CA 94913-4988

SUBJECT: Response to Grand Jury Report, *The Need for Labor Negotiation Transparency*

Judge D'Opal:

This letter serves as the Larkspur City Council's response to the Grand Jury's report *The Need for Labor Negotiation Transparency*, dated June 1, 2015. Foremost, the City Council thanks the members of the Grand Jury for your service and particularly for your promotion of transparency in government. Transparency in government is an ideal and goal shared by all of Marin's elected officials and the Grand Jury's efforts to identify areas for improvement is much appreciated. We appreciate the lengths to which the Grand Jury has gone to make the public aware of Civic Openness in Negotiations (COIN) ordinances – one emerging approach to increased transparency.

The City Council recognizes that members of the Grand Jury, like councilmembers, are volunteers and have only so much time available to conduct business. With such limited time, it is understandable that the Grand Jury focused on the agencies discussed in the first paragraph of the section labelled "Approach". Nonetheless, the City Council is disappointed that no officials from Marin cities seem to have been interviewed. Most of Marin's cities employ small numbers of represented employees and many of these represented units are not connected to larger labor unions. The experience of our agencies is very different from the experience of the large employers listed in the Grand Jury report, and our perspective about labor relations reflects a different dynamic. Our point is not that our labor negotiations cannot benefit from some or all of the recommendations in the Grand Jury's report, but that the adversarial rhetoric concerning labor relations found in some of the report's reference material (from Southern California cities) is wholly inconsistent with the relatively congenial labor-management atmosphere in Marin County. Without this local context, a reader of the Grand Jury's report might infer that the specific labor relations challenges in Orange County exist in Marin County. They do not.

We are also disappointed by the absence of a section discussing current labor negotiation practices by the municipalities in Marin. The Grand Jury's report gives the impression that none of the practices espoused by advocates of COIN are found in Marin – an impression

Planning: (415) 927-5038

Parks and Recreation: (415) 927-6746

Library: (415) 927-5005

Public Works: (415) 927-5017

Central Marin Police: (415) 927-5150

Fire: (415) 927-5110

that is not correct. Many of Marin's cities, including Larkspur, long ago implemented some of the core tenants of COIN. For example, Larkspur has for many years employed independent negotiators for labor relations. In addition, Larkspur already commissions third-party audits of the liabilities associated with its employment costs, specifically pension costs and retiree medical costs. These third-party audits are available to the public and any member of the public is welcome to address the City Council about them.

The literature on COIN implies that agency governing boards are under-informed about the financial impacts of employment agreements when they approve them. While we cannot attest for other cities, the Larkspur City Council wants to assure the Grand Jury and our residents that our current practices include financial briefings as part of our closed session discussions. City staff reports were presented with our most recently approved memoranda of understanding and other documents governing employee agreements. (Links to these reports are provided at the end of this letter.) The summary information in these reports reflects more detailed information and discussion from the closed session meetings that led to these agreements. We recognize that the Grand Jury's promotion of COIN is about disclosure of information and is not a direct comment about whether the Larkspur City Council is or is not well-informed when making its decisions. We are offering this comment to assure our constituency that we take seriously our fiduciary obligation to be well-informed as we examine proposals from the bargaining table and that, in this respect, we take exception to some of the general rhetoric of COIN proponents.

In reviewing the Grand Jury report, there are two points that the City Council believes warrant clarification. The first point concerns the footnote on Page 3 of the report, in which the Grand Jury makes reference to a dispute about COIN before the Public Employee Relations Board (PERB) known as *Orange County Employees Association (OCEA) vs County of Orange*. Subsequent to the Grand Jury issuing its report, the attached ruling was issued; the ruling was decided in favor of the OCEA's arguments. The footnote states that the charge against the County of Orange relates to the adoption of a COIN ordinance and not its implementation, which might be interpreted to mean that the outcome of the dispute has no bearing on the implementation of COIN. We disagree with such an interpretation. If the County of Orange does not appeal the ruling or the ruling is upheld on appeal, the County of Orange must engage in "meet and confer" talks with the OCEA. Through this meet and confer process, disputes over the implementation of COIN may very well arise, and the parties may find themselves requesting resolution of these disputes in front of PERB. All taxpayers deserve to know that an agency adopting a COIN ordinance before the Orange County parties resolve their disputes may be exposing the agency to labor relations and legal costs that can be avoided by simply taking a "wait and see" approach.

Our second point concerns this sentence on Page 5 of the report:

The COIN process is about the transparency of decisions made during negotiations that lead to a tentative agreement – the agreement that is recommended to the Employer for approval.

The City Council wants to make certain that the public understands the nature of a tentative agreement in Larkspur. The City Council meets regularly with its negotiator(s) in closed session. During these closed session meetings, the City Council grants certain levels of authority to the negotiator to make agreements at the bargaining table. In Larkspur, when the designated negotiator signs a tentative agreement, he or she is doing so with the

authority granted by the Council. Perhaps in some organizations, agency representatives sign tentative agreements without consulting with the governing board first or having already received authorization to make commitments at the bargaining table. It may be that this step in the COIN process is proposed and deemed necessary as a check against tentative agreements that the governing board has not authorized. Perhaps in these agencies, the process is such that rejection by governing body is a normal aspect of the process. It would not be a normal aspect of the process in Larkspur. In Larkspur, the City Council has discussed tentative agreements and their financial ramifications before they are signed. At best, overturning a memorandum of understanding at the end of the process would destroy the faith our labor units have that the City's negotiator only signs tentative agreements the City Council is prepared to approved; at worst, it would expose the City to charges of bargaining in bad faith – and associated legal exposure – for rejected elements of agreements that the City advanced at the bargaining table.

What follows are the City Council's specific responses to the report's findings and recommendations.

Grand Jury Finding 1: *The residents of Marin County pay taxes to support decisions made by the Board of Supervisors and City and Town Councils; however these residents have minimal opportunity to provide input into labor negotiations.*

The City Council agrees that residents pay taxes but offers no opinion as to residents' reasons for doing so. The City Council notes that labor negotiations in Larkspur have always been placed on the agenda so that the public is informed when they are occurring; the public has always and will always have the option to address the Council at any public meeting about labor negotiations and labor relations, in general. To the extent that the Grand Jury is defining "minimal opportunity" as there not being agenda items as they are described in the COIN ordinances, the City Council agrees that such agenda items have not existed in Larkspur.

Grand Jury Finding 2: *The COIN process can be implemented without affecting the manner in which tentative agreements are negotiated but which nevertheless will ensure public awareness of the terms and cost of those agreements in advance of their being adopted.*

The City Council finds no evidence in the Grand Jury's report to support this assertion. The Grand Jury's report provides a list of five agencies that have adopted some form of a COIN ordinance. A review of the websites of the five agencies suggests that only one agency, the City of Costa Mesa, has executed a labor agreement using COIN. Negotiations of that sole executed agreement, between the Costs Mesa and its non-sworn employees, did not begin until after the expiration of the previous agreement and took roughly one year to complete. In Larkspur' experience, one year is a long time for such negotiations. Additionally, in this specific case, news reports suggest the Costa Mesa employee unit was bargaining under the duress that the Costa Mesa's financial situation was going to result in layoffs unless there were concessions at the bargaining table. This one "COIN in action" example appears far too unique in nature to use as a basis for drawing the conclusion in the Grand Jury's finding. The City Council requires more information about the bargaining experience under a COIN ordinance before rendering an opinion on this finding. The City Council does

note that it appears that the Cities of Costa Mesa and Beverly Hills are in the process of initiating bargaining processes with several employee groups and will be following the COIN model.

Grand Jury Finding 3: *The COIN process mandates transparency in government decision-making, allowing residents to be informed and to participate in public discussion of how their tax dollars are spent.*

The City Council agrees that the COIN process would increase the amount of information that the City would publish during the negotiation process and that it stands to reason that public discourse would follow.

For any agency adopting a COIN process, the City Council believes residents should be advised as to when public discussion and input can be most effective. Based on our interpretation of the COIN process and our understanding of applicable labor law, the best point in the COIN process for public discussion between and with the City Council is prior to the start of bargaining. In the COIN process, the initial forum to discuss the summary report of employee costs would be the one point in the process the City Council believes could be a true exchange of ideas about labor negotiations. Once bargaining begins, the City Council would be quite limited by law in its ability to converse with the public about negotiations. Additionally, the COIN process places great weight on establishing a two-meeting review period for a draft employment agreement, after which the agreement would be approved or disapproved. As noted previously, given the Larkspur City Council's role in the our bargaining process, the rejection of a draft employment agreement would significantly damage the City's credibility at the bargaining table and potentially bring charges from our labor groups that we bargained in bad faith.

Grand Jury Recommendation 1: *Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance prior to June 1, 2016, or prior to the next round of negotiations, whichever comes earlier.*

The City Council does not believe it would be fiscally prudent to consider adopting a COIN ordinance until (a) legal challenges to COIN ordinances have been resolved (particularly those related to *Orange County Employees Association vs County of Orange*); and (b) there is a significant number of case studies to examine. It appears that within the next few months, the COIN process will be underway in several jurisdictions. Perhaps by some point in 2016 or 2017, there will be enough examples for the City Council to consider what form of a COIN ordinance might be appropriate for Larkspur.

Grand Jury Recommendation 2: *Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance which includes, but is not limited to the following.*

1. *Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.*

2. *Hire an independent auditor to determine the fiscal impact of each provision in the current contract, and make this analysis available for public review.*
3. *Make public each proposal, after it is accepted or rejected by either Party, and publicly verify the costs of that accepted or rejected proposal by an independent auditor.*
4. *Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.*
5. *After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.*

As noted previously, the City Council does not believe it would be fiscally prudent to consider adopting a COIN ordinance until (a) legal challenges to COIN ordinances have been resolved (particularly those related to *Orange County Employees Association vs County of Orange*); and (b) there is a significant number of case studies to examine. The City Council would like to examine such case studies before considering specific elements of a COIN ordinance.

The City Council does offer the following comments with respect to three of the elements enumerated by the Grand Jury. First, as noted previously, the City of Larkspur has retained independent negotiators for many years and fully anticipates doing so with all future negotiations. Second, the City of Larkspur already receives detailed audits of its liabilities related to employee costs from third parties. The City Council believes it would be a wasteful use of taxpayer money to pay yet another third party to compile this information in one report – the City Council is comfortable that such a report could be compiled by the City's Finance Director. Regardless of when and if the City Council adopts a COIN ordinance, we are prepared now to commit to having such a report prepared and presented publicly before bargaining begins. Finally, the City Council does not see any particular reason why negotiated labor agreements cannot be published and in circulation for two meetings prior to adoption. Regardless of when and if the City Council adopts a COIN ordinance, we are prepared now to commit to this practice.

Sincerely,

Larry Chu
Mayor

c: Marin County Grand Jury

encl: as stated

links to relevant staff reports: <http://www.cityoflarkspur.org/DocumentCenter/View/4845>
<http://www.cityoflarkspur.org/DocumentCenter/View/4876>

FORM FOR RESPONDING TO GRAND JURY REPORT

Report Title: The Need for Labor Negotiation Transparency

Report Date: June 1, 2015

Public Release Date: June 4, 2015

Response by: September 4, 2015

FINDINGS

- I (we) agree with the findings numbered: 1, 3
- I (we) disagree wholly or partially with the findings numbered: 2

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered _____ have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered _____ have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered 1, 2 require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 7/28/15 Signed: John Wight

Number of pages attached _____ Mayor, San Anselmo

**TOWN OF SAN ANSELMO
GRAND JURY REPORT RESPONSE
THE NEED FOR LABOR NEGOTIATION TRANSPARENCY
JUNE 4, 2015**

Finding 2

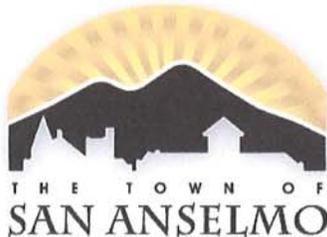
The Town of San Anselmo needs to investigate further how the principles of COIN may affect the bargaining process and balance the costs and ramifications with the need to ensure public awareness of the terms and cost of those agreements in advance of their being adopted. Good points have been made in the Grand Jury report that will be discussed. To that end, the Town Council will discuss the principles of COIN in detail in the fall of 2015.

Recommendations 1 and 2

Further analysis is necessary before the San Anselmo Town Council can commit to adopting a COIN ordinance prior to June 1, 2016. The Town's only bargaining agreement expires June 30, 2018 and discussions on COIN will take place in the fall of 2015.

John Wright
Mayor

Doug Kelly
Vice Mayor



Tom McInerney
Councilmember

Ford Greene
Councilmember

Kay Coleman
Councilmember

525 San Anselmo Avenue, San Anselmo, CA 94960-2682
www.townofsananselmo.org
(415) 258-4600 | Fax (415) 459-2477

July 29, 2015

Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

Re: Response to the June 4, 2015 Civil Grand Jury Report- The Need for Labor Negotiation
Transparency.

Dear Sir or Madam:

The Town Council of the Town of San Anselmo has received a copy of the June 4, 2015, Grand
Jury Report "*The Need for Labor Negotiation Transparency.*"

As required, I have enclosed the Town Council's response to Findings F1 through F3 and
Recommendations R1 and R2.

Please do not hesitate to contact me should you need additional information or clarification.

Respectfully,

A handwritten signature in blue ink that reads "John Wright".

John Wright
Mayor