



Agenda Item No. 14.

Staff Report

Date: September 10, 2015
To: Mayor Hoertkorn and Councilmembers
From: Joe Chinn, Town Manager
Subject: Response to Marin County Civil Grand Jury Report "The Need for Labor Negotiation Transparency"

Recommendation

Town Council authorizes the Mayor to sign the attached letter response to the Marin County Civil Grand Jury Report entitled "The Need for Labor Negotiation Transparency".

Background and discussion

On June 1, 2015, the Marin County Civil Grand Jury issued a report entitled *The Need for Labor Negotiation Transparency*, which proposes agencies adopt a form negotiation process called Civic Openness in Negotiations (COIN). The Town is required to respond to Grand Jury reports by indicating its agreement or disagreement with the report's findings and recommendations.

Analysis of the issue and the Town Council response to the report is found in the draft letter attached.

Fiscal, resource and timeline impacts

There is no fiscal impact associated with this response to the Grand Jury.

Alternative actions

Council could choose to modify the draft letter response to the Grand Jury.

Environmental review (if applicable)

Not applicable.

Attachments

- Response Draft Letter to Marin County Civil Grand Jury
- Response Form
- Grand Jury Report of June 1, 2015 "The Need for Labor Negotiations Transparency"
- Responses to the Civil Grand Jury from Other Cities in Marin County
 - a. Belvedere (August 11, 2015)
 - b. Larkspur (August 19, 2015)
 - c. San Anselmo (July 29, 2015)
 - d. Tiburon (August 20, 2015)

September 11, 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 June 1, 2015
"The Need for Labor Negotiation Transparency"

Dear Honorable Judge D'Opal:

The Ross Town Council has received and reviewed the Grand Jury Report – "The Need for Labor Negotiation Transparency" dated June 1, 2015. The Report directs the Town to respond to Findings Nos. 1-3 and Recommendations Nos. 1-2. The Town Council approved this response at the September 10, 2015, Council meeting.

STATEMENT REGARDING FINDINGS

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.*

Response: The Town Council agrees in part and disagrees in part with this finding. There is no doubt that the residents of Marin County and Ross pay taxes that provide revenues to support the Town's provision of services to the community.

The Town does not agree that residents have minimal opportunity to provide input into labor negotiations. Ross is a small town in Marin with 20.8 FTE employees, with 7 FTE belonging to a labor association which bargains collectively (the Ross Police Officers Association – RPOA). The other employees are unrepresented. Mandatory subjects of bargaining include wages (and other forms of compensation, i.e. fringe benefits), hours and working conditions. Current labor agreements, salary schedules and the Town's budget outlining personnel costs are available for review by the public on the Town's website or at Town Hall. The members of the public are encouraged to provide comments and input to the Council related to labor costs such as: at the public meeting the proposed contract is available to the Council to vote on; at budget workshops and budget hearings with labor costs being a significant part of the budget; and at any Council meeting as part of the public comment portion of the agenda. Proposed labor agreements are always placed on the Town Council agenda and public comment is always taken prior to Council consideration.

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 costs of those agreement in advance of their being adopted.*

Response: The Town does not agree that the COIN process can be implemented without affecting the manner in which tentative agreements are negotiated. In Ross, the negotiation process allows for discussion between the Town labor negotiator and the bargaining unit negotiator and proposals and counter-proposals to be discussed between the parties. Pausing during negotiations to call for an independent audit of a proposal then circulating that proposal for public discussion even if it has already been rejected by one side or the other is a significant change and would affect the timing and tone of labor negotiations.

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.*

Response: The Town agrees that the COIN process does provide for transparency and would increase the amount of information that the Town would publish during the negotiation process. Residents potentially would participate in public discussions on the information presented through that process.

RECOMMENDATIONS

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.*

Response: The Grand Jury's recommendation that the Town of Ross adopt a COIN ordinance attempts to address a perceived lack of transparency regarding the Town's labor negotiation process and the fiscal impact of the resulting labor agreement. The Ross Town Council shares the goal of being transparent in our operations. While we appreciate and agree with the Grand Jury's position that information regarding the negotiation process and employee compensation should be easily accessible by the public, we believe the Town already provides sufficient notice and an opportunity to comment when tentative agreements have been reached, and makes available detailed cost information regarding current and anticipated labor costs. We also believe we provide opportunities in the budget process and at regular Council meetings where the public is provided and can comment on salary and benefit items and associated costs. Therefore we believe the recommendation that Ross adopt a COIN ordinance and incur the costs associated with its implementation is not warranted.

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.*

Response: The Town of Ross is currently negotiating with our one labor association RPOA. For this negotiation the Town is using an independent, experienced lead negotiator and RPOA is also using an independent negotiator. That being said, there could be circumstances in the future where we may think the best outcome and public interest is best served by having Town management staff directly negotiating with our labor association. In addition, the Town and thus the public would save the cost of hiring an independent negotiator by having Town staff conduct the negotiations. The Town believes we should consider whether to hire an independent lead negotiator or have Town staff negotiate labor agreements based on a review of the circumstances prior to negotiations commencing to determine what is in the best interest of the public rather than mandating that all negotiations are best handled by an independent lead negotiator.

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.*

Response: Town staff provides information related to the fiscal impact of each provision of the current labor agreement with the Ross Police Officers Association, as well as the cost of salaries and benefits for unrepresented employees, which is included in detail in the Town's annual operating budget. Department budgets include employees' salaries, as well as expense detail for each Town paid benefit (health premiums, retirement, specialty incentives, longevity pay, uniform allowance, holiday pay, etc.). The Town's budget, labor agreements and salary schedule are available on the Town's website, as are the comprehensive annual audits. The Town does not need to hire an "independent auditor" to determine the fiscal impact of each provision in the current contract and would find that additional cost an unnecessary and undue public expense.

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.*

Response: Labor negotiations are an iterative process in Ross where proposals and counter proposals are exchanged and discussed in a fairly informal way until a tentative agreement is reached. In the process there could be a number of proposals and counter-proposals. Pausing during negotiations to call for an independent audit of each proposal and then circulating that

proposal for public discussion even if it has already been rejected by one side or the other is a significant change and would lead to delays in the negotiations as well as change the tone of labor negotiations. The tentative agreement is then presented to the Town Council (at a regular Town Council meeting) for their consideration along with a staff report that includes a statement as to the total cost of the proposal. It is the duty of the Town Manager and Finance Officer to ensure that the cost analysis is accurate. Hiring an independent auditor to cost out the tentative agreement would just increase the cost to the public and delay the negotiation process.

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.*

Response: Pursuant to State law, the tentative agreement, staff report, and all other agenda materials are made public at least 72 hours before the Council meeting. However, typically the Town of Ross is able to provide the material six days before the Council meeting. In the future, the Town can agree to make the tentative agreement and related staff report related to labor negotiations available to the public seven days in advance. The portion of the recommendation the Town does not agree with is having it being "independently verified" which as we discussed increases the cost to the public and delays the process without providing any additional benefit to the public.

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.*

Response: The Ross Town Council could agree with the concept of having the tentative agreement on two consecutive public meeting agendas. However, as a small Town with only one regular Council meeting a month this provision would lead the Town if we did not hold a special meeting to potentially violate Government Code 3505.1 which requires that the governing body vote to accept or reject a tentative agreement within 30 days of the date it is first considered at a duly noticed public meeting. Therefore, the Town will not be implementing this recommendation but will make public the tentative agreement seven days in advance of the Council meeting.

Thank you for the opportunity to review and respond to the Report. The Town Council appreciates the work of the Grand Jury in exploring issues of concern to the residents of Marin County.

Sincerely,

Kathleen Hoertkorn
Mayor

cc: John Mann, Foreperson

RESPONSE TO GRAND JURY REPORT FORM

Report Title: **The Need for Labor Negotiation Transparency**

Report Date: **June 1, 2015**

Public Release: **June 4, 2015**

Response by: **September 20, 2015 (Date of Extension)**

FINDINGS

- I (we) agree with the findings numbered: F3
- I (we) disagree wholly or partially with the findings numbered: F1, F2
(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 _____ 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 R1, R2.1 – R2.5 will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: 9/11/15

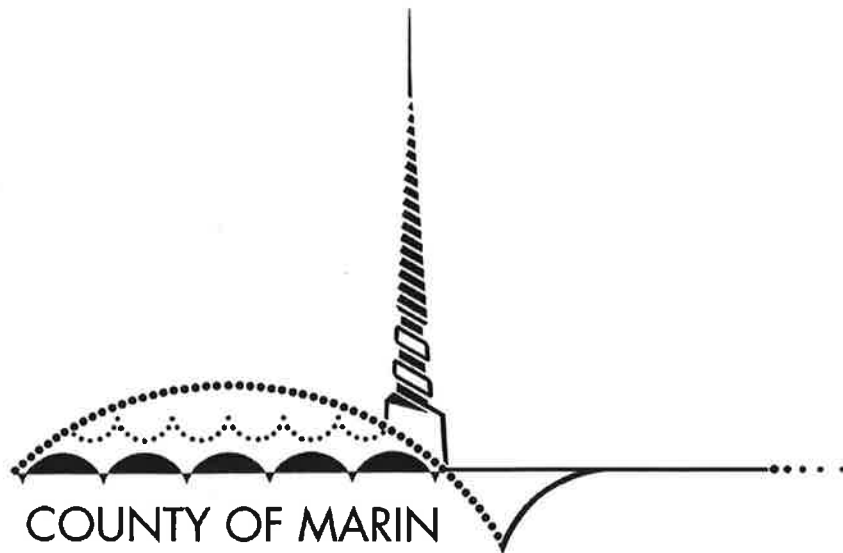
Signed: _____
Kathleen Hoertkorn, Mayor

Number of pages attached ____

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 agendaized 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 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.

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.

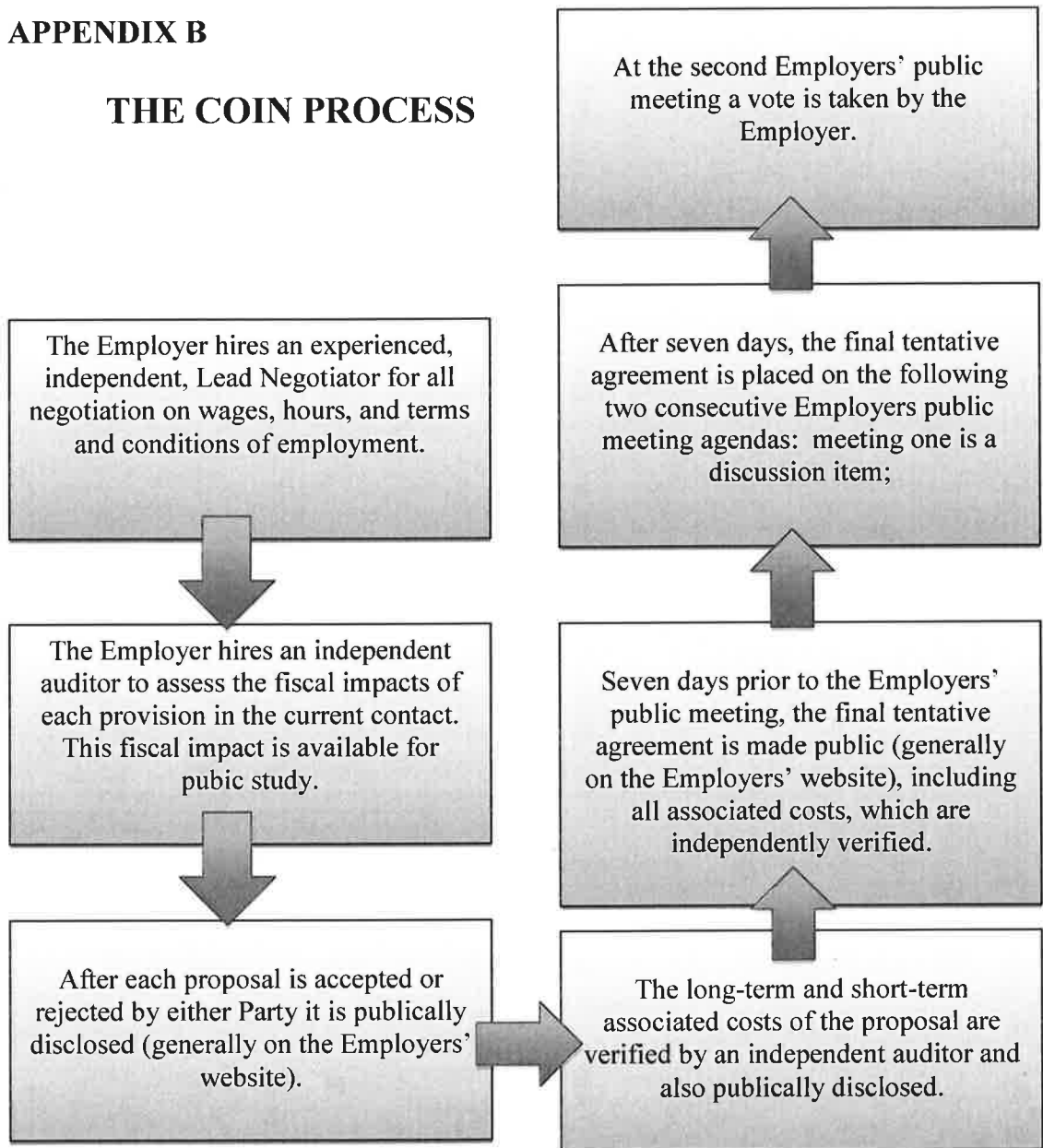
APPENDIX A

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](http://www.marincounty.org/depts/bs/meeting-archive).

**RESPONSE TO GRAND JURY REPORT FORM
City of Belvedere**

Report Title: The Need for Labor Negotiation Transparency

Report Date: June 1, 2015

Public Release: June 4, 2015

Response By: September 4, 2015

FINDINGS

- We agree with the findings numbered: F3.
- We disagree wholly or partially with the findings numbered: F1, F2.

RECOMMENDATIONS

- Recommendations numbered NONE have been implemented.
- The Recommendation to place tentative labor agreements on two consecutive City Council agendas prior to adoption has not yet been implemented, but will be implemented in the future.
- Recommendations numbered: NONE require further analysis.
- Recommendations numbered: R1, R2 will not be implemented because they are not warranted or are not reasonable.

Date: August 10, 2015. Signed: 
Claire McAuliffe, Mayor

Number of pages attached: 3



CITY of BELVEDERE

Mary Neilan, City Manager

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Tel.: 415.435.3838 • Direct: 415.435.8906

MNeilan@cityofbelvedere.org

August 11, 2015

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

Dear Judge D'Opal:

Enclosed please find the City of Belvedere's response to the June 1, 2015 Marin County Grand Jury's report titled "The Need for Labor Negotiation Transparency." This item was reviewed and considered by the Belvedere City Council at their August 10, 2015 Regular Meeting.

Please extend the City's appreciation to the 2015 Grand Jurors for the important work they do on behalf of all of the citizens of the County of Marin.

Sincerely,

Mary Neilan
City Manager

Encl.

cc: Jack Nixon, Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael CA 94913-4988

Statement Regarding Disputed Finding

Finding 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.

The City does not agree that Belvedere residents have minimal opportunity to provide input into labor negotiations.

Belvedere is the smallest city in Marin with just 21 employees, six of whom belong to a labor association and bargain collectively (the Belvedere Police Officers Association – BPOA). The other employees are unrepresented. Mandatory subjects of bargaining include wages (and other forms of compensation, i.e. fringe benefits), hours and working conditions. Current labor agreements along with the City's budget outlining personnel costs are available for review by the public at City Hall or on the city's website. If the public, in anticipation of future changes to the terms of those agreements, wishes to provide input to the Council they are welcome to do so during the Open Forum (public comment) period at any City Council meeting, anytime during the year.

Finding 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 costs of those agreement in advance of their being adopted.

The City does not agree that the COIN process can be implemented without affecting the manner in which tentative agreements are negotiated. In Belvedere, the negotiation process is not lengthy and is often accomplished in one or two meetings between the City Manager and the bargaining unit representative. Pausing during negotiations to call for an independent audit of a proposal then circulating that proposal for public discussion even if it has already been rejected by one side or the other is a significant change and would affect the timing and tone of labor negotiations.

Statement Regarding Recommendations that will not be implemented

Recommendation 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 first.

Recommendation 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 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.*

Response to recommendations:

The Grand Jury's recommendation that the City of Belvedere adopt a COIN ordinance attempts to address a perceived lack of transparency regarding the City's labor negotiation process and the fiscal impact of the resulting labor agreement. We appreciate and agree with the Grand Jury's position that information regarding the negotiation process and employee compensation should be easily accessible by the public. The City already provides an opportunity to comment when tentative agreements have been reached, and makes available detailed cost information regarding current and anticipated labor costs. For the reasons outlined below, we believe the recommendation that Belvedere adopt a COIN ordinance and incur the costs associated with its implementation is not warranted.

The City does, however, agree that additional notice to the public of potential City Council action on labor matters is possible and could enhance the public's awareness of costs and other impacts resulting from the collective bargaining process. To that end, within the next six months, the Council will adopt an Administrative Policy that requires labor agreements to be placed on two consecutive Council agendas prior to adoption.

Response to COIN ordinance provisions

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

The City Manager represents the City in negotiations with the BPOA and in discussions with other employees about compensation or working conditions. The City Manager does not benefit from any salary or benefit increases negotiated by the BPOA, nor from any increases that may be granted to unrepresented employees. There is no conflict and no need to hire an "independent, experienced Lead Negotiator".

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.*

The fiscal impact of the current labor agreement with the BPOA, as well as the cost of salaries and benefits for unrepresented employees, is outlined in detail in the City's annual operating budget. Department budgets include employees' salaries (identified by name), as well as line item detail (cost) for each city paid benefit (health premiums, retirement, specialty pay, uniform allowance, etc.). The budget includes a five year projection of expenses, taking into

account anticipated increases in the cost of salaries and benefits. The City's budget, labor agreements and salary resolutions are available on the City's website, as are the comprehensive annual audits and actuarial reports identifying the City's pension liabilities. The City does not need to hire an "independent auditor" to determine the fiscal impact of each provision in the current contract.

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.*

Labor negotiations is an iterative process in Belvedere where proposals and counter proposals are exchanged and discussed in a fairly informal way until a tentative agreement is reached. This can happen in as little as one meeting if both sides have clear authority from those they represent. The tentative agreement is then presented to the City Council (at a regular City Council meeting) for their consideration along with a staff report that includes a statement as to the total cost of the proposal. The Finance Officer, who does not participate in the negotiation process nor benefit from the outcome, prepares this cost analysis and is responsible for its accuracy. The City does not need to hire an independent auditor to cost out the tentative agreement.

Pursuant to state law, the tentative agreement, staff report and all other agenda materials are made public at least 72 hours before the council meeting. However, it is often the case that reports are completed before that deadline and when that occurs, it may be possible to provide a longer review period.

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.*

The City agrees that additional notice to the public of potential City Council action on labor matters is possible and could enhance the public's awareness of costs and other impacts resulting from the collective bargaining process. To that end, within the next six months, the Council will adopt an Administrative Policy that requires labor agreements to be placed on two consecutive Council agendas prior to adoption.



City of Larkspur

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

August 19, 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 approve; 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 Wright

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
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(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 cursive script that reads "John Wright".

John Wright
Mayor

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: 3
 - I (we) disagree wholly or partially with the findings numbered: 1+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 _____ 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 1+2 will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.) *Letter attached*

Date: 08-20-15 Signed: Margaret D. Peck

Number of pages attached 5
TOWN MANAGER
TOWN of TIBURON

Office of the Tiburon Town Attorney/ 415.435.7370



August 20, 2015

The Honorable Faye D'Opal
Judge of the Marin County Superior Court
Post Office Box 4988
San Rafael, CA 94913-4988

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

Re: Response to Grand Jury Report June 1, 2015
The Need for Labor Negotiation Transparency

Frank X. Doyle
Mayor

Erin Tollini
Vice Mayor

Jim Fraser
Councilmember

Alice Fredericks
Councilmember

Emmett O'Donnell
Councilmember

Margaret A. Curran
Town Manager

Dear Honorable Judge D'Opal and Mr. Nixon:

This letter explains in detail the Town of Tiburon's response to the Grand Jury Report dated June 1, 2015. The Report directs the Town to respond to Findings Nos. 1-3 and Recommendations Nos. 1-2. The Findings involve conclusions of fact that the Town has little or no independent basis to evaluate. In responding to these Findings, the Town assumes that the information in the Report is correct and relies on that information.

FINDINGS

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.*

Town's Response to Finding 1:

The Town does not agree that Tiburon residents have minimal opportunity to provide input into labor negotiations.

Tiburon is a small town in Marin with 40.5 FTE employees, with 19.1 FTE belonging to a labor association which bargains collectively. The other employees are unrepresented. Mandatory subjects of bargaining include wages (and other forms of compensation, i.e. fringe benefits), hours and working conditions. Current labor agreements, salary schedules and the Town's budget outlining personnel costs are available for review by the public at Town Hall or on the Town's website. Additionally, labor negotiations in Tiburon always begin by being placed on a Town Council closed session agenda; this serves to notify the public that discussions are commencing; the



Hon. Faye D'Opal
Mr. Jack Nixon
August 20, 2015
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public has always and will always have the option to address the Council at any public meeting about labor negotiations and labor relations. If the public, in anticipation of future labor negotiations, wishes to provide input to the Council on these matters they are welcome to do so during the Oral Communication (public comment) period at any Town Council meeting. Proposed labor agreements are always placed on the Town Council agenda and public comment is always taken prior to Council consideration.

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 costs of those agreement in advance of their being adopted.*

Town's Response to Finding 2:

The Town does not agree that the COIN process can be implemented without affecting the manner in which tentative agreements are negotiated, nor does the Town find any evidence in the Grand Jury's report to support this assertion. In Tiburon, the negotiation process is not lengthy. The Town Manager and Director of Administrative Services first meet with the Town Council in a noticed closed session. The Director of Administrative Services then conducts meetings with the bargaining unit representatives to seek agreement on terms. Pausing during negotiations to call for an independent audit of a proposal then circulating that proposal for public discussion even if it has already been rejected by one side or the other is a significant change and would affect the timing and tone of labor negotiations.

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.*

Town's Response to Finding 3:

The Town agrees that the COIN process does provide for transparency, and with transparency, residents potentially would participate in public discussions on the information presented through that process.

RECOMMENDATIONS

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.*



Hon. Faye D'Opal
Mr. Jack Nixon
August 20, 2015
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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.*

Town's Response to Recommendations:

The Grand Jury's recommendation that the Town of Tiburon adopt a COIN ordinance attempts to address a perceived lack of transparency regarding the Town's labor negotiation process and the fiscal impact of the resulting labor agreement. Transparency in government is an ideal and goal shared by the Town's elected officials. While we appreciate and agree with the Grand Jury's position that information regarding the negotiation process and employee compensation should be easily accessible by the public, we believe the Town already provides sufficient notice and an opportunity to comment when tentative agreements have been reached, and makes available detailed cost information regarding current and anticipated labor costs. Therefore we believe the recommendation that Tiburon adopt a COIN ordinance and incur the costs associated with its implementation is not warranted.

Town's Response to COIN Ordinance Provisions

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



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Mr. Jack Nixon
August 20, 2015
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The Director of Administrative Services represents the Town in negotiations with the Tiburon Police Association and S.E.I.U. Local 1021 and in discussions with other employees about compensation or working conditions. The Director does not benefit from any salary or benefit increases negotiated by the Tiburon Police Association and the S.E.I.U. Local 1021, nor from any increases that may be granted to unrepresented employees. There is no conflict and no need to hire an "independent, experienced Lead Negotiator". The Director, who also serves as the Town's Finance Director, has significant experience in both determining the costs of labor agreements and in their negotiation.

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.

The fiscal impact of the current labor agreement with the Tiburon Police Association and the S.E.I.U. Local 1021, as well as the cost of salaries and benefits for unrepresented employees, is outlined in detail in the Town's annual operating budget. Department budgets include employees' salaries, as well as line item detail (cost) for each Town paid benefit (health premiums, retirement, specialty pay, uniform allowance, etc.). The Town's budget, labor agreements and salary resolutions are available on the Town's website, as are the comprehensive annual audits and actuarial reports identifying the Town's pension liabilities. The Town does not need to hire an "independent auditor" to determine the fiscal impact of each provision in the current contract and would find that additional cost an unnecessary and undue public expense.

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.

Labor negotiations are an iterative process in Tiburon where proposals and counter proposals are exchanged and discussed in a fairly informal way until a tentative agreement is reached. This can happen in as little as one or two meetings if both sides have clear authority from those they represent. The tentative agreement is then presented to the Town Council (at a regular Town Council meeting) for their consideration along with a staff report that includes a statement as to the total cost of the proposal. The Finance Officer, who does not benefit from the outcome, prepares this cost analysis and is responsible for its accuracy. The Town does not need to hire an independent auditor to cost out the tentative agreement.



Hon. Faye D'Opal
Mr. Jack Nixon
August 20, 2015
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Pursuant to state law, the tentative agreement, staff report and all other agenda materials are made public at least 72 hours before the council meeting. However, it is often the case that reports are completed before that deadline and when that occurs, it may be possible to provide a longer review period.

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.

The Tiburon Town Council holds regular meetings twice a month. At those meetings, discussion of any and all agenda items is welcome. If concerns are raised by the public that suggest additional time is needed to fully analyze the proposal, the Town Council has the discretion to continue the item to the next meeting. To require that a tentative labor agreement be placed on two consecutive agendas would unnecessarily extend the review and approval process and is not warranted.

* * * * *

The Tiburon Town Council reviewed and approved this response on August 19, 2015 at a duly noticed and agendized public meeting. If you have further questions on this matter, please do not hesitate to call.

Very truly yours,

MARGARET A. CURRAN
Town Manager

cc: Mayor and Town Council
Town Attorney