




TOWN OF FAIRFAX

STAFF REPORT

August 5, 2015

TO: Mayor and Town Council

FROM: Michele Gardner, Town Clerk 

SUBJECT: Discuss/consider response to Grand Jury Report: The Need for Labor Negotiation Transparency

RECOMMENDATION

Discuss and consider the response prepared by Mayor Coler and Councilmember Weinsoff.

DISCUSSION

At its July 15, 2015 meeting, the Town Council designated Mayor Coler and Councilmember Weinsoff to prepare a response to the Marin County Civil Grand Jury Report: "The Need for Labor Negotiation Transparency" and to submit the response for consideration at a future Council meeting. Pursuant to Penal Code § 933.05, the Town Council is required to respond in writing to the Findings and Recommendations contained in the Grand Jury Report.

The deadline for the Grand Jury to receive the Town's response is September 4, 2015.

FISCAL IMPACT

None at this time

ATTACHMENTS

1. Response form (completed) and written explanation of disputed findings (letter to Judge d'Opal)
2. Grand Jury report "The Need for Labor Negotiation Transparency"

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: _____ **Signed:** _____

Number of pages attached 3

DRAFT

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 agenda item 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, includes 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

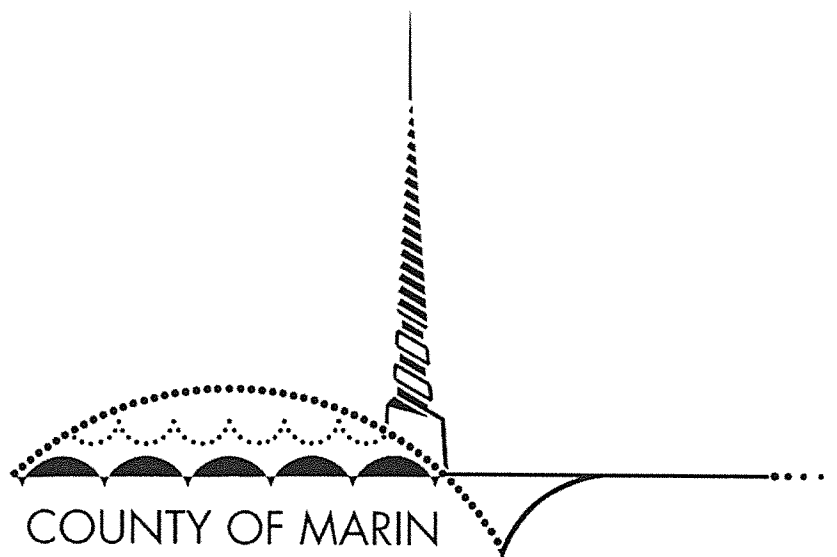
Enclosure – *Form for Responding to the Grand Jury Report*

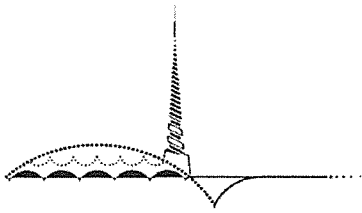
cc: Foreperson
Marin County Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

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 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.

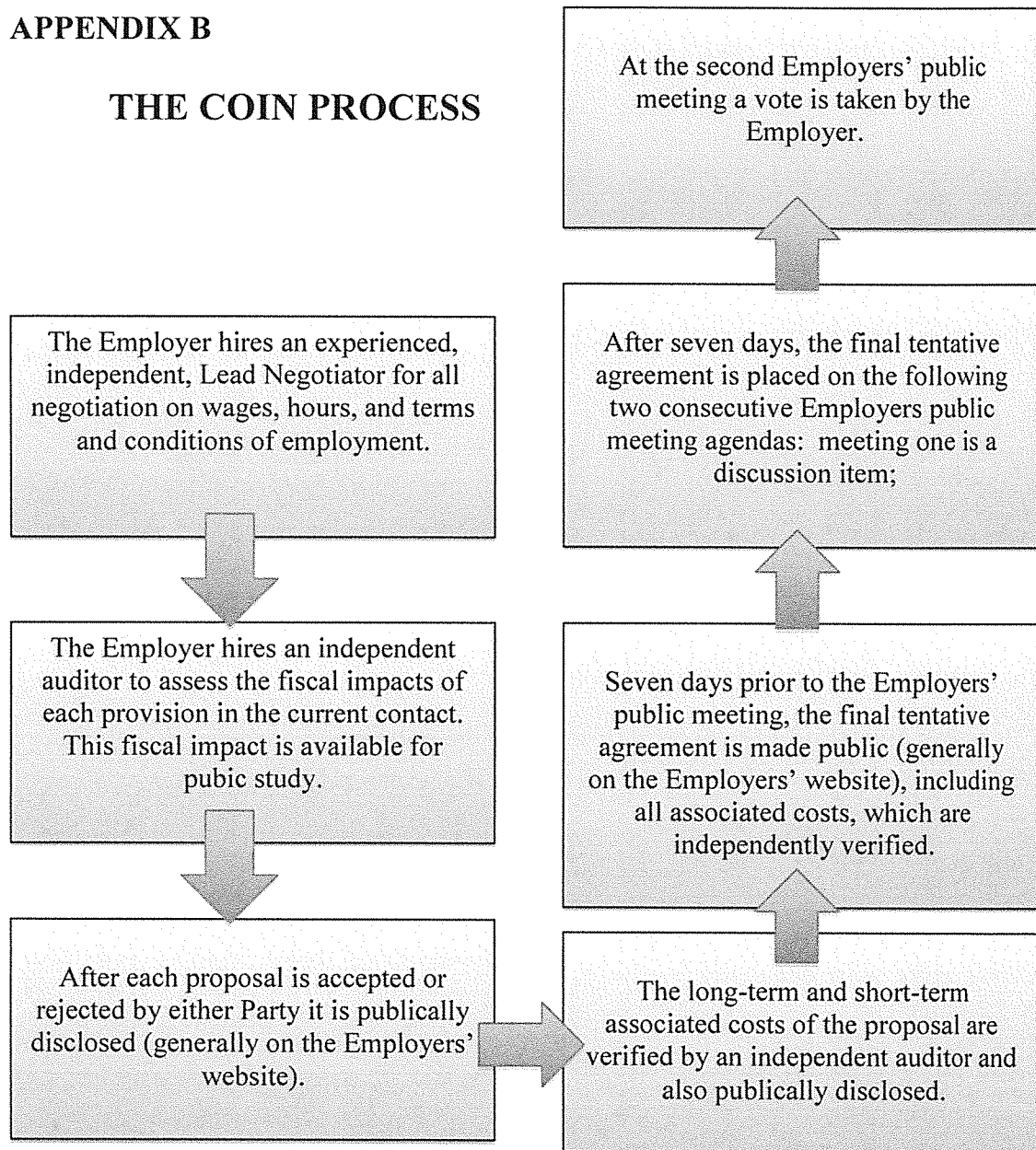
APPENDIX A

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).