

To: Mayor and City Council

From: Mary Neilan, City Manager

Subject: Response to Marin County Civil Grand Jury Report: The Need for Labor Negotiation Transparency

Recommended Motion/Item Description

Approve response to Marin County Civil Grand Jury Report: The Need for Labor Negotiation Transparency

Background

The 2014/15 Marin County Civil Grand Jury has issued a report that requires a response from the City of Belvedere. The response must conform to the format required by Penal Code Section 933.05.

Findings

The Grand Jury has recommended that the City of Belvedere adopt a COIN ordinance to address a perceived lack of transparency regarding the City’s labor negotiation process and the fiscal impact of the resulting labor agreement. 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 City 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 Belvedere adopt a COIN ordinance and incur the costs associated with its implementation is not warranted.

The complete response to the Grand Jury Report is attached.

Fiscal Impact

None

Attachments

- Response to Grand Jury: The Need for Labor Negotiation Transparency
- Grand Jury Report: The Need for Labor Negotiation Transparency

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: **Mary Neilan, City Manager**

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.
- Recommendations numbered: NONE have 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: _____

Number of pages attached: 3

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. 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 City 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 Belvedere adopt a COIN ordinance and incur the costs associated with its implementation is not warranted.

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.

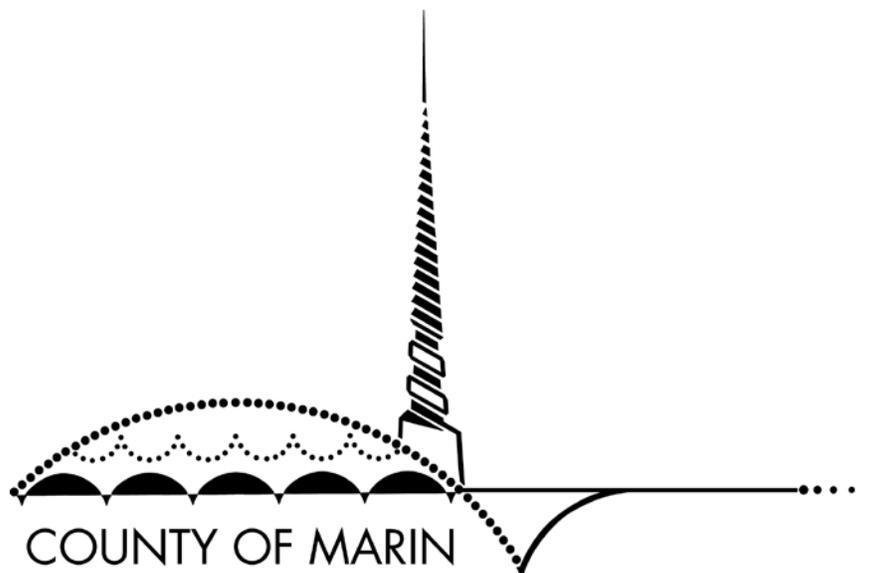
5. *After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agendas: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the employer to approve or disapprove the tentative agreement.*

The Belvedere City Council holds regular meetings only once 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 City 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 create a very lengthy review and approval process and is not warranted.

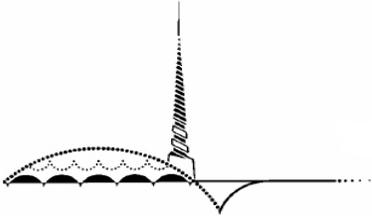
2014/2015 MARIN COUNTY CIVIL GRAND JURY

The Need for Labor Negotiation Transparency

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



Marin County Civil Grand Jury



The Need for Labor Negotiation Transparency

SUMMARY

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

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

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

The common elements of the COIN process are as follows:

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

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

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

BACKGROUND

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

APPROACH

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

DISCUSSION

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

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

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

COIN Started In Costa Mesa

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

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

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

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

What COIN Is: Key Components

The common elements of the COIN process are as follows:

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

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

What COIN Is Not: Misconceptions

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

Misconception #1: The public negotiates.

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

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

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

Misconception #3: COIN slows down the negotiation process.

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

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

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

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

FINDINGS

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

RECOMMENDATIONS

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

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

REQUEST FOR RESPONSES

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

From the following governing bodies:

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

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

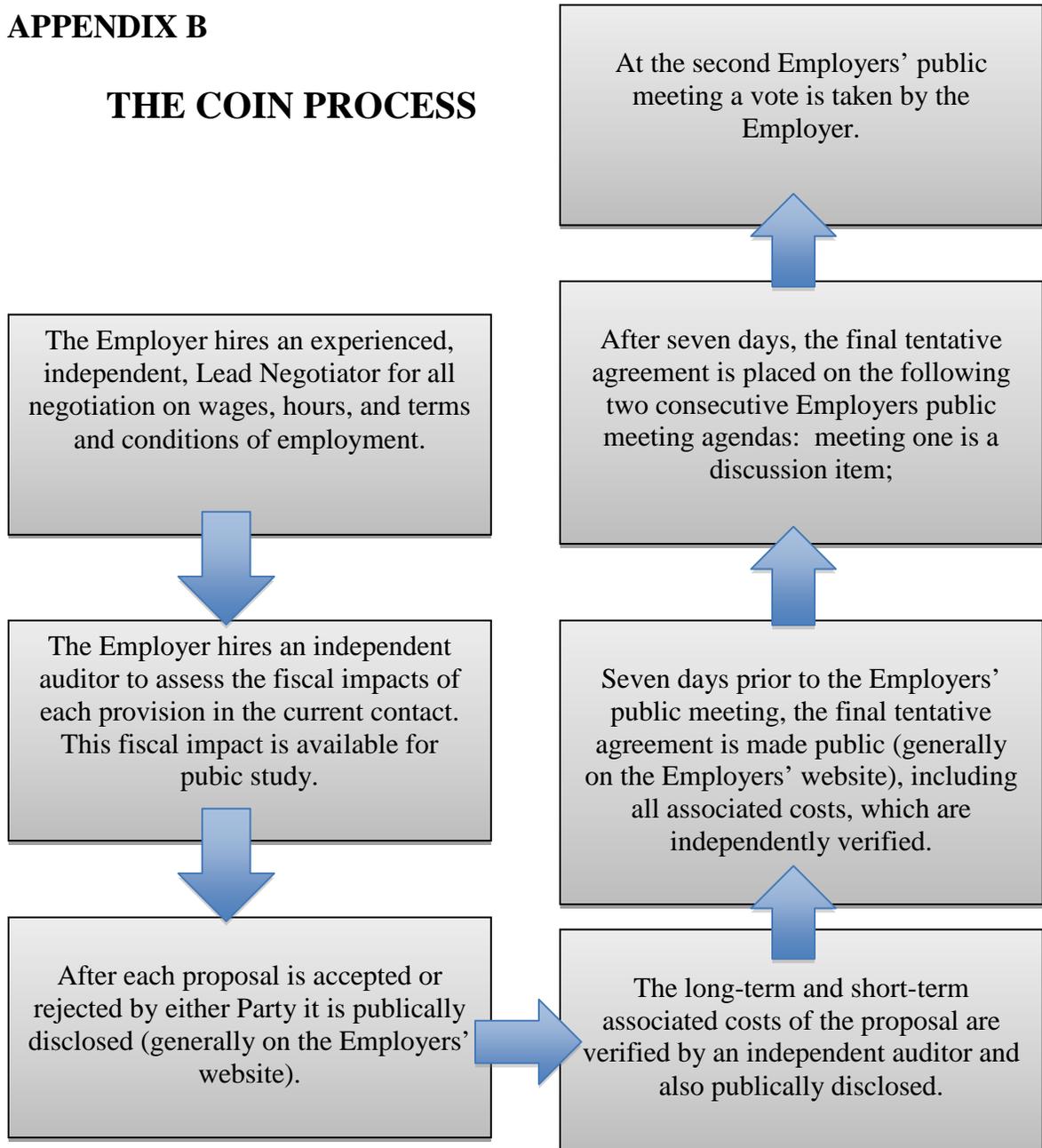
APPENDIX A

Summary of “COIN” Requirements Adopted by City/ County

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

APPENDIX B

THE COIN PROCESS



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