

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

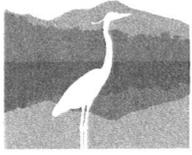
- I (we) agree with the findings numbered: N/A
- I (we) disagree wholly or partially with the findings numbered: F1, F2, F3  
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered N/A have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered N/A have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered R1, R2 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 NA will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: 9/4/2015 Signed: Carla Condon

Number of pages attached 5



THE TOWN OF  
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September 4, 2015

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

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

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

Dear Judge D'Opal and Foreperson:

This letter serves as the Corte Madera Town Council's response to the Grand Jury's report *The Need for Labor Negotiation Transparency*, dated June 1, 2015.

The Corte Madera Town Council welcomes your efforts to identify areas for improvement. We also appreciate the amount of effort to which the Grand Jury has gone to make the public aware of Civic Openness in Negotiations (COIN) ordinances, one of several emerging approaches to increased transparency, that have been implemented in certain larger agencies in Southern California.

However, we do want to express concern that the focus of the report was mainly based on interviews with these larger agencies. Corte Madera employs small numbers of represented and unrepresented employees, and many of these employees are not connected to larger labor unions. In this regard the report gives a somewhat false impression of the dynamics of labor negotiations in our cities.

We feel that the report should have provided more focus on how negotiations are conducted in Marin municipalities rather than those in Southern California. Corte Madera, like many other Marin cities, has already implemented some of the core tenets of COIN. We employ independent negotiators, IEDA in particular, to handle all labor negotiations with both SEIU and our Firefighter's Association, and have done so for many, many years. We always perform salary surveys of Marin County and similar Bay Area cities before beginning any labor negotiations and seldom grant pay or benefit increases that deviate from the average shown on those surveys.

Corte Madera does provide bi-annual audits of the liabilities associated with its employment costs, specifically pension costs and retiree medical costs. We rely on the actuarial reports on pension costs provided by CalPERS each year, and we retain an independent consultant to evaluate our OPEB costs every two years.

The Grand Jury report identifies some of the key components on COIN as:

- Hiring experienced independent negotiators for all components of labor negotiations.
- Hiring an independent auditor to assess the fiscal impacts of EACH provision in the current labor contract.
- Hiring an independent auditor to verify the long and short term costs of EACH proposal that is presented in the negotiation process.

As noted above, recommending that the smaller cities in Marin adopt all of the COIN policies used by large agencies in Southern California is not necessarily in the best interest of the public. We feel that the Grand Jury should have identified and addressed the fiscal impacts that would be imposed on our cities if these policies were to be adopted. We are negotiating with small groups of employees, as small as three and no more than sixteen in each group. It is fair to assume that the cost of fully implementing COIN for our negotiations could be as high as \$50,000, if not more, each time we go through the employment agreement process.

As a matter of public record, Corte Madera's current practices include financial briefings as part of our closed session discussions, and staff reports are always presented with any request to approve memoranda of understanding and other documents governing employee 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 Corte Madera Town Council is or is not well-informed when making its decisions. We are offering these comments to assure our constituency that we take seriously our fiduciary obligation to be well-informed as we examine proposals from the bargaining table.

In reviewing the Grand Jury report, there are two points that the Town 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, PERB issued a proposed decision ruling in favor of the OCEA's arguments. 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 waiting for clear direction from the courts.

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.*

In Corte Madera, the Town 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 Town's negotiator only signs tentative agreements the Town Council is prepared to approve; at worst, it would expose the Town to charges of bargaining in bad faith – and associated legal exposure – for rejected elements of agreements that the Town advanced at the bargaining table.

What follows are the Town 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 Town Council agrees that residents pay taxes but offers no opinion as to residents' reasons for doing so. The Town Council notes that labor negotiations in Corte Madera have always been placed on the agenda so that the public is informed when they are occurring and aware of the content of the negotiations; the public has always and will always have the option to address the Council at any public meeting about labor negotiations and labor relations. 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 Town Council agrees that such agenda items have not existed in Corte Madera.

**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 Town 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 Corte Madera's 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 Town Council requires more information about the bargaining experience under a COIN ordinance before rendering an opinion on this finding. The Town 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 Town Council agrees that the COIN process would increase the amount of information that the Town 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 Town 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 Town 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 Town Council believes could be a true exchange of ideas about labor negotiations. Once bargaining begins, the Town Council would be quite limited by law in its ability to converse with the public about negotiations.

**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 Town 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*); (b) there is a significant number of case studies to examine, and more awareness of the actuarial costs involved; and (c) more understanding of the actuarial and other financial costs involved in a COIN ordinance. 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 Town Council to consider what form of a COIN ordinance might be appropriate for Corte Madera.

**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 Town 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*); (b) there is a significant number of case studies to examine, and more awareness of the actuarial costs involved; and (c) more understanding of the actuarial and other financial costs involved in a COIN ordinance. The Town Council would like to examine such case studies before considering specific elements of a COIN ordinance.

The Town Council does offer the following comments:

1. As noted previously, the Town of Corte Madera has retained independent negotiators for many years and fully anticipates doing so with all future negotiations with our organized groups.
2. The Town of Corte Madera already receives detailed audits of its liabilities related to employee costs, and will continue to seek to improve the way those costs are evaluated.
3. Regardless of when or if the Town Council adopts a COIN ordinance, we are prepared now to commit to having such a report prepared and presented publicly before bargaining begins.
4. The Town 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 Town Council adopts a COIN ordinance, the Town will continue to operate with transparency.

Sincerely,

A handwritten signature in cursive script that reads "Carla Condon". The signature is written in black ink and is positioned above the typed name and title.

Carla Condon  
Mayor



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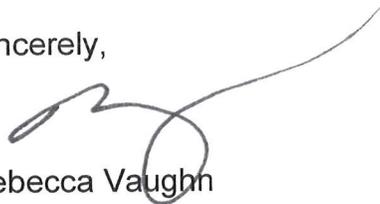
September 4, 2015

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 Town of Corte Madera'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 Corte Madera Town Council at their August 18, 2015 Regular Meeting.

Sincerely,



Rebecca Vaughn  
Town Clerk

Enclosure

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