



**SUPPLEMENTAL AGENDA ITEM
 AGENDA STAFF REPORT**

MEETING DATE: 8/4/15
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Counsel
DEPARTMENT HEAD REVIEW: Leon Page
Department Head Signature
DEPARTMENT CONTACT PERSON(S): Leon Page (714) 834-3300

RECEIVED
 2015 JUL 30 AM 9:39
 CLERK OF THE BOARD
 ORANGE COUNTY
 BOARD OF SUPERVISORS

SUBJECT: Urgency Amendment to Suspend Civic Openness in Negotiations (COIN) Ordinance

<p>CEO CONCUR</p> <p><u><i>[Signature]</i></u> <i>CEO Signature</i></p>	<p>COUNTY COUNSEL REVIEW</p> <p><i>No legal objection</i> <i>Action</i> <u><i>[Signature]</i></u> <i>County Counsel Signature</i></p>	<p>CLERK OF THE BOARD Discussion</p>
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A
Staffing Impact: N/A **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue:
Funding Source: N/A **County Audit in last 3 years** N/A

Prior Board Action: 08/05/2014 #25

RECOMMENDED ACTION(S)

1. Read title of the ordinance.
2. Order further reading of the ordinance be waived.
3. Consider the matter.
4. Adopt the ordinance by four-fifths vote.

SUMMARY:

The Office of County Counsel requests that the Board, on an urgency basis, adopt an amendment to Section 1-3-12 of the Codified Ordinances of the County of Orange to suspend the operation of the Civic Openness in Negotiations (COIN) ordinance. The suspension may be temporary, depending on the outcome of the litigation, appeals, and administrative proceedings concerning the validity of the COIN Ordinance. The amendment suspending the COIN Ordinance would take effect immediately upon adoption by a four-fifths vote of the Board.

BACKGROUND INFORMATION:

On August 5, 2014, the Board adopted Codified Ordinance 14-005 which added Section 1-3-12, titled Civic Openness in Negotiations (COIN), to the Codified Ordinances of the County of Orange. Among its provisions, the COIN ordinance established procedures and practices to keep the public informed of labor negotiations undertaken pursuant to the Meyers-Milias Brown Act (MMBA), where either the County of Orange or a recognized employee organization proposed changes in wages, hours or any other terms or conditions of employment.

Unfair labor practice charges challenging the Board's adoption of the ordinance were filed with the Public Employment Relations Board (PERB) by three recognized employee organizations representing County employees. In June 2015, an Administrative Law Judge with PERB rendered a proposed decision finding that some of the provisions of the ordinance fell within the scope of representation and that the County therefore violated the MMBA and applicable PERB Regulations by refusing to negotiate (those provisions) prior to COIN's adoption. The proposed decision orders the County to rescind certain provisions of the ordinance (while other provisions remain unaffected).

Under the MMBA either party may challenge an ALJ's proposed decision by filing exceptions with PERB itself. The County filed exceptions to the proposed decision on July 13, 2015. The on-going legal proceedings relating to the COIN Ordinance create uncertainty, and actions taken by the County in accordance with the COIN Ordinance remain under attack and do expose the County to potential liability. For example, labor organizations could request that PERB nullify any unilateral imposition resulting from negotiations conducted in accordance with COIN. In order to avoid confusion regarding the interpretation and implementation of the Ordinance during the pendency of these legal proceedings, and in furtherance of a desire to preserve the County's legal rights regarding the COIN Ordinance until a final decision is rendered, a suspension of the Ordinance's provisions is needed.

Suspension of the Ordinance's provisions is a matter of urgency. Employee organizations have expressed reluctance to defer labor negotiations with the County until the normal process for adoption or modification of an ordinance has been completed, arguing that such delay unfairly denies them the right to engage in negotiations promptly upon request, as required by the MMBA. In order to avoid claims of a failure to negotiate promptly upon request and to preserve the public peace, health and welfare, staff recommends that the Board adopt the proposed urgency ordinance suspending operation of COIN until all related litigation and appeals concerning the validity of the COIN have been exhausted. This will facilitate the commencement of labor negotiations while preserving the County's legal position regarding this matter.

Pursuant to Government Code requirements a four-fifths affirmative vote is required to enact the Ordinance on an urgency basis.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – Ordinance Amending Section 1-3-12 of the Codified Ordinances of the County of Orange pertaining to Civic Openness in Negotiations (COIN).

Attachment B – Section 1-3-12 of the Codified Ordinances of the County of Orange pertaining to Civic Openness in Negotiations (COIN).

ORDINANCE No. _____

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA
AMENDING SECTION 1- 3-12 PERTAINING
TO CIVIC OPENNESS IN NEGOTIATIONS

The Board of Supervisors of the County of Orange, California ordains as follows:

SECTION 1: Section 1-3-12 of the Codified Ordinances of the County of Orange is hereby amended to add new subsection (h), which shall read as follows: “The implementation and application of this COIN Ordinance shall be suspended until such time as all litigation, appeals and administrative proceedings concerning the validity of the ordinance have been exhausted and all related judicial, quasi-judicial or administrative determinations, findings, orders and decisions are final.”

SECTION 2: This is an urgency ordinance necessary for the immediate preservation of the public peace, health, or safety and it shall take effect immediately. The facts supporting the urgency of this ordinance are as follows:

The recent issuance of a proposed decision by a Public Employment Relations Board Administrative Law Judge finding that some of the provisions of the COIN Ordinance are subject to negotiation has rendered uncertain the process by which labor negotiations between the County and exclusive representatives of its employees should be conducted. Such uncertainty has hindered the ability of the County, as a public employer, and public employee organizations, serving as exclusive representatives for County employees, to engage in good faith negotiations over the wages, hours, and other terms and conditions of employment for County employees. Such good faith negotiations are recognized as vital to maintaining the positive employer-employee relations necessary for efficient delivery of critical public services.

Pursuant to law the County has filed exceptions to the ALJ’s proposed decision. The ongoing legal proceedings relating to the COIN Ordinance create uncertainty, and actions taken by the County in accordance with the COIN Ordinance remain under attack and do expose the County to potential liability. For example, labor organizations could argue that delaying negotiations while the unions’ initial proposals are costed, and then posted for 30 days, constitutes a failure to negotiate promptly upon request. In addition, labor organizations could request that PERB nullify any unilateral imposition resulting from negotiations conducted in accordance with COIN.

In addition, employee organizations have expressed reluctance to defer labor negotiations with the County until the normal process for adoption of an ordinance has been completed, arguing that the delay unfairly denies them the right to engage in negotiations promptly upon request, as required by the MMBA. In order to avoid claims of a failure to negotiate promptly upon request and to preserve the public peace and welfare, urgent action is needed.

Suspending the application of COIN will remove such uncertainty and allow labor negotiations to proceed unhindered by questions regarding the validity of COIN.

CODIFIED ORDINANCES OF THE COUNTY OF ORANGE

Sec. 1-3-12. - Civic Openness in Negotiations (COIN).

(a) Applicability.

- (1) This section shall apply to labor contract negotiations undertaken pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500 et seq.), where either a recognized employee organization or the County, through their respective representatives, propose changes in wages, hours, or any other terms or conditions of employment. This section shall not apply to any labor contract negotiations undertaken pursuant to the Meyers-Milias-Brown Act that have commenced prior to the date of adoption of the ordinance from which this section derived and until the current contracts are expired.
- (2) In an effort to avoid inherent conflicts of interest, the principal representative negotiating on behalf of the County (herein "principal negotiator") shall not be an employee of the County and shall have a demonstrated expertise, to the sole satisfaction of the Board of Supervisors, in negotiating labor and employment agreements on behalf of public entities. The use of such a principal negotiator as described herein may only be waived by a majority vote of the Board of Supervisors. The Chief Human Resources Officer or his or her designee(s) will be present during negotiations and participate in the negotiations with the principal negotiator.
- (3) This section shall not prevent the negotiation of ground rules applicable to any labor contract negotiations undertaken pursuant to the Meyers-Milias-Brown Act and is not intended to revise or nullify any agreed-upon ground rules established for negotiations that have commenced as of the date of the adoption of this section. Consistent with the Meyers-Milias-Brown Act, the parties may, but are not required to, negotiate preliminary procedural matters governing the conduct of negotiations including, but not limited to, the time and place for bargaining, the order of issues to be discussed, the signing of tentative agreements, the requirement of package bargaining, or the use of supposals. A "supposal" is an agreement by the parties to seek resolution of meet and confer disputes by means of exchanging hypothetical settlement provisions. These hypothetical settlement provisions are designed to explore the feasibility of reaching agreement on disputed issues. By definition, a "supposal" does not constitute a "proposal," "offer," or "counter offer" as those terms are used by the PERB, by the Meyers-Milias-Brown Act, or by the courts. Instead, a supposal is a tool allowing the parties to explore informally and without binding impact, possible settlement options without incurring the legal impact of a "proposal," "offer" or "counter offer."

(b) Independent economic analysis.

- (1) In order to implement the requirements of this section, the Auditor-Controller of the County shall initially prepare an Independent Economic Analysis (hereinafter "report") which describes and summarizes the fiscal costs to the County of the benefit and pay components currently provided to members of recognized employee organizations in

comparison to the costs of each term and condition of employment offered in negotiations, including the costs of each term and condition of employment proposed in a supposal, if a supposal is used. The report will itemize the annual and cumulative costs that would or may result from adoption or acceptance of any initial meet and confer proposal to be considered by the Board of Supervisors. The report shall provide all relevant data upon which the report is based.

- (2) The report shall be completed and made available for review by the Board of Supervisors and the public at least thirty (30) calendar days before consideration by the Board of Supervisors of an opening proposal to be presented to any recognized employee organization regarding negotiation of an amended, extended, successor, or original memorandum of understanding.
- (3) The report shall be regularly updated by the Auditor-Controller to itemize the annual and cumulative costs that would or may result from adoption or acceptance of each meet and confer proposal (hereinafter referred to as "update"). These itemizations shall display the fiscal impacts of each employee association and County proposal. Each report and update shall be prepared in the following format, including all benefit and/or pay aspects of each MOU. The particular categories of pay/benefits listed are provided as examples only. The actual pay/benefit categories may vary depending on the particular bargaining unit. Each report and update shall provide the total compensation calculations for each compensation element and compare them to the prior year, as well as to the prior proposals made in the particular negotiation to which the report and updates apply. Additionally, each report and update shall include the computation of a best estimate of the absolute amount and the change from the currently computed pension unfunded actuarial accrued liability and the retiree medical unfunded actuarial accrued liability. The Auditor-Controller may add additional information as they deem appropriate.

REPORT FORMAT

	ASSOCIATION				
Benefit/Pay	Value of Benefit/Pay	Existing Cost to County	Projected Cost to County	Pensionable	Non-Pensionable
[Examples of possible benefit/pay elements]					
Base Salary Pension/Retirement Benefit					

Bilingual Pay					
Class A/B License Pay					
Shift Differential Pay					
Shift Differential Pay— A/M					
Emergency Med Dispatch Pay					
Canine Care Pay					
Motor Officer Assignment Pay					
Motor Training Officer Assign Pay					
POST Advanced Certificate Pay					
POST Intermediate Certificate Pay					
Uniform Pay—Patrol					
Investigator II Certification Pay					
Instructor II Certification Pay					
Instructor III Certification Pay					
Public Education Officer Certification Pay					

Driver/Operator Certification Pay					
Rescue Specialist Certification Pay					
Confined Space Oper Tech Certification Pay					
Others as deemed necessary					

(c) Civic openness in the meet and confer process.

- (1) Under Government Code section 3505 of the Meyers-Miliias-Brown Act, as it currently exists, a governing body of a public agency, or the agency's designated agent, must meet and confer in good faith with representatives of recognized employee organizations before making any changes in wages, hours and other terms and conditions of employment. Under Government Code section 54957.6, the Board of Supervisors can meet in closed session with its designated representatives to discuss these negotiations, review its position in negotiations, and instruct its designated representatives on how to proceed in upcoming negotiations.
- (2) The Board of Supervisors shall report out from such closed session any and all prior formal offers, formal counteroffers and supposals made by either the County or by representatives of the recognized employee organization which were communicated to the County during the closed session. The report shall be made in a timely manner without undue delay. For purposes of this section an "offer" is a formal proposal regarding wages, hours or other term or condition of employment made by the parties in negotiation sessions. A "counteroffer" is a proposal regarding wages, hours or other terms or conditions of employment made in response to an offer. A "supposal" is used as defined in subdivision (a)(3) above.
- (3) The report out of closed session shall also include the release of a list of names of all persons in attendance during the negotiation sessions, the date of the sessions, the length of the sessions, the location where the sessions took place and any pertinent facts regarding the negotiations that occurred in a particular session, including, without limitation, all formal offers and counteroffers made both by the County and the recognized employee organization.
- (4) Board of Supervisor representatives shall have a duty to advise the Board of Supervisors during any such closed session of offers, counteroffers, information provided, and/or statements of position discussed by the employee organization and

County representatives participating in the meet and confer process since the last such closed session.

- (5) This section shall not mandate publication of Board-directed future proposals, the analytical thought process utilized by the Board of Supervisors in addressing issues subject to the meet and confer process, or the content or substance of any discussions subject to the deliberative process or attorney-client privileges. It is the intent of this section that, except as specifically stated, such privileges are not waived by any provision of this section.
- (6) Notwithstanding the provisions of this subsection (c)(1)—(5), the County shall disclose to the Board of Supervisors and to the public any and all offers, counteroffers and supposals made by: (a) the County to representatives of the recognized employee organization; and (b) representatives of the recognized employee organization to the County. Such disclosure shall be made within twenty-four (24) hours of the making of such offer or counteroffer. The terms "offer," "counteroffer," and "supposal" shall have the same meanings ascribed to them in section 1-3-12(c)(2) above.
- (d) Adoption of memorandum of understanding. Excepting the resolution of any meet and confer impasse, the rendering of a final Board of Supervisors determination regarding adoption of a memorandum of understanding shall only be undertaken after the matter has been heard at a minimum of two (2) board meetings wherein the public has had the opportunity to review and comment on the matter. Not less than seven (7) days prior to the first board meeting where the matter shall be heard, the County shall post on its website the memorandum of understanding under consideration for adoption, along with any final report and updates made by the Auditor-Controller pursuant to subsection (b) herein.
- (e) Inconsistencies. Any provision of the Codified Ordinances of Orange County or appendices thereto inconsistent with the provisions of this section, to the extent of such inconsistencies, is hereby repealed or modified to the extent necessary to effect the provisions of this section.
- (f) Severability. If any provision or clause of this section or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this section which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this section are declared to be severable.
- (g) Publication. This section shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the Orange County Reporter, a newspaper of general circulation, printed and published in the County of Orange or, in the alternative, the Clerk of the Board may cause to be published a summary of this section and a certified copy of the text of this section shall be posted in the office of the Clerk of the Board five (5) days prior to the date of adoption of this section, and within fifteen (15) days after adoption, the Clerk of the Board shall cause to be published the aforementioned summary and shall post in the office of the Clerk of the Board a certified copy of this section together with the names and members of the Board of Supervisors voting for and against the same.

(Ord. No. 14-005, §§ 1, 2, 8-5-14)

CALIFORNIA GOVERNMENT CODE

SECTION 25123

All ordinances shall become effective 30 days from the date of final passage, except the following ordinances, which shall take effect immediately:

- (a) Those calling or otherwise relating to an election.
- (b) Those specifically required by this code or by any other law to take immediate effect.
- (c) Those fixing the amount of money to be raised by taxation, or the rate of taxes to be levied.
- (d) Those for the immediate preservation of the public peace, health, or safety, which shall contain a declaration of the facts constituting the urgency, and shall be passed by a four-fifths vote of the board of supervisors.
- (e) Those specifically relating to the adoption or implementation of a memorandum of understanding with an employee organization.
- (f) Those relating to salaries and other compensation of officers, other than elected officers, and employees.

(Added by Stats.1947, c. 424, p. 1110, § 1. Amended by Stats.1959, c. 324, p. 2252, § 1; Stats.1981, c. 141, p. 923, § 1, eff. July 1, 1981; Stats.1983, c. 91, § 1, eff. June 15, 1983.)