



City of Larkspur

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October 13, 2015

Richard Mann, Foreperson
Marin County Grand Jury
3501 Civic Center Drive
San Rafael, CA 94903

Dear Mr. Mann,

Enclosed please find the City of Larkspur response to the Grand Jury Report, *The Need for Labor Negotiation Transparency*. The response was originally sent on August 20, 2015 to Judge D'Opal.

Upon receipt of your letter stating you had not received our response, I figured the response was in the Judge's office. Patti Church clarified for me that two copies get sent, one to you and one to the Judge. My apology for the error. I sent Patti a copy via email this afternoon.

Yours truly,

Cynthia Huisman, CMC
Larkspur City Clerk

Enclosure



City of Larkspur

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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

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Public Works: (415) 927-5017

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Fire: (415) 927-5110

none of the practices espoused by advocates of COIN are found in Marin – an impression that is not correct. Many of Marin's cities, including Larkspur, long ago implemented some of the core tenets 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>