



County of Orange

County Executive Office

July 17, 2018

Honorable Charles Margines
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to Grand Jury Report, "OCFA – Financial Flames on the Horizon"

Dear Judge Margines:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Board of Supervisors.

If you have any questions, please contact Lilly Simmering of the County Executive Office at 714-834-6748.

Sincerely,

Frank Kim
County Executive Officer

Enclosure

cc: FY 2017-18 Orange County Grand Jury Foreman
Lilly Simmering, Deputy Chief Operating Officer, County Executive Office



Responses to Findings and Recommendations
2017-18 Grand Jury Report:

“Orange County Fire Authority – Financial Flames on the Horizon?”

SUMMARY RESPONSE STATEMENT:

On March 20, 2018, the Grand Jury released a report entitled: “Orange County Fire Authority – Financial Flames on the Horizon?” This report directed responses to findings and recommendations to the Orange County Board of Supervisors, which are included below.

FINDINGS AND RESPONSES:

F.1. The 1995 OCFA JPA agreement, requiring that all SFF funds be allocated to OCFA, did not anticipate the disproportionate property values and growth in the City of Irvine, resulting in the current inequity issue.

Response: **Disagrees wholly with finding.** OCFA JPA Agreement specifically addressed the issue of inequity in Article IV, Section 4 of the 1995 JPA. In that section, the members agreed that the cost of service shall not be adjusted by reason of equity for a period of three (3) fiscal years from the date that OCFA was formed. All signatories to the JPA are assumed to have read and understood the language before agreeing to be part of the JPA, which indicates that if there were any concerns about inequity under the JPA, it could have been raised at that time.

F.2. The imminent deadline of June 30, 2018, for members to notify OCFA of intent to withdraw leaves insufficient time to finalize a mutually agreeable plan to resolve inequity issue.

Response: **Disagrees partially with the finding.** The safety of Orange County residents is of utmost importance to the County of Orange (County) and the Board of Supervisors (Board). In addition to having two Supervisors on the OCFA Board, the County family also includes multiple agencies who are often times involved in emergency response. For example, the County’s Emergency Operations Center is a division of the Orange County Sheriff’s Department. While the County believes that issues concerning the safety of Orange County residents should be resolved in a timely manner, it also

recognizes the complexity of the inequity issue and prefers that the resolution reflects one where the safety of the residents is prioritized. The County appreciates the effort that OCFA and the City of Irvine has and continues to expend on resolving this issue.

F.3. The bilateral discussions between Irvine and OCFA, without the County's involvement, have not resolved the inequity concerns and cannot resolve them without joint discussions and mutual agreement among all principal parties.

Response: Agrees with finding. While the County appreciates the efforts made by both OCFA and the City of Irvine to resolve the matter, the County would be open to being a larger part of the discussions. As the entity that is apportioned the portion of the one percent tax levy known as the Structural Fire Fund (SFF), and which is required to pay SFF to OCFA under the terms of OCFA's JPA Agreement, the County's participation in any discussions regarding a transfer of some or all SFF property tax revenues to a SFF city is crucial.

In the past, the County has partaken in discussions on issues of equity. In May 2012 when the City of Irvine raised its concerns about equity, OCFA formed an ad hoc committee to study the equity issue. After the failure of the Second Amendment to the JPA in March 2016, OCFA indicated in May 2016 that, should the City of Irvine and/or the County of Orange wish to pursue a proposal, the two parties will work it out amongst themselves before bringing the proposal to the larger OCFA Board for discussion and consideration.

F.4. The disagreement between Irvine and the County regarding the application of Tax Equity Allocation (TEA) funds complicates the resolution of the inequity issue.

Response: Partially disagrees with finding. Before Proposition 13 was passed in 1978, cities had the power to levy and collect their own property taxes. Each city could set its own property tax rate depending on its revenue needs. Proposition 13 changed this by limiting ad valorem property taxes to 1 percent of assessed value. The tax would be collected by counties and allocated as required by the Legislature. The Legislature adopted AB 8, which generally allocated the 1 percent property tax rate in proportion to each local agencies' relative share of property taxes collected before Proposition 13.

Under the AB 8 property tax allocation framework, cities like Irvine that had levied no or low property taxes before Proposition 13 received none or little of the property tax being paid by their residents. To help alleviate this disparity, the Legislature enacted the Tax Equity Allocation ("TEA") statute. Under TEA, these no and low tax "qualifying cities," which were allocated less than seven percent of the property taxes generated within their boundaries, are entitled to receive a minimum property tax allocation of approximately seven percent of such revenues. The definition of a "qualifying city" is based on the amount of property taxes that

were allocated in a qualifying city in the 1988-89 fiscal year. The TEA revenues that are allocated to a qualifying city like Irvine are effectively funded from property taxes that were originally allocated to the County with the County's property tax allocation being reduced by the difference between Irvine's TEA amount and Irvine's lower AB 8 property tax allocation.

If Irvine had been allocated the portion of property taxes in Irvine now allocated to SFF, then Irvine would not have qualified for TEA, because it would have received approximately 15 percent of property taxes, which is greater than TEA's seven percent threshold (and greater than the 12 percent statewide average for cities). However, because SFF is allocated to the County, Irvine receives a TEA property tax subsidy from the County that brings its share of property taxes to approximately seven percent even though fire protection is paid for by the County through SFF and provided through OCFA. In recent years, Irvine's annual receipt of TEA revenues from the County exceeded \$17 million. Irvine's receipt of TEA from the County predates the formation of OCFA and Irvine would not be entitled to receive TEA revenues if it was not a low tax city. It is speculative to attribute any difficulty in the resolution of the inequity issues to Irvine's receipt of TEA.

F.5. In the event of a Structural Fire Fund (SFF) member's withdrawal from OCFA, the JPA agreement does not clearly address the disposition of the member's SFF contributions, which may result in litigation.

Response: **Partially disagrees with finding.** The 1999 JPA agreement provides that, withdrawal "by a Structural Fire Fund city may be subject to property tax transfer negotiations and such additional notices as required by applicable law." The withdrawal of a SFF city member does not require a transfer of any or all SFF property taxes to the city unless the city wishes to undertake responsibility of fire protection. If the city wishes to undertake responsibility for fire protection, then the transfer of property taxes to pay for such services is subject to negotiation. Discussion of the likelihood of future litigation is highly speculative.

F.7. In the event of a member's withdrawal from OCFA, the JPA agreement does not define the disposition of that member's share of OCFA's unfunded liabilities, which may result in litigation.

Response: **Partially disagrees with finding.** The 1999 JPA Agreement provides that withdrawing members may negotiate with the Authority for return or repurchase of any and all stations and equipment serving that member's jurisdiction and such negotiations could address the disposition of that member's share of liabilities. Discussion of the likelihood of future litigation is highly speculative.

RECOMMENDATIONS AND RESPONSES:

R.1. Starting immediately, all three parties (the City of Irvine, OCFA, and the County of Orange) should be included in all discussions addressing Irvine's SFF inequity issue to reach a mutually satisfactory interim agreement to avoid Irvine's withdrawal from OCFA.

Response: **The recommendation has not been implemented, but will be implemented in the future.** The County has a vested interest in keeping Orange County residents safe in emergency situations and stands willing to be a part of any solution that would preserve the high standard of service that exists in the current emergency system.

R.3. By June 1, 2018, OCFA and the County of Orange should provisionally define the disposition of a member's SFF contributions in the event of that member's withdrawal.

Response: **The recommendation will not be implemented because it is not warranted.** The OCFA JPA Agreement already addresses the question of what happens to a member's SFF contributions in the event of a withdrawal.

R.6. All parties should commit to revisiting the JPA agreement with the goal of resolving outstanding issues prior to the 2030 expiration of the JPA.

Response: **The recommendation requires further analysis.** The County has a vested interest in keeping Orange County residents safe in emergency situations and stands willing to be a part of any solution that would preserve the high standard of service that exists in the current emergency system.