



Donald P. Wagner, Mayor

cityofirvine.org

1 Civic Center Plaza, Irvine, CA 92606-5208

949-724-6233

August 31, 2018

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

Subject: Response to the Orange County Grand Jury Report, *Orange County Fire Authority – Financial Flames on the Horizon?*

Dear Judge Margines:

In accordance with Section 933.05 of the California Penal Code, this letter constitutes the City of Irvine's response to the Orange County Grand Jury 2016-2017 Report released March 20, 2018, entitled: *Orange County Fire Authority – Financial Flames on the Horizon?* The enumerated items in this response correspond to the numbering of the findings and recommendations contained in the Grand Jury Report.

We trust this response, from the City of Irvine, will be filed with the Grand Jury so that anyone reading the Grand Jury Report will be able to evaluate it in light of the City of Irvine's response set forth above. If you have any questions, please feel free to contact the City Manager John Russo at 949-724-6249 or jrusso@cityofirvine.org.

Sincerely,

Donald P. Wagner
Mayor

Attachment

cc: Irvine City Council
Jeff Melching, City Attorney
Mike Hamel, Director of Public Safety

RESPONSES TO FINDINGS

Per the instructions on page 26 of the Grand Jury Report, the City of Irvine ("City") is required to respond to Grand Jury Findings F1, F2, F3, F4, F5, F6, and F7. Those responses are provided immediately below.

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: The City partially disagrees with this finding. While the City agrees that the Joint Powers Authority (JPA) Agreement for the Orange County Fire Authority does not adequately anticipate and account for the disproportionate growth in property values in the City of Irvine (resulting in the current inequity issue), the 1995 OCFA JPA Agreement is no longer operative. The 1995 OCFA JPA Agreement was superseded in its entirety when, on September 23, 1999, "the members entered into an amended Joint Powers Authority Agreement ('1999 Amended Agreement') which superseded all prior agreements between the parties ..." (See First Amendment to Amended Joint Powers Authority Agreement, p. 2.)

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 the inequity issue.*

Response: The City agrees with this finding. Indeed, the City attempted to negotiate a mutually agreeable plan to resolve the inequity issue prior to the June 30, 2018 deadline, but was unable to do so. As a result, the City provided a notice of intent to withdraw prior to the June 30, 2018 deadline. The City intends to continue in discussions with OCFA and the County of Orange, with a goal of preserving the safety of the citizens of Orange County, resolving the inequity issue, addressing OCFA's unfunded pension liabilities, and remaining in OCFA through the expiration of the operative JPA Agreement in 2030.

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: The City partially disagrees with this finding. The City has been engaged in discussions that have included the County – its discussions have not been strictly with OCFA representatives. The City agrees, however, that to date discussions have not yielded a mutual agreement among all principal parties. The City further

agrees that a mutual agreement among all principal parties is the preferred means of resolving inequity concerns.

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: The City partially agrees with this finding. The City agrees the TEA process complicates the identification of a mutually agreeable resolution to the inequity concerns. However, the extent to which the City and the County disagree on those matters is not yet fully known, and will be better understood as discussions among the principal parties continue.

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 that member's SFF contributions, which may result in litigation.*

Response: The City agrees with this finding.

F.6. *In the event of Irvine's withdrawal from OCFA, the conflicting positions between the City and OCFA regarding ownership of fire stations and equipment located in Irvine may result in litigation.*

Response: The City agrees with this finding to the extent it indicates that the parties' conflicting positions "may" result in litigation. The City's primary goal, however, is to identify a mutually agreeable solution that preserves the safety of the citizens of Orange County, resolves the inequity issue, addresses OCFA's unfunded pension liabilities, and provides for the City to remain in OCFA through the expiration of the operative JPA Agreement in 2030.

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: The City disagrees with this finding. The operative JPA Agreement expressly addresses all OCFA liabilities, stating in Paragraph 3 "[e]xcept as otherwise provided herein, the debts, liabilities and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the parties of this Agreement."

RESPONSES TO RECOMMENDATIONS

Per the instructions on page 27 of the Grand Jury Report, the City of Irvine ("City") is required to respond to Grand Jury Recommendations R1, R2, R4, and R6. Those responses are provided immediately below.

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 withdrawal from OCFA (F1, F2, F3, F4)*

Response: This recommendation has not been implemented but will be implemented in the future. The City, OCFA, and the County are involved in ongoing discussions. Although a discussion that includes all three parties has not occurred in recent months, the City agrees that participating in such discussions in the near future is warranted. It is premature to determine whether all discussions should include all parties.

R.2. *Prior to June 30, 2018, the City of Irvine should adopt a contingency plan to ensure uninterrupted fire and emergency services in the event of the City's intended withdrawal from OCFA. (F2, F6)*

Response: This recommendation has not been implemented but will be implemented in the future. The City provided notice of withdrawal from OCFA prior to the June 30, 2018 deadline, so that it may continue in its discussions with the principal parties regarding resolution of the inequity issues. In pursuing that resolution, the City's paramount concern is ensuring uninterrupted fire and emergency services, preferably through a membership in OCFA through 2030 that resolves the inequity issue and addresses OCFA's unfunded pension liabilities.

R.4. *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. (F5)*

Response: This recommendation will not be implemented. The June 1, 2018 deadline for implementation of this recommendation has passed, and as of that date the parties were not in agreement (provisional or otherwise) on the disposition of the City's SFF contributions in the event of Irvine's withdrawal from OCFA. That matter is the subject of continuing discussions.

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. (F1, F5, F6, F7)*

Response: This recommendation will be implemented by the City. Indeed, the City's goal is to resolve outstanding issues prior to 2020.