

## Memorandum

**TO:** East Contra Costa Fire Protection District  
Board of Directors  
Brian Helmick, Interim Fire Chief

**FROM:** Shayna M. van Hoften, Legal Counsel  
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**DATE:** September 29, 2017

**RE:** Analysis of the District's Legal Authority and Obligation to Provide Fire Protection Services

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This memorandum briefly discusses the East Contra Costa Fire Protection District's (District) power and duty to provide fire protection service to residents and businesses within its service area. While the District has the power to provide service, it is not legally obligated to provide any particular level of service.

### I. BACKGROUND

The District is a special district formed under the Fire Protection District Law of 1987 (FPDL) (Cal. Health & Safety Code §§ 13800 *et seq.*). The District provides services, including fire protection and fire and emergency response services, to over 114,000 residents in an area covering 249 square miles. The District's service area covers all of the City of Brentwood and the City of Oakley, as well as certain neighboring areas within unincorporated Contra Costa County (County).

Due to ongoing budgetary constraints, the District's current revenues allow it to operate three fire stations—down from eight stations in 2010—and fund operation of the CalFire Sunshine station during non-fire season. Consequently, the level of service that the District provides frequently falls below the best practices recommended by various industry experts. Concerns about the level of service within the District's service area have given rise to questions regarding the District's obligation to provide service in accordance with these industry standards.

### II. THE DISTRICT HAS THE POWER TO PROVIDE FIRE PROTECTION SERVICE

The FPDA lays out the powers granted to all fire protection districts. Absent authority granted by the FPDA, the District has no power to act. The FPDA grants the District the power to provide "fire protection services" and "any other services relating to the protection of lives and property," such as fire and medical emergency response. (Cal. Health & Safety Code § 13862(a), (f).)

The City of Oakley, the City of Brentwood, and the County also have the power to provide fire protection and fire and medical emergency response services to residents within the District's

service area. Cities and counties have the power to provide these services as part of their broad police powers. (Cal. Const., art. XI, § 7.) In general, cities are further obligated to form fire departments and to hire or contract for fire chiefs. However, this requirement does not apply to cities that are part of a fire protection district. (Cal. Gov. Code § 38611.) Decisions regarding the management and operation of a city fire department are left to the legislative discretion of the city. (See *New Hampshire Ins. Co. v. City of Madera* (1983) 144 Cal.App.3d 298.) Due to their location within the District, the cities of Brentwood and Oakley are exempt from the obligation to hire or contract for a fire chief and form a fire department. Unlike cities, counties are *not* required to establish fire departments, even for areas not located within a fire district. (See *New Hampshire Ins. Co. v. City of Madera* (1983) 144 Cal.App.3d 298.) The cities of Brentwood and Oakley, as well as the County, rely almost entirely on the District to provide fire protection services to their businesses and residents within the District's service area.

### **III. NO PUBLIC ENTITY HAS A LEGAL OBLIGATION TO PROVIDE ANY SPECIFIC LEVEL OF FIRE PROTECTION SERVICE**

While the District exercises its power to provide fire protection services to the best of its ability, it does not have a legal obligation to provide fire protection service at any specified level, nor to respond to any specific request for fire protection service.

Various organizations promulgate standards commonly used to evaluate the adequacy of fire protection service in a given area. For example, National Fire Protection Association (NFPA) Standard 1710 recommends that a fire department's response team leave the station within 80 seconds of receiving a call, and arrive to the scene within 4 minutes in at least 90 percent of incidents. Similarly, Insurance Services Office, Inc. (the ISO) rates properties based on their proximity to fire stations and fire hydrants. However, these standards are merely best practices, and no law requires fire protection service providers, such as the District, to meet these standards.

To the contrary, California law grants providers of fire protection services "a broad immunity from liability for injuries resulting in connection with fire protection service." (*Cairns v. Cty. of Los Angeles* (1997) 62 Cal. App. 4th 330, 335; see Cal. Gov. Code §§ 850 *et seq.*) In particular, "a public entity that has undertaken to provide fire protection service" is not liable "for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." (Cal. Gov. Code § 850.2; see also Cal. Gov. Code § 850.4 (no liability due to injury resulting from condition of fire protection equipment).) This immunity applies both to policy decisions, such as where to place fire stations and what equipment to purchase, as well as to decisions made while responding to calls, such as which call to respond to first or what type of fire attack to use. It also applies to failures, such as not succeeding in protecting a person or property from a fire, whether the injury was caused by lack of resources or by negligence. (*State v. Superior Court (Wanda Nagel)* (2001) 87 Cal. App. 4th 1409, 1413.)

The Legislature's rationale for enacting these provisions was that "[w]hether fire protection should be provided at all, and the extent to which fire protection should be provided, are political decisions which are committed to the policy-making officials of government." (*Cairns v. Cty. of Los Angeles* (1997) 62 Cal. App. 4th 330, 335 (quoting Cal. Law Revision Com. com. to §§ 850 and 850.2.)) In other words, the Legislature recognized that the ability of agencies to provide fire protection services is often influenced by decisions of policy makers and, in some cases,

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voters. Accordingly, these laws make the consequences for failure to provide adequate service political, rather than legal. Further, provision of fire protection service also requires fire chiefs and firefighters to make difficult decisions in high pressure situations when responding to calls. The statutory provisions cited above protect the discretion of fire chiefs and firefighters to make these decisions without having to worry about being second guessed by judges and juries.

In conclusion, the District has non-exclusive power to provide fire protection and emergency response services within its service area, but it is not legally obligated to provide any particular level of service.