

**ORANGE COUNTY FIRE AUTHORITY –
FINANCIAL FLAMES ON THE HORIZON?**



GRAND JURY 2017-2018

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SUMMARY

The Orange County Fire Authority (OCFA) is under threat. OCFA provides fire and emergency services for twenty-three cities and the unincorporated areas of the County. Payment for these services is through a mandated allocation from property taxes and negotiated contract fees. Rapidly accelerating property values and major growth in the City of Irvine have resulted in significant inequity between Irvine’s financial contributions to OCFA compared to the value of services received. Consequently, Irvine has threatened to withdraw from OCFA – a decision which must be made by June 30, 2018 – a rapidly approaching deadline.

Irvine’s withdrawal would insert a hole in the middle of OCFA’s service area. Further, the loss of Irvine’s financial contributions, as well as fire stations and equipment located in the City, would impact OCFA’s budget and organizational structure. For Irvine, this withdrawal would result in assuming responsibility for its own fire and emergency needs, immediately losing its seat on the OCFA Board of Directors through the effective withdrawal date of July 1, 2020, continuing mandated contributions until the effective withdrawal date, and potentially assuming a share of OCFA’s unfunded pension liabilities.

The Grand Jury recommends that the City of Irvine, OCFA and the County of Orange immediately commence joint discussions to reach an interim agreement addressing Irvine’s inequity issue. Without such an agreement by June 30, 2018, these unresolved issues would likely lead to uncertainty, disruption and litigation – significant costs to all concerned.

REASON FOR THE STUDY

Figure 1: Canyon Fire 2 Photo



Source: Used with permission from Mindy Schauer, photographer, Orange County Register October 9, 2017

The scope and intensity of the two recent Orange County fires, the Canyon Fire and the Canyon Fire 2, demonstrated the importance of a comprehensive regional firefighting capability for Orange County. OCFA, the County's regional firefighting service, provides fire and emergency services to approximately 1.8 million County residents. Due to some member cities' objections to the amount of fire funds they are obligated to pay, OCFA faces potential reduction in budget and services if one or more cities decide to withdraw. The City of Irvine, in particular, is dissatisfied with the level of inequity between increasing payments for fire and emergency services versus the estimated value of services received.

As a result of OCFA's inability to alleviate its concerns, Irvine has threatened to withdraw. If a major funding source like Irvine withdraws from OCFA, the agency would face both financial and operational challenges which would affect services to a significant portion of Orange County

residents living within its service area. The rapidly approaching June 30, 2018 OCFA deadline for members to submit a notice of withdrawal further exacerbates this threat.

METHOD OF STUDY

Local news reports and on-line research led to the investigation of this complex subject through interviews with eleven top decision makers drawn from OCFA management, the OCFA Board of Directors, the Orange County Board of Supervisors, Orange County executive management, city managers and council members of certain OCFA member cities. Concurrently, the Grand Jury carefully examined pertinent budgetary and financial documents, as well as historical and current applicable legislation.

BACKGROUND AND FACTS

Orange County Fire Authority

Prior to May, 1980, fire services for nine cities and the unincorporated areas of the county were provided by the California Department of Forestry. Those nine cities were:

| | | |
|----------|---------------------|-------------|
| Cypress | Los Alamitos | Tustin |
| Irvine | Placentia | Villa Park |
| La Palma | San Juan Capistrano | Yorba Linda |

In 1980, the Orange County Fire Department (OCFD) was formed as a County department reporting to the Board of Supervisors. Over the course of the next decade, five new cities were formed from the unincorporated areas and two additional cities contracted with OCFD for their fire services. However, the member cities wanted greater input into how their fire and emergency services were provided and after joint discussions a new governance structure was selected – a joint powers authority (JPA).

As a result, the Orange County Fire Authority (OCFA) was formed as a JPA in 1995. According to the JPA agreement (Amended Orange County Fire Authority Joint Powers Agreement, 1999), OCFA was formed to provide “fire suppression, protection, prevention and related and incidental

services, including but not limited to, emergency medical and transport services, and hazardous materials regulation . . .” to the County of Orange unincorporated areas and member cities.

OCFA is an independent organizational entity similar to a special district. It is the largest regional service organization in Orange County, and is one of the largest in California, serving approximately 1.8 million residents (OCFA 2016 Statistical Annual Report). The service area now includes twenty-three member cities and the unincorporated areas of Orange County. A twenty-five member Board of Directors governs and sets policy for OCFA. This Board includes one elected official appointed to represent each of the twenty-three member cities and two representatives from the Orange County Board of Supervisors. OCFA is led by a Fire Chief who is appointed by and reports to the Board of Directors.

OCFA’s regional approach provides many advantages for the members it protects. By pooling resources, OCFA can purchase additional fire engines and specialized equipment – significant expenses – which some cities could not afford on their own. The OCFA does not allocate equipment based on city boundaries. Instead, all member agencies have access to OCFA resources, including helicopters for brush fires and the use of sophisticated rescue equipment to save the lives of accident victims. In addition, administrative functions such as human resources and accounting are not required for each individual member, but are consolidated for all members.

The current twenty-year term of the JPA began July 1, 2010 and ends on June 30, 2030. The JPA will automatically renew in 2030 with the same terms and conditions, with certain exceptions. Member cities have the right to withdraw after the first ten years (in 2020) but to do so they must submit a written notice of withdrawal prior to July 1, 2018 (First Amendment to Amended Joint Powers Agreement, 2008.)

OCFA Member Payment Methods

OCFA’s members pay for fire services through two different payment methods. A basic understanding of these two payment methods is helpful to understand the issues discussed in this report. Sixteen of OCFA’s twenty-four members (fifteen cities and the County) pay for fire

services through the Structural Fire Fund (SFF) property tax allocation and eight members, referred to as “Cash Contract Cities,” pay for their fire services through negotiated contracts.

Structural Fire Fund

Prior to Proposition 13 (1978), Orange County paid for fire protection through a property tax levied on properties in the participating cities and unincorporated areas. The County adjusted the amount of these taxes to reflect the estimated cost of providing services to each jurisdiction. This fire protection portion of Orange County’s property tax is known as the Structural Fire Fund (SFF) and the cities that receive fire services this way are called “SFF cities.” SFF cities have never had their own municipal fire departments. Proposition 13 locked the portion of SFF property taxes, estimated to be approximately 11.6% of the 1% basic levy, into statute (FY2015/16 OCFA Adopted Budget, 78.) Per the JPA agreement, the County is obligated to allocate all SFF funds it receives to OCFA to meet expenses and fund reserves.

The fifteen Structural Fire Fund cities are:

| | | | | |
|-------------|--------------|---------------|------------------------|---------------------|
| Aliso Viejo | Irvine | Laguna Niguel | Los Alamitos | San Juan Capistrano |
| Cypress | La Palma | Laguna Woods | Mission Viejo | Villa Park |
| Dana Point | Laguna Hills | Lake Forest | Rancho Santa Margarita | Yorba Linda |

Cash Contracts

Cash Contract Cities were not originally part of OCFA because they had their own municipal fire departments. They later negotiated contracts with OCFA and relinquished their municipal departments. Therefore these eight jurisdictions do not have a fire tax mandated as a portion of their 1% property tax levy. Instead, these eight cities pay for fire services by contract with OCFA through payments from their general funds. Cash contract charges are based on OCFA’s annual budget and include a cap provision that governs the maximum amount that the contract charges can increase each year (Amended Orange County Fire Authority Joint Powers Agreement, 1999.)

The current eight Cash Contract City members are:

| | | | |
|------------|--------------|------------|-------------|
| Buena Park | San Clemente | Seal Beach | Tustin |
| Placentia | Santa Ana | Stanton | Westminster |

Structural Fire Fund – Equity Concerns

For this report, OCFA “equity” refers to the extent to which OCFA revenue (i.e., SFF or Cash Contract payments) received from a member bears a reasonable relationship to the value of fire and emergency services that the member receives.

In 1996, just one year after it was formed, OCFA conducted an equity study on its revenues from participating jurisdictions after some SFF cities expressed concerns about their payments. The City of Irvine has long protested that, because its property values are disproportionately high, its contribution of SFF funds is also disproportionately large and exceeds the funds necessary to provide fire services to the City.

A 1999 amendment to the JPA agreement created a fund to benefit SFF cities. This fund, the Structural Fire Fund Entitlement Fund (SFFEF), created from the unencumbered fund balance each year, offered allocations to SFF cities to offset inequities when financial conditions allowed. The allocations could be used for Board-approved and OCFA-related services or resource enhancements to SFF members. In 2002, legislators enacted AB 2193 (Maddox) in response to the concerns of the Orange County Professional Fire Fighters Association, IAFF – Local 3631 (firefighters’ union) that funds were being used for non-fire protection services. This legislation prohibited the use of property taxes received by OCFA on expenditures not directly related to fire protection purposes. However, even while adhering to this restriction, OCFA has been able to distribute some SFFEF allocations in various years, depending upon available funds and mandated calculations.

In March 2012 the City of Irvine raised renewed concerns about inequity to the OCFA Board of Directors. Irvine representatives, due to OCFA taking no action to mitigate their concerns, stated

their intent to exercise their option to withdraw from OCFA in 2020. In response, the OCFA Board formed an Ad Hoc Equity Committee for the purposes of studying the equity issue. Their proposed solution for addressing the equity concerns resulted in the Second Amendment to the JPA agreement (2014, Second Amendment to Amended Orange County Fire Authority Joint Powers Agreement).

The key terms of the amendment stated that SFF agencies contributing more than the average SFF Rate to OCFA would be eligible for “Jurisdictional Equity Adjustment Payments.” The Amendment was approved by two-thirds of the OCFA members in 2014, but was later challenged by the County and invalidated by the Appellate Court. The Court held that only the County, not OCFA, can adjust the allocation of SFF property tax revenues, and that OCFA funds must be spent specifically for “fire protection purposes” as defined by Section 6503.1 of the California Government Code. In light of the invalidation of the Second Amendment, the Irvine City Council met in closed session in January 2017 and instructed staff to explore leaving OCFA in 2020 (Irvine City Council Regular Meeting Minutes, January 24, 2017).

In October 2017, the California State Legislature passed SB 302 (Mendoza) which amends Section 99.02 of the Revenue and Taxation Code, and applies very narrowly to Orange County, OCFA and SFF funds. The bill was sponsored by the Orange County Professional Fire Fighters Association, IAFF – Local 3631.

Prior to this legislation, existing regulations in the California Revenue and Taxation Code prohibited transfers of revenues between local agencies unless certain requirements were met. SB 302, specific to OCFA, adds a fifth condition on property tax transfers that applies only to the transfer of SFF revenues. It requires that the transfer of SFF property tax revenues be approved by the Orange County Board of Supervisors, the city councils of a majority of OCFA member cities, and two-thirds vote of the OCFA Board of Directors. Also, the transfer may not violate existing law that requires SFF revenues to be expended by OCFA exclusively for fire protection and related purposes. It is anticipated that the added requirement of the approval of a majority of member city councils will prevent any resolution of Irvine’s concerns, as a reduction of Irvine’s

and/or other SFF agencies’ contributions would likely result in increased charges to cash contract members.

These equity resolution attempts are summarized in Table 1.

Table 1: History of attempts to address OCFA equity concerns

| Year | Measure |
|--------------|---|
| 1997 | Equity Formula was placed in the amended JPA to allow allocation of year-end funding (per Board discretion) for enhanced services to member cities/county deemed overfunded, per an agreed-upon formula. (SFFEF) |
| 2010 | First Amendment to the JPA made the equity allocations mandatory every 10 years, removing the Board's discretion at each 10th year. |
| 2012 | Irvine requested new discussion of equity. In response, OCFA formed an Equity Ad Hoc Committee to review options. |
| 2012-13 | A Second amendment was approved by OCFA members, providing for return of funds to eligible overfunded members per a new agreed-upon formula. In return, Irvine agreed to commit as a member of OCFA through 2030. |
| 2013 | County of Orange opposed the Second Amendment in a judicial validation process and prevailed. The ruling was jointly appealed to the Appellate Court by Irvine and OCFA. |
| March 2016 | The Second Amendment was nullified by the Appellate Court. |
| January 2017 | Irvine reported out of closed session that the City Council directed staff to explore leaving OCFA in 2020. |
| October 2017 | SB 302 was signed by Governor Brown and enacted. |

Irvine’s Unique Position

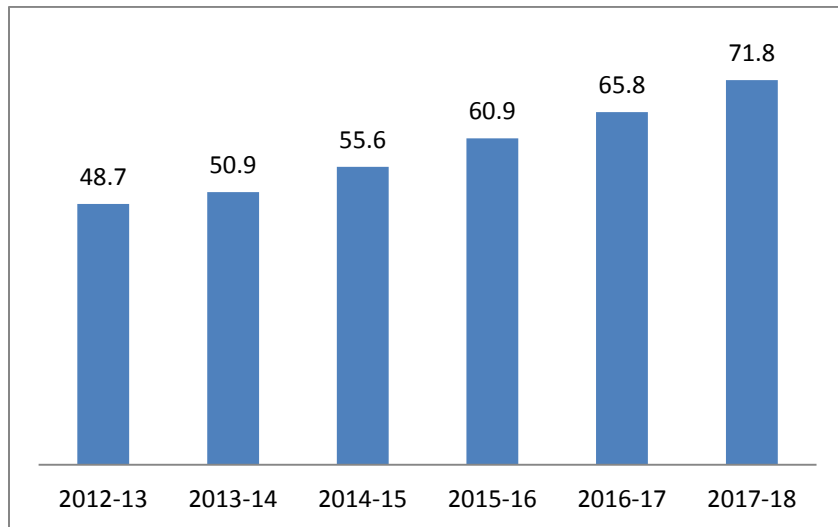
Irvine is one of sixteen SFF members in OCFA, with eleven of the seventy-two OCFA fire stations (15%) located within its boundaries. OCFA’s 2016-17 SFF revenue from properties within Irvine represents approximately \$79 million, or approximately 35% of the total OCFA SFF revenue (Appendix 1). Property tax (SFF) revenue as a whole represents approximately 42% of OCFA’s funding sources (OCFA 2016 Statistical Annual Report, Page 2). Therefore, Irvine’s SFF contribution represents approximately 15% of OCFA’s total revenues.

A Victim of Its Own Success

Irvine representatives have always maintained that the equity discussion is financially driven, and that they are otherwise satisfied with OCFA services. At the root of Irvine’s concern is the degree of inequity resulting from the SFF payment basis. If the revenue flowing to OCFA from an SFF city’s property taxes exceeds the estimated value of the fire services that city receives in return, the city is known as a “donor city.” Although there are fourteen other cities as well as the unincorporated County areas who are SFF contributors to OCFA, Irvine is in a unique position. Not only is it a donor city, it is a donor city by a much larger amount than any other due to its rising assessed property valuation, resulting in increased SFF payments (Tables 2 and 3).

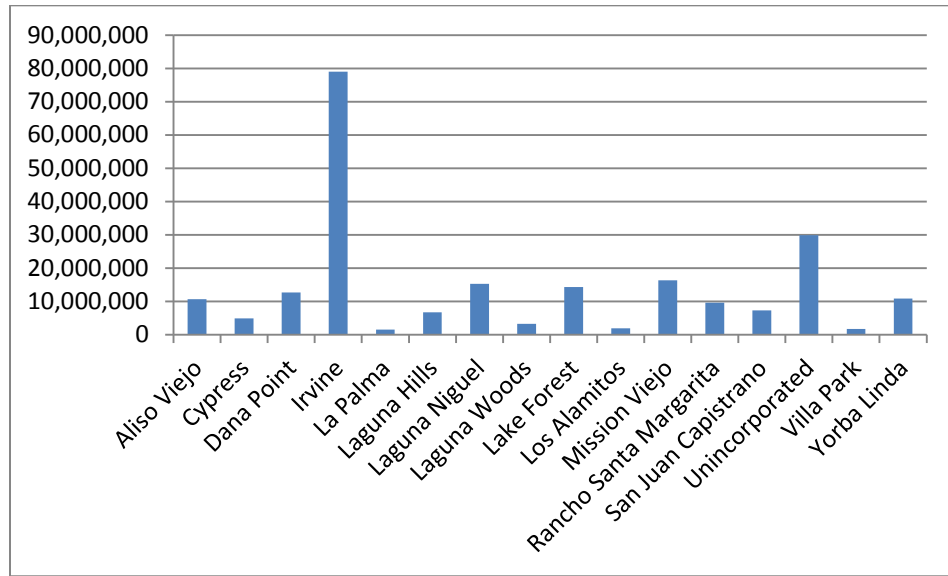
Irvine property owners have the same mandated percentage of their property tax allocated to OCFA as property owners in any other SFF jurisdiction. In actual dollars, however, the City of Irvine pays much more than any other SFF member and continues to face steadily escalating SFF payments that exceed the estimated value of the fire services the City can receive from OCFA. Growth in Irvine’s SFF portion of property taxes has resulted from substantial new development and escalating property values (Table 2), compared to older and fully built-out cities in the OCFA region.

Table 2: Irvine Assessed Property Valuation (Billion \$)



Source: Office of the Orange County Assessor

Table 3: Budgeted FY 2016-17 SFF payments (\$)



Source: OCFA

In 2016-17, with its assessed property valuation at more than \$65 billion, Irvine paid an estimated \$79 million in SFF dollars to the County, which was passed through to OCFA (OCFA Auditor-Controller Report AT68AD73). It is estimated by both OCFA and Irvine that Irvine’s 2016-17 equity share of OCFA services, based upon its population, assessed value, and consumption (number of fire-related/emergency calls), was approximately \$56 million. The difference, approximately \$23 million, is the basis of Irvine’s complaint.

Tax Equity Allocation

To further complicate this issue, there is a mitigating factor for Irvine’s property taxes which is not directly related to the SFF payments. According to the Office of the Orange County Auditor-Controller, there are other provisions of the state tax laws which apply to Irvine. Proposition 13 (1978), followed by AB 8 (1979), proportionally compressed the property taxes down to 1% of the assessed value of the property, establishing a “base rate” for each city. These base rates were established in 1978-79 when Irvine’s property values and development were significantly less than they are today.

As a result of the established low base rates, some cities were not receiving their fair share of taxes back from the state so AB 709 (1987) and AB 1197 (1988) were enacted. Together they comprise the Tax Equity Allocation (TEA) legislation. These statutes require that some counties shift some of their own tax revenue back to “qualifying” cities. The result was that qualifying cities would receive 7% of the property taxes collected within their boundaries. Counties must make up the difference between what a qualifying city would receive under the normal property tax revenue calculation process and the 7% required by TEA. Orange County has *only one* qualifying city – Irvine. According to the Office of the Orange County Auditor-Controller, under Revenue and Taxation Code 98, the County must make up the difference – the TEA adjustment amount. The following are TEA adjustment amounts apportioned to Irvine for the last three years (Table 4).

Table 4: Irvine – Apportioned tax equity allocation

| Fiscal Year | TEA Adjustment Amount |
|--------------------|------------------------------|
| 2014-15 | \$14,788,490 |
| 2015-16 | \$16,379,292 |
| 2016-17 | \$17,774,500 |

Source: Office of the Orange County Auditor-Controller

Adjusted Equity Calculations

As the basis for their objections, Irvine has estimated that in FY 2016-17 it overpaid OCFA by approximately \$23 million. However, the County considers the approximate \$18 million TEA apportionment to be an offset to Irvine’s SFF overpayment, thereby reducing the estimated overpayment to \$5 million. In addition, in 2016-17, Irvine received approximately \$530,000 from OCFA’s SFFEF - Structural Fire Fund Entitlement Fund (City of Irvine FY 2016-17 Adopted Budget, 72.) Combined with the TEA apportionment, the SFFEF payment reduces the estimated overpayment to \$4.5 million (Table 5).

Table 5: Irvine – Equity calculation for FY 2016-17

| Calculated Items | \$ Million (rounded) |
|---|-----------------------------|
| Irvine SFF funds paid to OCFA | 79.0 |
| Less: OCFA/Irvine estimated value of services received | (56.0) |
| Resulting Estimated SFF Overpayment (per Irvine) | 23.0 |
| Less: Tax Equity Allocation (TEA) from County | (18.0) |
| Less: SFF Entitlement Funds from OCFA | (0.5) |
| Resulting Estimated SFF Overpayment (per County) | 4.5 |

Source: Based on financial data from OCFA, County of Orange, City of Irvine

Irvine, however, maintains that the TEA funds received from the County should not be applied to the SFF overpayment, but rather to their General Fund revenues. It should be noted that one of the causes of Irvine dropping below the 7% required minimum and qualifying for the TEA payment is due to the large SFF amount passed through to OCFA.

OCFA – Impact if Irvine Withdraws

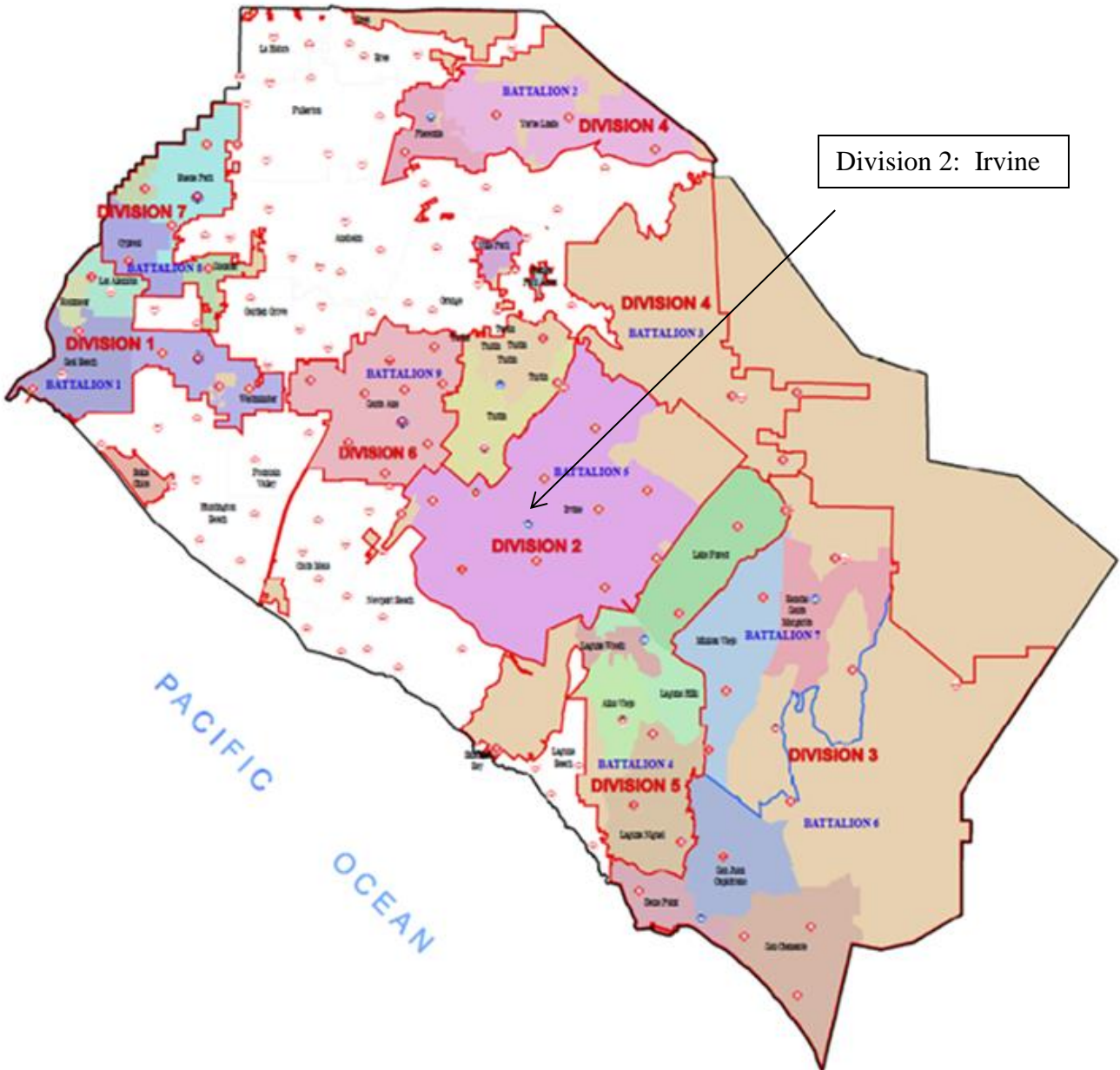
Irvine’s withdrawal from OCFA would pose various difficulties for the JPA. Not only does Irvine’s SFF contribution represent approximately 15% of OCFA’s total revenues, but Division 2 (Irvine) occupies a critical location – central in the total fire service area (Figure 2).

Strategic Location

Irvine’s withdrawal from OCFA would insert a hole in the middle of the OCFA’s service area, the current Division 2 (Figure 2). Not only is the City of Irvine included in this Division, but Emerald Bay, John Wayne Airport and UC Irvine are as well. Irvine’s withdrawal may force OCFA’s renegotiation of fire services for these important entities. Additionally, eleven of seventy-two OCFA fire stations (15%) are located in the City of Irvine and the potential loss of

these stations from the organization would force new mutual aid contracts with these three entities as well as with Irvine itself.

Figure 2: OCFA Service Area by Division (Division 2: Irvine)



Source: OCFA

Long Term Unfunded Liabilities

OCFA participates in the Orange County Employees Retirement System (OCERS), a cost sharing, multiple-employer, defined benefit pension plan. OCFA has indicated that much of the excess SFF funds from donor cities has been expended in recent years to pay down OCFA’s Unfunded Actuarially Accrued Liability (UAAL) – “unfunded liability.” This pay down represents a very large benefit not only to OCFA, but also to OCERS and the county taxpayers as well.

Table 6: OCFA long-term unfunded liabilities (June 30, 2017)*

| | \$ Amount in Millions | % of Total |
|--------------------------------------|------------------------------|-------------------|
| Defined Benefit Pension Plan | \$400.40 | 77.00% |
| Defined Benefit Retiree Medical Plan | 98.6 | 19.00% |
| Helicopter Lease Purchase Agreement | 3.7 | 0.71% |
| Accrued Compensated Absences | 16.9 | 3.30% |
| Total | \$519.60 | 100.00% |

Source: OCFA 2017 Liability Study

*Note: the valuation date for the pension plan is December 31, 2016, instead of June 30, 2017, consistent with OCERS’ calendar year basis for financial reporting.

As seen in Table 6 above, the two major elements of the four unfunded categories are the pension plan and the retiree medical plan. The concern over the unfunded liabilities is not new. In September 2013, the OCFA Board of Directors approved an Expedited Pension UAAL Payment Plan (2016 Liability Study – OCFA’s Long Term Liabilities, Page 6) which directed using available funds to accelerate the pay down of the liability. In FY 2015/16, the plan was modified to contribute even more funds, and in FY 2017/18 the plan was modified again, adding another source of additional funds.

OCFA has made additional payments towards its UAAL, as shown in Table 7.

Table 7: OCFA – Additional payments toward UAAL

| | \$ Million |
|--------------|-------------------|
| FY 13/14 | \$5.5 |
| FY 14/15 | \$21.3 |
| FY 15/16 | \$15.4 |
| FY 16/17 | \$13.5 |
| Total | \$55.7 |

Source: OCFA 2017 Liability Study

According to OCFA, during the past four years the OCFA Board of Directors’ support of the accelerated plan, referred to as the “snowball effect,” has enabled OCFA to make accelerated payments totaling \$55.7 million. This accelerated reduction of the deficit has resulted in interest savings of \$11.5 million as well. OCERS reported that OCFA will achieve 85% funding of the UAAL by December 31, 2020 and 100% funding by December 31, 2027, assuming all other actuarial inputs are held constant.

However, Irvine’s possible withdrawal and the resulting potential loss of their SFF portion of OCFA revenue would eliminate the acceleration of the pay down strategy, and the UAAL would continue to escalate with little mitigation.

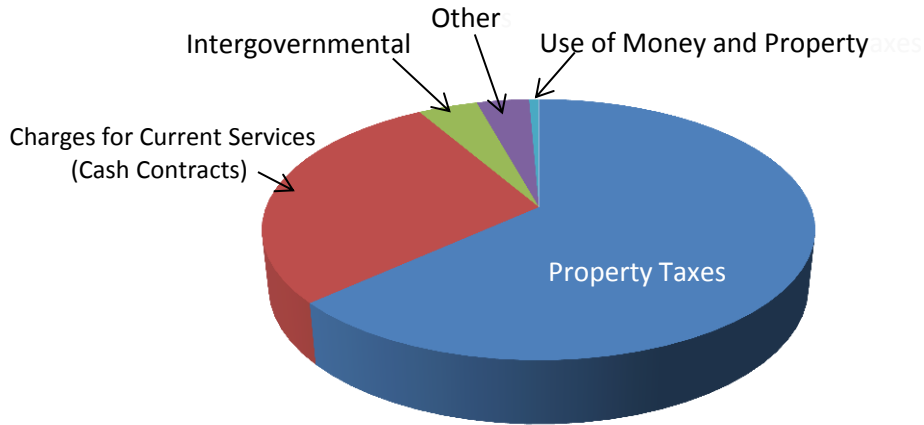
Budget Limitations

The OCFA Adopted Budget for 2017-18 highlights the following points:

1. The General Fund revenue is budgeted at \$367 million, and expenditures are budgeted at \$350 million.
2. A one-time adjustment of approximately \$5.9 million will be used to pay down the UAAL.

Property tax represents approximately 66% of the General Fund’s total revenue.

Figure 3: OCFA Budgeted Revenue by Category FY 2017-18



Source: FY 2017/18 OCFA Adopted Budget

It is apparent in Figure 3 that property taxes comprise a large majority of OCFA revenues. Because Irvine represents approximately 35% of those property taxes, the potential loss of that revenue would likely trigger a major reorganization of future OCFA budgets. This could include cutbacks in personnel and equipment throughout the service areas as well as the likely elimination of the UAAL pay down plan.

Irvine – Impact if Irvine Withdraws

Irvine’s withdrawal from OCFA would not be without issues and complications for the City. Although withdrawal may seem like the answer to Irvine’s inequity issues, nothing about this situation is simple.

SFF Funds

First, if Irvine withdraws from OCFA, its SFF funds do *not* automatically revert to the City as some City representatives have indicated. The JPA agreement specifies 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 passage of SB 302 in October 2017 makes the disposition of SFF funds even more complex, with the stipulation that any change to SFF

property tax allocations now requires the agreement of Orange County Board of Supervisors, the city councils of a majority of OCFA member cities, and two-thirds vote of the OCFA Board of Directors.

OCFA Representation

Secondly, if Irvine did submit notice of withdrawal by the June 30, 2018 deadline, the City would immediately lose its seat on the OCFA Board of Directors, per the JPA guidelines. This would mean the City would have no OCFA representation for their remaining two years of membership, while still subject to SFF contributions.

Fire Stations

According to OCFA, the eleven fire stations that are located in the City of Irvine belong to OCFA. Irvine, however, has stated that the fire stations belong to the City. The JPA agreement specifies that any withdrawing member may negotiate with OCFA for return or repurchase of any and all stations and equipment serving that member's jurisdiction. Possible litigation over this issue could be a very large expenditure for both parties.

Source of Fire and Emergency Services

Withdrawal from OCFA by 2020 would necessitate funding, staffing, and equipping a City of Irvine Fire Department within two years, or negotiating for an alternative joint venture (JPA) with surrounding cities that have their own fire departments. As OCFA Division 2 also encompasses John Wayne Airport and UC Irvine, the City may be put in a position to service these entities as well. A two-year window for finalizing such negotiations, organization, and funding would likely not provide adequate time to do so.

Unfunded Pension Liabilities

The question of allocation of OCFA's long-term, unfunded pension liabilities in the event of a member withdrawal is not addressed in the JPA agreement. Irvine representatives have stated that they believe that the City's withdrawal could be accomplished without incurring any of OCFA's pension liabilities. However, it seems unreasonable to assume that Irvine's share of

those liabilities, however they may be calculated, would not follow them if they withdraw. This open question is another possible litigation issue, costly to both parties.

Conclusions

The equity issue within OCFA has been a long-standing one, with multiple attempts made over the years by OCFA and its members to address it. As a result of the most recent legislation (SB 302), however, any proposed resolution will be even more difficult to reach with the addition of more parties needed for agreement.

Strategic and Financial Impacts

As previously noted, OCFA's Division 2, located in the City of Irvine, is situated in the geographic center of the OCFA service area (Figure 2). Irvine's withdrawal from OCFA would disrupt the strategic integrity of a uniform service area with regard to placement of fire stations as well as distribution of firefighting equipment and personnel. The withdrawal would also have a negative effect on OCFA's operating budget, financial stability, response times, and overall operations. These possible effects make it apparent that it would be in the best interest of OCFA, the City of Irvine, other member cities, and the County to negotiate a mutually agreeable solution.

Why Inequity is Inevitable

Inequities are a feature of any representative democratic government. Wealthier communities send more tax revenue to a central government than less wealthy communities, which is redistributed for the common good. These revenues are allocated to give all communities the same basic services as their needs require. A prime example of this is funding for public schools.

In a hypothetical scenario, two homes on the same block may pay significantly different amounts of property taxes, depending upon the date of sale (defined base year) and the assessed value of the home. For example, if a home was purchased in 1975 with a sale price of \$95,000 and has not changed hands for the past 43 years, the property taxes would be significantly lower than

those of a home next door which was purchased in the base year of 2017 with a sale price of \$975,000. Yet these next-door neighbors receive the same public school accessibility.

This is also true of OCFA, whose fire and emergency services are provided equally to the residents of all member agencies and are not based on the ability to pay. If they were, Irvine would take the majority of fire services and other smaller and less affluent member cities would have a lower level of services. The City of Irvine is not attempting to abrogate its civic responsibilities, but rather is seeking more equitable treatment.

Future Negotiations

Recently there have been informal discussions between the City of Irvine and OCFA regarding the equity issue. These discussions have not included the County of Orange, which might have provided an avenue for additional input or options. Instead, OCFA advised the County that any position they have regarding the equity issue must be presented to the OCFA Board of Directors. Now, with the recent passage of SB 302, all parties to the discussion, including the County, are required to approve any proposed solutions to the equity issue – which would necessitate that all parties participate in any discussions.

If a consensus is not achieved in the short term by June 30, 2018, and no further action is taken before the *next* withdrawal notice deadline of June 30, 2028, then the OCFA JPA will automatically renew on July 1, 2030 – resulting in the same terms and conditions with the same unresolved issues, possibly leading to the breakup of OCFA.

FINDINGS

In accordance with California Penal Code §933 and §933.05, the 2017-2018 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court of California, County of Orange.

Based on its investigation titled “Orange County Fire Authority – Financial Flames on the Horizon?” the 2017-2018 Orange County Grand Jury has arrived at seven principal findings, as follows:

- F1. 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.
- F2. 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.
- F3. 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.
- F4. The disagreement between Irvine and the County regarding the application of Tax Equity Allocation (TEA) funds complicates the resolution of the inequity issue.
- F5. 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.
- F6. 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.
- F7. 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.

RECOMMENDATIONS

In accordance with California Penal Code §933 and §933.05, the 2017-2018 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court of California, County of Orange.

Based on its investigation titled “Orange County Fire Authority – Financial Flames on the Horizon?” the 2017-2018 Orange County Grand Jury makes the following six recommendations:

- R1. 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. (F1, F2, F3, F4)
- R2. 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)
- R3. 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)
- R4. By June 1, 2018, OCFA and the City of Irvine should resolve ownership of the Division 2 fire stations and associated equipment located in the City of Irvine. (F6)
- R5. By June 1, 2018, OCFA should provisionally define the disposition of a member’s share of OCFA unfunded liabilities in the event of that member’s withdrawal. (F7)
- R6. 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)

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the findings and recommendations of this Grand Jury report:

§933(c)

No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head or any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. . . .

§933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.*

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933(c) are required or requested from:

Responses Required:

Findings:

Orange County Board of Supervisors: Findings: F1, F2, F3, F4, F5, F7

City of Irvine, City Council: Findings: F1, F2, F3, F4, F5, F6, F7

Orange County Fire Authority Board of Directors: Findings: F1, F2, F3, F5, F6, F7

Recommendations:

Orange County Board of Supervisors:

Recommendations: R1, R3, R6

City of Irvine, City Council:

Recommendations: R1, R2, R4, R6

Orange County Fire Authority Board of Directors:

Recommendations: R1, R3, R4, R5, R6

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Documents

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2. *First Amendment to Amended Joint Powers Authority Agreement Orange County Fire Authority*, July 1, 2010
3. *Second Amendment to Amended Orange County Fire Authority Joint Powers Agreement*, December 9, 2013
4. *Third Amendment to Amended Joint Powers Authority Agreement Orange County Fire Authority*, October 2, 2015
5. Court of Appeal of the State of California Fourth Appellate District Division Three, *Orange County Fire Authority et al. v. County of Orange*, G050687, *Opinion*, March 15, 2016
6. *California State Senate Bill 302, Chapter 807, October 14, 2017*
7. City of Irvine, *FY 2016-17 Adopted Budget*, 72
8. City of Irvine, *Budget Revenues General Fund 2013-14 to 2017-18*
9. Orange County Fire Authority, *2016 Statistical Annual Report*
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13. Orange County Fire Authority, *Agenda Staff Report FY2014/15 Mid-year Financial Report*
14. *Final Equity Share Calculation Simplified Option 2A-One Region Updated FY 2010/2011 Taxes, 3 FY Average Use, AV, POP*, December 11, 2017
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17. Orange County Fire Authority, *FY2017/18 OCFA Adopted Budget*, 78
18. Orange County Auditor-Controller Property Tax Section, *Tax Equity Allocation Explanation*, January 2, 2018
19. Orange County Fire Authority, *2016 Statistical Annual Report*

Websites

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<http://www.ocregister.com/2017/01/26/irvine-takes-step-to-leave-orange-county-fire-authority/>
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http://irvine.granicus.com/DocumentViewer.php?file=irvine_87813b06aefeaee26b516d659b370a54.pdf&view=1
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4. Orange County Assessor, *Roll Detail by City*, accessed January 19, 2018
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5. Orange County Fire Authority Service Area, accessed August 8, 2017
<http://www.ocfa.org/AboutUs/Departments/Operations.aspx>
6. California State Legislature Assembly Hearing of July 12, 2017 re: SB302 As Amended July 3, 2017
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8. Orange County Register, *Orange County Fire Authority faces financial deficit, pensions and Irvine threatening to drop it*, Mar 15, 2015, accessed Jan 22, 2018
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APPENDIX

Appendix 1: OCFA budgeted Structural Fire Fund revenue by member agency

| | FY 2015/16 | FY 2016/17 | FY 2017/18 |
|------------------------|----------------------|----------------------|----------------------|
| Aliso Viejo | 10,097,519 | 10,671,670 | 11,242,937 |
| Cypress | 4,701,843 | 4,895,673 | 5,066,753 |
| Dana Point | 11,912,343 | 12,719,236 | 13,821,426 |
| Irvine | 73,883,489 | 79,010,274 | 86,025,009 |
| La Palma | \$1,483,090 | \$1,541,453 | \$1,598,276 |
| Laguna Hills | 6,452,428 | 6,710,687 | 6,949,145 |
| Laguna Niguel | 14,677,182 | 15,258,914 | 16,070,368 |
| Laguna Woods | 3,064,476 | 3,243,437 | 3,450,009 |
| Lake Forest | 13,270,443 | 14,366,062 | 15,434,382 |
| Los Alamitos | 1,820,245 | 1,889,483 | 1,990,701 |
| Mission Viejo | 15,688,165 | 16,316,300 | 16,997,261 |
| Rancho Santa Margarita | 9,306,628 | 9,594,218 | 10,133,553 |
| San Juan Capistrano | 6,969,386 | 7,341,421 | 7,749,858 |
| Unincorporated | 28,288,451 | 29,862,289 | 31,911,074 |
| Villa Park | 1,626,437 | 1,704,792 | 1,787,383 |
| Yorba Linda | 10,439,907 | 10,905,026 | 11,432,809 |
| Total | \$213,682,033 | \$226,030,935 | \$241,660,944 |

| | | | |
|---|---------------|---------------|---------------|
| Irvine's Percentage of Total SFF Revenue | 34.58% | 34.96% | 35.60% |
|---|---------------|---------------|---------------|

Source: OCFA