



Menlo Park Fire Protection District

Fire Chief
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Board of Directors

Chuck Bernstein
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October 9, 2018

Honorable V. Raymond Swope
Judge of the Superior Court
C/O Charlene Kresevich
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA. 94063-1655

Re: Civil Grand Jury Report "Menlo Park Fire Protection District: Ready For Growth"

Dear Honorable Judge Swope:

The following response was considered and approved by the Menlo Park Fire Protection District Board of Directors at their regular meeting held on September 18, 2018.

The Fire Board, Fire Chief and involved staff would like to thank the members of the Civil Grand Jury for their work and dedication in preparing the report. The Board agrees with the majority of findings and recommendations.

Regarding the 19 findings, the Fire District agrees with 11, and respectfully disagrees with 8. An explanation has been provided for each area of disagreement.

Regarding the 10 recommendations, the Fire District agrees with 6, and respectfully disagrees with 4. An explanation has been provided for each area of disagreement.

For further explanation or information please contact the Clerk of the Board Michelle Kneier, and/or myself, Fire Chief Harold Schapelhouman.

Thank you,

A handwritten signature in blue ink that reads "Harold Schapelhouman". The signature is fluid and cursive, with a large checkmark-like flourish at the end.

Harold Schapelhouman
Fire Chief

CC: Board of Director, General Counsel, Clerk of the Board, File, Web-Site

"Excellence In Service"

Strategic Planning

F1: The District has operated without a multiyear strategic plan since 2010.

Districts Response - Agree

Reason: The Term of that plan extended beyond that stated date but its functionality was questionable due to evolving issues surrounding a number of impacting events like the worldwide recession and protracted labor issues and difficulties with the Firefighters Union.

F2: The District's Board of Directors established and authorized a Strategic Planning Committee in 2011. However, during the subsequent six-year period, 2012-2017, the committee met only sporadically and failed to submit a strategic plan to the Board.

Districts Response - Agree

Reason: The committee met as needed and its primary tasking was never to be responsible for, or to develop, a Strategic Plan, but rather to discuss "Strategic" items as necessary.

F3: The District's deployment system meets the District's current demands but is becoming strained, especially east of Highway 101.

Districts Response - Agree

Reason: This is the direct result of development, growth, a booming regional economy and associated traffic congestion.

F4: The District's Board, despite repeated attempts, has not taken necessary steps to create a strategic plan since 2009.

Districts Response - Agree

Reason: The Board still focused on making strategic decisions but needed to deal with other immediate need items like the worldwide recession, labor strife, unfair labor practice charges, a Federal FLSA Lawsuit and absence of the Fire Chief due to a debilitating injury.

F5: The District would benefit from developing a strategic plan and the associated financial analysis that would demonstrate whether or not future property tax revenues will be sufficient to fund the increasing needs of the District resulting from serving the new developments in the District.

Districts Response – Agree

Reason: We agree, if relevant and well done, a strategic plan and associated financial analysis could demonstrate whether or not future property tax revenues would be sufficient to fund increasing needs to the District resulting from serving new developments in the District.

Property Acquisitions

***F6:** The Citygate report, commissioned and accepted by the Board in February 2017, recommended searching for an acceptable parcel to relocate Station 3 before making a final decision regarding the best location for Station 3 and 5.*

Districts Response - Disagree

Reason: Both the 2015 and 2017 deployment studies worked at identifying options for the District to consider, in a District where it is very challenging to find infill fire station sites, given topography, land expense and that most parcels are developed or have constraints. The 2017 effort modeled several scenarios designed to offer solutions matching deployment to the realities of changing a fire station location. There was no one perfect solution. City gate's opinion was that Station 3 coverage could be better if moved westerly. However, at the time of both 2015 and 2017 studies, neither staff nor Citygate could find an actual, available and suitable parcel. Thus, the Station 3 recommendation was a goal for the District to keep under consideration as land options might appear. A consultant's recommendation is just that – something for leadership to strive for, but one that other realities could prevent.

***F7:** Notwithstanding the Citygate recommendation to move Station 3, the District purchased the residence adjacent to Station 3 in Atherton reportedly to eventually expand the station.*

Districts Response - Disagree

Reason: The District never stopped looking for a westward parcel for a relocated Station 3, however when the parcel at the current location was made surprisingly available, the District knew that the current site was too small to rebuild on and that a westward parcel might never become feasible. Therefore, the District made the investment to at least protect Station 3 as a future site and have the option to rebuild a modern, meeting needs fire station on an expanded parcel.

***F8:** In February 2017 the Board directed the fire chief to use data from the Citygate report to create an updated fire station location and land acquisition plan encompassing the entire District. As of the date of this report, no such plan has been presented to the Board.*

Districts Response - Agree

Reason: The Fire Chief and Board focused on the individual evaluation of a number of evolving property acquisitions which created a constantly evolving landscape and opportunities.

***F9:** From October 2017 to March 2018, the District spent \$21.9 million to purchase five separate properties without a comprehensive District-wide land acquisition and station location plan or review by the Strategic Planning Committee.*

Districts Response - Agree

Reason: Each of these purchase opportunities was evaluated by the Chief, Fire Board and legal counsel. All were carefully scrutinized based upon the immediate and future needs of the Fire District.

The District has acquired properties directly next to, or behind, five existing Fire Stations and its administrative offices. Two of those Fire Stations have been rebuilt strategically using those adjoining properties to properly expand and modernize those facilities while keeping costs down.

Impact Fees

***F10:** Developments planned and approved for the area east of Highway 101 in Menlo Park, East Palo Alto, and in unincorporated County areas, will substantially affect District operations, requiring additional personnel, facilities, and equipment to meet increasing demands for service.*

Districts Response - Agree

Reason: The Fire District agrees with this statement. The planned and approved projects in Menlo Park, East Palo Alto, Atherton and unincorporated areas of San Mateo County within the District's jurisdiction will have adverse impacts on the District operations. The Nexus Study and the Citygate Standards of Coverage Report provide evidence to support this statement. In addition, all the environmental impact reports (EIRs) prepared by the local agencies for new development within the Fire District's jurisdictions show unacceptable traffic operations on roadways, including the District's emergency service routes. These include the EIRs for Menlo Park General Plan Update and M-2 Rezoning (ConnectMenlo), East Palo Alto General Plan Update, and individual development projects (including Facebook projects).

***F11:** Approved and planned development in Menlo Park, East Palo Alto, and unincorporated County areas will have negative impacts on District operational performance as attendant congestion lengthens response time to emergencies.*

Districts Response - Agree

Reason: See response to F10 above.

***F12:** In the absence of a strategic plan, associated financial analysis, and land acquisition plan, the District has not demonstrated to the constituent jurisdictions of Atherton, Menlo Park, Redwood City, and the County of San Mateo that the Districts financial resources will be inadequate to address the anticipated demand for District services. As a result, the District was unable to persuade constituent jurisdictions to adopt impact fees on new residential and commercial developments to fund District operations.*

Districts Response - Disagree

Reason: This is a summary of actions by the Fire District regarding the emergency services and fire protection impact fee (Impact Fee). The primary objective of the Impact Fee is to ensure that

new development pays its fair share of the costs of capital facilities and equipment needed to serve growth within the Fire District's boundaries. The development of an Impact Fee was first considered in connection with the City of Menlo Park approval of the Gateway Project in 2010. As part of the City's approval of a Development Agreement for that project, the developer agreed to pay \$25,000 to fund a nexus study conducted by the Fire District to analyze the adoption of an Impact Fee. In 2012, the Fire District entered into an agreement with a consulting firm (Seifel Consultants) to perform a Nexus Study in compliance with State law standards in order to establish an Impact Fee. The Nexus Study demonstrates the relationship, or nexus, between the need for capital facilities and equipment to serve new development and the type and amount of impact fees that would ensure new development pays its fair share of capital facilities and equipment. The draft Nexus Study was reviewed by the Fire District and District legal counsel. It was sent to all the local agencies within the District's jurisdiction for review and comment (East Palo Alto, Menlo Park, Atherton, portions of unincorporated County of San Mateo ("Local Agencies")). The Fire District also solicited input from local developers. After receiving feedback, the Fire District modified the Nexus Study and reduced the amount of the impact fee from the legally supportable level established in the Nexus Study. The Fire District Board approved the Nexus Study and the revised lower Impact Fee Schedule and Credit Program on February 16, 2016. The Fire Board also directed that the Nexus Study and Impact Fee be forwarded to the Local Agencies for approval. The Local Agencies never approved the Impact Fee. On May 16, 2017, Fire District Board adopted a resolution: (1) withdrawing its request that the Local Agencies approve the Impact Fee Nexus Study and adopt the Impact Fee; (2) reaffirming its approval of the Nexus Study and its adoption of the Impact Fee; (3) reaffirming the principle that new development should pay its fair share of the costs of capital improvements and equipment needed to serve new development and that the Nexus Study was correctly prepared in accordance with legal standards and provides the evidentiary basis for the impacts of new development on the Fire District and the costs associated therewith; and (4) affirming the methodology, growth projections, and fee calculation models of the Impact Fee Nexus Study, including the conclusion that capital improvements and equipment will be needed to accommodate new development.

Donations

FI3: The District has solicited and received donations of cash from Facebook.

Districts Response - Disagree

Reason: – The statement is factually incorrect. We informed the Grand Jury of this incorrect fact in the District's response to their request to review their preliminary factual findings in June 2018. All the payments by Facebook to the District are not donations. The payments are either to address impacts of Facebook development, or payment of fees for District services. They were made pursuant to two types of agreements: (1) Agreements, dated April 24, 2012 and November 22, 2016, to address the impacts of Facebook development on the District provision of fire services (Impact Fee Agreements); and (2) an agreement dated September 2013 establishing a system for administering Facebook's payment of fees for the performance of plan check, inspections and similar services by the District (District Services Fee Agreements). The Impact Fee Agreements clearly state that the Facebook project would adversely impact fire services and the payments under the Agreement are to address these impacts. The Agreements

specify the payments are to be used to pay for enhancements to fire services to address Facebook impacts, such as signal preemption devices. All payments made under the Agreements are placed in a separate account to be used to pay for facilities, equipment and apparatus to address the impacts of development on services. Under the District Fee Agreement, the payments for plan check and inspection services are in accordance with District regulations and fee schedules for the payment of fees for these services. The Agreement only addresses a means for paying these fees given the volume of requests from Facebook. All businesses in the District pay fees for these services.

***F14:** By accepting donations from Facebook, which is subject to inspection and regulation by District personnel, the District has created the possible appearance of favorable treatment or disparate application of rules and laws.*

Districts Response - Disagree

Reason: – This statement is incorrect because it is based on incorrect premise that Facebook payments are donations (see response to F13 above). In addition, Facebook has also entered into Impact Fee Agreements with other developments in the City. As stated above, the fees that Facebook pays for services are in accordance with the Fee Schedule adopted by the District Board of Directors that applies to all entities using certain types of District services. Facebook is treated the same as all other entities in the District – no better and no worse. Most importantly, the enforcement of District rules and laws is done by sworn officers who are bound to follow the law in accordance with its terms.

***F15:** The District exercises code enforcement powers and reviews the construction plans of businesses located within its boundaries. Accepting donations of cash and services from these businesses can create the appearance of favorable treatment or disparate application of rules and laws.*

Districts Response - Disagree

Reason: See response to F14 above.

Accreditation

***F16:** The District acknowledged the value of accreditation in 2011 and set its attainment as a goal every year since. However, it has not progressed beyond the first phase of the accreditation process since 2011.*

Districts Response - Disagree

Reason: Accreditation is a lofty goal and worthwhile process but difficult to achieve.

***F17:** The District's management and governance structure has not demonstrated the ability to balance competing ongoing emergency response responsibilities with administrative and planning functions. This has been an impediment to completing a strategic plan and achieving accreditation.*

Districts Response - Disagree

Reason: According to the Center for Public Safety Excellence the timeline for achieving accreditation can vary. CPSE suggests that agencies have reported 2,000 hours in preparing required documents and importantly up to 13,000 hours addressing issues that must be resolved in pursuit of accreditation. The District is currently developing the necessary draft documents and also pursuing development of policies, procedures and other reference sources that must be completed in support of 252 Performance Indicators.

Recognizing the complexity and amount of effort to complete the work and apply for candidate status for accreditation, in 2017 a Senior Division Chief was reassigned to manage this time-consuming project. That Division Chief has been delegated the responsibility to coordinate the efforts of staff in addressing the 252 Performance Indicators and development of response and reference documents addressing the 10 Categories' required for accreditation.

1. Governance and Administration
2. Assessment and Planning
3. Goals and Objectives
4. Financial Resources
5. Programs
6. Physical Resources
7. Human Resources
8. Training and Competency
9. Essential Resources
10. External Systems Relation

District Identity

***F18:** The title “Menlo Park Fire Protection District” could lead some residents to conclude erroneously that the fire agency is a function of Menlo Park City government and is under the direction and control of the city.*

Districts Response - Agree

Reason: This occasionally occurs but is easily explained. The Fire District was officially created before the City and enjoys a National and International reputation as a leader in public safety.

***F19:** The District website does not contain a description of its status as an independent Special District, or its structure of governance as an independent Special District under California law.*

Districts Response - Agree

Fire Districts have found it helpful to link to the Districts Make the Difference website created by CSDA to explain what special districts are to the public. There are definitions, infographics, fact sheets and videos about special districts, including a fact sheet about fire protection districts.

CIVIL GRAND JURY RECOMMENDATIONS:

Strategic Planning

***R1:** Develop a strategic plan that conforms to the standards set by the Center for Public Safety Excellence by June 30, 2019.*

Districts Response - Agree

Explanation: The recommendation has not been implemented, but will be implemented in the future. This plan will be completed by the end of the year.

***R2:** Prepare an updated fire station location and land acquisition plan encompassing the entire District by June 30, 2019.*

Districts Response - Agree

Explanation: The recommendation has not been implemented, but will be implemented in the future. This goal is to have this item prepared for Fire Board review by the end of the year.

***R3:** Ensure its administrative functions operate effectively regardless of competing short-term priorities caused by emergency response operations, including the establishment of an ongoing management process to track progress and results of agency goals and objectives relating to general organizational and operational programs. The District board should take these actions by June 30, 2019.*

Districts Response - Agree

Explanation: The recommendation has not been implemented, but will be implemented in the future. We will continue to follow the annual Board and Chiefs Goal setting process and open meeting reporting and Annual Reporting Process. Adjusting Board policy and guidance as needed.

Property Acquisitions

***R4:** Review the consultant recommendations relative to the location of Station 3 and re-examine the basis for purchasing the Atherton property by June 30, 2019.*

Districts Response - Agree

Explanation: The recommendation has not been implemented, but will be implemented in the future as part of an overall updated Standards of Coverage study completed next year in 2019. We maintain that this acquisition was both appropriate and strategic.

Impact Fees

R5: Initiate dialogue with local government partners (Atherton, East Palo Alto, Menlo Park, and the County of San Mateo) to evaluate if impact fees on new development are necessary to adequately fund District operations in future years by December 31, 2018.

Districts Response - Disagree

Explanation: The recommendation will not be implemented because it is not warranted or reasonable. The Fire District already went through this process with the Local Agencies as described under Finding F12 above. The Fire District consulted with the Local Agencies in the development of the Nexus Study and proposed Impact Fee. The Nexus Study and Impact Fee Schedule and Credit Program was formally submitted by the Fire District Board to the Local Agencies for their approval. The Fire District's submittal was never presented to the legislative bodies of the Local Agencies for action. After 15 months of inaction by the Local Agencies, the Fire District Board withdrew its request.

R6: If impact fees are determined to be necessary to fund District operations in future years, the District should initiate an effort to satisfy local government requirements, such as an independent analysis of the District's fiscal condition, to implement an impact fee program by December 31, 2019.

Districts Response - Disagree

Explanation: The recommendation will not be implemented because it is not warranted or reasonable. See Response to Recommendation R5 above. Since the action in the Recommendation is not being contemplated at this time, the Fire District cannot commit to how it will conduct such an action – See Response to Recommendation R5 and Finding F12. In addition, the requirements for adoption of a development impact fee are set forth in State law. The standard of “local government requirements” referenced in the Recommendation is unclear and unknown.

Accreditation

R7: Commit to completing the CFAI accreditation process by December 31, 2019.

Districts Response - Disagree

Explanation: The recommendation has not been implemented, but will be implemented in the future. We expect to be completed by spring or fall of 2020. Currently the project is scheduled to have all Performance Indicators and source documents completed by year's end 2019. Once completed, the District will make application for Accreditation Candidate status and schedule mentorship. Based on review by the CPSE mentor, District staff will redraft any source documents and Performance Indicators. On completion of mentorship review and redraft of any required documents, a CPSE Evaluation Team will be scheduled to evaluate the District's submittal. If recommended for accreditation the District will then have to submit a review before

the CPSE Fire Service Accreditation Board. That Board convenes twice a year in the spring and the fall.

***R8:** Once accredited, annually budget sufficient funds to cover all costs associated with maintaining accreditation, including staff resources, training, and consultant services. Maintenance of accreditation should be added to the fire chief's annual performance evaluation. These policies should be formally adopted by the District's Board by June 30, 2020.*

Districts Response - Agree

Explanation: The recommendation has not been implemented, but will be implemented in the future. The Board will evaluate policy and budget options and priorities annually and continue to support accreditation as is financially feasible and organizationally practical.

Donations

***R9:** Adopt a policy not to pursue or accept donations from any private entity over which it exercises any official powers, such as building or plan inspection, or enforcement of any law or regulation. This policy should be adopted by December 31, 2018.*

Districts Response - Disagree

Explanation: The recommendation will not be implemented because it is not warranted or reasonable. Public agencies are allowed to accept donations under the law. It is an accepted practice for government agencies, such as sponsorship of public events. The Fire District does not want to foreclose this legally available option. Furthermore, the Fire District has set up a mechanism for how it accepts donations that prevents the issues raised by the Grand Jury. In addition, the Fire District strongly objects to the premise of the Recommendation that donations would affect the Fire District's performance of its official duties and powers under the law.

District Identity

***R10:** Expand its website to include a description of special districts in general and the Menlo Park Fire Protection District in particular by June 30, 2019.*

Districts Response - Agree

Recommendation: Fire Districts have found it helpful to link to the Districts Make the Difference website created by CSDA to explain what special districts are to the public. There are definitions, infographics, fact sheets and videos about special districts, including a fact sheet about fire protection districts.

Action – The District's Web-Site has been updated to include this information.