

# **EAST CONTRA COSTA** FIRE PROTECTION DISTRICT

Brian Helmick  
Fire Chief



**SERVING THE COMMUNITIES OF:**  
Bethel Island  
Brentwood  
Byron  
Discovery Bay  
Knightsen  
Morgan Territory  
Oakley

October 8, 2020

Mayor Kevin Romick  
Vice Mayor Sue Higgins  
Councilmember Claire Alaura  
Councilmember Michael Krieg  
Councilmember Randy Pope  
Oakley City Hall  
3231 Main St  
Oakley, CA 94561

**VIA EMAIL ONLY**

Re: Request to Cure Violations of Station 55 Agreement and to Cease and Desist City Development Practices Detrimental to the District

Dear Mayor Romick, Vice Mayor Higgins, and Councilmembers Alaura, Krieg, and Pope:

I am writing on behalf of the Board of Directors of the East Contra Costa Fire Protection District (District) to express our concern regarding development practices by the City of Oakley (City) that are degrading the District's ability to provide effective fire protection service. The District's service levels are far below national standards in large part due to the inadequate revenue that the District receives. The City's practice of permitting additional development without ensuring that new development generates sufficient capital and operating revenue to mitigate the costs of increased demand for fire and medical emergency response and fire prevention services hinders the District's ability to provide such services to the District's 128,000 residents. In particular:

- The District is concerned about the City's longstanding practice of discounting and waiving its impact fees for fire protection capital funding, and its reluctance to require new development to join community facilities districts to support fire protection operating costs.
- The City has disregarded numerous commitments made to the District in the "Cooperative Funding Agreement Between the City of Oakley and the East Contra Costa Fire Protection District Regarding the Construction of Fire Station #55" (Station 55 Agreement), some of which relate to impact fees. Under the Station 55 Agreement, in part, the City is required to stop taking action to suspend fire impact fees – and is prohibited from waiving the same – unilaterally. However, the City has violated these requirements. We understand that increasing the City's fire impact fees to the levels identified in the District's recent impact fee study would increase the damages the District could demand in response to the City's actions. Nonetheless, we are disappointed to see that the City would prioritize limiting its own liability from this breach over the health and safety of the residents and businesses of the entire District.

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The District's staff and legal counsel have met extensively with the City's staff and legal counsel since mid-August to resolve this issue, including a meeting on September 10, 2020 between Mayor Romick and an ad hoc committee of the District's Board of Directors. While we understand that discussions are ongoing, we request that the City (1) cease and desist all breaches of the Station 55 Agreement; (2) provide the District with the information it needs to assess the effects of these breaches and cure or compensate the District for all such breaches; (3) enact measures to ensure that future development provides adequate capital and operating funding to allow the District to provide fire protection service consistent with national standards, including updating the City's impact fees to the levels requested by the District; and (4) develop and abide by protocols to improve collaboration between City staff and District staff in the development process. These requests are further detailed below. We remain hopeful that the District and City will be able to resolve these concerns at a staff level, but in the event that a political resolution is necessary, the Board would like you to be aware of the grounds for our concerns.

**A. The District is unable to provide adequate fire protection service to its 128,000 residents due to its inadequate funding.**

**1. The District is unable to provide fire protection service at levels consistent with national standards.**

The District's goal is to provide service at a level consistent with national standards for fire protection services. Similarly, Policy 4.4.1 of Oakley's General Plan 2020 is to "Promote and encourage the high service level of fire protection services within Oakley." The National Fire Protection Association recommends a 4 minute first-unit response time for fire protection. (National Fire Protection Association Standard 1710, Chapter 4, section 4.1.2.1.) The District's 2016 Deployment and Staffing Study further specifies the Districtwide Response Time Performance should be 7 minutes and 30 seconds for at least 90% of calls. This includes 1 minute, 30 seconds for call processing time, 2 minutes for engine turnout time, and 4 minutes to respond to the call for help. The District is currently unable to meet this standard. In 2019, the District responded to 90% of its calls within 12 minutes, 56 seconds.

**2. The District's service deficits are due to its lack of revenue.**

The District currently has three stations to cover a service area of 250 square miles with 128,000 residents. The District needs three additional fully staffed stations to serve its current service population. Additional capital and operating revenue is necessary to increase service levels. For example, Station 55 in Oakley is vacant because the District does not have the operating revenue to staff it.

Fire protection districts are generally funded primarily through property taxes. The District's share of the local 1% ad valorem property tax is approximately half of that available to other Contra Costa County fire protection districts. This allocation is insufficient to cover the one-time capital costs or the ongoing operations costs of providing service at levels consistent with national standards.

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- 3. While the District does not oppose new development, new development that does not generate sufficient capital and operating revenue to cover the District's costs further degrades fire protection service for the entire region.**

This principle is consistent with Policy 4.4.2 of the City's own General Plan 2020, which is to "Require that new development pay its fair share of costs for new fire protection facilities and services." To prevent future development from exacerbating the District's service deficits, the District has prepared a Development Impact Fee Study to quantify the one-time capital costs of new development on the District, and is finalizing a Fiscal Impact Analysis to assess the ongoing operating costs necessary to provide fire protection services to new development. The recommended impact fees and community facility district (CFD) parcel taxes these studies recommend represent the bare minimum the District needs to provide service to new development. (The District is also working to address the deficits for existing development through separate means.) Without increased impact fees and new CFDs, the District cannot build the fire stations; purchase the apparatuses and equipment; and fire, train, equip and pay the firefighters necessary to accommodate the additional demand for the District's services from new development.

In sum, the District's current forces are already stretched too thin. They are stretched even thinner with each under-funded increment of increased demand for service, further diminishing the District's ability to provide appropriate levels of service to the entire area, hurting both current and future residents and businesses.

- B. The City's historic development practices are a significant contributor to the District's service deficits.**
  - 1. The City's practice of discounting and suspending impact fees have worsened the District's capital funding deficit.**

Adequate impact fee revenue is essential to funding the District's capital needs, such as fire stations, apparatuses, and personal protective equipment. In 2001, the City Council passed Resolution No. 09-01 to update impact fees previously imposed by Contra Costa County on behalf of the Oakley Fire Protection District, a predecessor to the District, to cover capital costs for fire protection services. These fees included an automatic escalator tied to the Consumer Price Index. (See Resolution No. 09-01, Sec. 9(b).) However, between 2001 and 2018, the City never applied its automatic escalator; it began doing so only when required by the Station 55 Agreement. If the City had applied the escalator as required by law, the City's impact fees would be approximately 60% higher today. Additionally, the City has repeatedly suspended its impact fees altogether. The City collected no impact fees on residential development from 2011 to 2017, and no impact fees on nonresidential development at all since 2011. In other words, nonresidential development in the City over the past decade has not contributed anything to the District's increased capital costs for providing service to that development. These incentive programs also appear to be contrary to the City's response to Recommendation #8 of Grand Jury Report 1706 "Funding the East Contra Costa Fire Protection District," in which the City stated it had an adopted policy to collect impact fees on both commercial and residential development since incorporation. (Letter from Bryan Montgomery, Oakley City Manager to Jim Mellander, Foreperson, Contra Costa County Civil Grand Jury "Responses to Contra Costa

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County Grand Jury Report No. 1706, entitled 'Funding the East Contra Costa Fire Protection District.'" (August 9, 2017).)

The City has requested that the District use its own already-inadequate funds to cover the deficits in fire protection capital funding created by the City's own policies. A notable example is the City's request that the District advance funds to complete the construction of Station 55 due to the City's lack of available impact fee revenue. On September 12, 2018, the City and the District entered the Station 55 Agreement, by which the District transferred \$1.9 million to the City from the District's unrestricted reserves to help construct Station 55, with the understanding that the funds would be repaid with future revenue from the City's fire facility impact fees. To ensure that the City would repay the District in a timely manner, the City agreed to (1) begin applying the automatic escalators in the Resolution No. 09-01; (2) cease the suspension of fire facility impact fees, including the City's nonresidential development fee incentive program; and (3) cease waiving fire facility impact fees for specific projects. Acknowledging the City's need for flexibility, the Station 55 Agreement allowed the City to waive fees for specific projects or reduce its fire facility impact fee generally after consulting with the District and making findings about the effects of such action on fire protection services within the City. The City also agreed to work in good faith with the District to implement its new impact fees. (See Station 55 Agreement, Section 5.)

**2. The City does not regularly require new development to participate in community facilities districts, exacerbating the District's operating deficits.**

Operating revenue funds the District's ongoing expenses, such as salaries for firefighters and maintenance for apparatuses. The City stated in its response to the Finding #10 of Grand Jury Report 1706 that it often conditions approval of new development on annexation into CFDs to support other services, but not for fire protection. The City Council further committed to considering whether requiring new development to join a districtwide CFD would be an effective means for generating operating revenue. (Letter from Bryan Montgomery, Oakley City Manager to Jim Mellander, Foreperson, Contra Costa County Civil Grand Jury "Responses to Contra Costa County Grand Jury Report No. 1706, entitled 'Funding the East Contra Costa Fire Protection District.'" (August 9, 2017).) While we appreciate the City's formation of Community Facilities Districts 2004-1 and 2018-1, we understand that participation in fire protection CFDs is voluntary, and has been limited to date. The District strongly supports requiring participation in a districtwide fire protection CFD, or another equivalent means of providing fire protection operating funding, as a condition of approval for all new development. We are encouraged by the efforts of the City Attorney in collaborating with our legal counsel to explore ways the City can require broader CFD participation, and we look forward to seeing the results.

**C. The District requests that the City update its development practices to account for impacts on fire protection, and demands that the City fulfill its obligations under the Station 55 Agreement.**

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**1. The entitlement process for the new Contra Costa Logistics Center exemplifies how the City's failure to collaborate with District staff can lead to development that compound the District's funding deficits.**

As discussed above, new development that increases District responsibilities – without sufficient contributions to mitigate these impacts – hurts all residents of the District.

As you also know, Oakley recently announced that it will be welcoming a major online retail fulfillment center that will be housed at the new Contra Costa Logistics Center (Logistics Center). Unfortunately, the City failed to ensure that the Logistics Center will provide sufficient resources to mitigate its impacts on the District. Furthermore, the City failed to respond to the District's concerns at any point in the environmental review process of this new development. The initial study for the Logistics Center incorrectly asserts that payment of impact fees would adequately mitigate the impacts of the project on the District. On September 26, 2019, the District submitted a comment on the draft environmental impact report for the Logistics Center informing the City that the current impact fees did not cover the full capital impacts of the project and would not account for operating costs. (Letter from Steven Aubert to Joshua McMurray "ECCFPD Comment on Oakley Logistics Center Project" (September 26, 2019).)<sup>1</sup> The District requested that the City correct this statement and require that the project (1) pay impact fees at the rate applicable at the time the City issues building permits, and (2) join a CFD to provide operating funds for fire protection. The City did not respond to the District's comment in its final environmental impact report for the project in violation of California Environmental Quality Act. (See Public Resources Code 21091(d); 14 Cal Code Regs §§15088(a).)

The City also stymied the District's efforts to make its requests known to the Logistics Center developer during the entitlement process. Despite the District's repeated requests over the span of three months, City staff refused to involve District staff in the negotiation of the development agreement, or to give the District's Fire Chief or Fire Marshal contact information for the developer, until after development agreement negotiations were complete. Instead of requiring payment of impact fees at the effective rate at the time of building permit, the "Development Agreement Between the City of Oakley and NP Oakley, LLC Regarding Oakley Logistics Center 6000 Bridgehead Road" (Logistics Center DA), adopted by the City on December 19, 2019, froze fire facility impact fees at the rates in effect on December 17, 2019.<sup>2</sup> (Logistics Center DA, Section 8.1.) The City negotiated these terms in full knowledge that the District was working on a study to update fire facility impact fees throughout its service area.

This failure to consult with the District has resulted in a development agreement that may create large deficits in both capital and operating funding for fire protection services. The District's Development Impact Fee Study indicates that the project's share of the District's capital costs at buildout is about \$1.2 million. Under the Logistics Center DA, the project will only pay about

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<sup>1</sup> While the heading of the letter names the incorrect project, the cover email, file name, and body of the letter all reference the correct project. Even if the District had not submitted a comment, the City was obligated to consult with the District, as the District is a "responsible agency" for the project.

<sup>2</sup> Our understanding is that the City interprets this agreement to require the Logistics Center to pay the rates in Resolution No. 09-01, notwithstanding the City's nonresidential impact fee incentive program.

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\$340,000 in impact fees, a shortfall of about \$860,000. Additionally, the Logistics Center DA contained no provision for operating funding from the Logistics Center. While the City's "Oakley Logistics Center Fiscal and Economic Impact Analysis" estimated that the best case scenario is that the Logistics Center will generate \$420,000 in property tax revenue annually at buildout, it did not even attempt to calculate the costs to the District of providing service, nor did the City consult with the District at all to assess the potential costs of service. In fact, the District's Fiscal Impact Analysis indicates that even the property tax revenue from the Logistics Center may not cover the District's operating costs to provide fire protection services, further exacerbating the District's annual operating deficits.

This lack of communication and regard for the District's needs is endemic in the City's development processes. We request that the City review its development processes to ensure that new development is providing sufficient funding for fire protection, as required by the City's General Plan, and that the City develop protocols for better involving District staff in the entitlement process.

**2. The City has failed to comply with its obligations under the Station 55 Agreement, degrading the District's ability to provide service.**

**(a) The City's continuation of its nonresidential development impact fee incentive program and freezing fire impact fees for the Logistics Center violate the Station 55 Agreement.**

The Station 55 Agreement prohibits the City from taking any action that has the effect of waiving payments of any fire facility impact fees for any project without consulting the District. (See Station 55 Agreement, Section 5(B).) Freezing fire facility impact fees effectively waives the increases with respect to the Logistics Center. Two of the Logistics Center's five buildings have already paid their impact fees.<sup>3</sup> Assuming that the City adopts impact fees at the levels proposed by the District, the difference between the fees set in the Logistics Center DA and the District's proposed fees for the final three buildings would be several hundred thousand dollars. We note that while the Logistics Center DA waived impact fees that would support the District, it included a \$850,000 in one-time "community benefit contribution" that the City may "utilize in a manner it believes best to serve and benefit its residents." (See Logistics Center DA, Section 8.3.) Essentially, the Logistics Center DA waived impact fees that would have gone to the District, and granted the City unrestricted funds for its own use.

The Station 55 Agreement also expressly prohibits the City from taking "any action that has the effect of (i) repealing, suspending, or reducing its Fire Facilities Impact Fee below the amount of such fee as established in Resolution No. 09-01, as adjusted for Inflation; [or] (ii) continuing any existing suspension or reduction thereof" without consulting with the District and making findings regarding the effects of its actions on fire protection in the City. (See Station 55 Agreement, Section 5(B).) The City breached this provision on February 11, 2020 by adopting "A Resolution of the City Council of the City of Oakley Continuing the City's Non-Residential Development Fee Incentive Program," which included an eighteen-month continuation of the City's suspension of its fire facility impact fees for nonresidential development. The City did not consult with the District prior to enacting this resolution, nor did the City make any findings regarding the impacts

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<sup>3</sup> While these buildings will increase the District's capital deficits, they paid the full impact fee at the time they received building permits, in compliance with the Station 55 Agreement.

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of this action on fire protection service within the City. We request that the City repeal this resolution as soon as possible.

Waiving and refusing to increase fees causes damage to the District. First, it increases the District's capital deficits, stretching already insufficient resources across greater call volumes rather than equipping the District to service new residents and developments. Second, it delays repayment of the funds the District forwarded to the City under the Station 55 Agreement, locking up the District's unrestricted reserves in a capital project that the District cannot even afford to staff, and substantially constraining the District's financial flexibility. For example, these reserves could be used to improve services, like covering up-staffing costs for new personnel.

The District has been requesting information for weeks to assess its potential damages as a result of these breaches. While the City has recently provided most of the information the District requested, some remains outstanding. We request that the City provide the remaining information, as detailed below, to allow the District to determine the extent of its damages, and compensate the District for fees waived in violation of the Station 55 Agreement.

While we have yet to receive a formal offer, we understand that City staff may propose to provide the District with certain real property to offset the effects of the continuation of the nonresidential development fee incentive program and make the District whole for losses incurred due to breaches of the Station 55 Agreement. The District is open to considering such an arrangement, and looks forward to hearing more about this potential solution.

**(b) The City's failure to transfer impact fee revenue and documents to the District violates the Station 55 Agreement.**

The City agreed to begin providing the District with a monthly reimbursement and accounting of all fees received commencing 60 days after final completion of the construction of Station 55. (See Station 55 Agreement, Section 3(A).) Station 55 achieved final completion on or about April 16, 2020. We understand that the City has collected over \$300,000 in impact fee revenue since then, though the District has yet to receive any payments from the City or an accounting of the fees collected. Additionally, within 30 days after final completion of Station 55, the City agreed to transfer to the District title to Station 55; ownership of all plans, drawings, and specifications; certain rights under the Design-Build Agreement for Station 55; and evidence demonstrating that prior to construction, someone exercising discretionary authority approved the design for Station 55, or that the design for Station 55 was prepared in conformity with standards previously so approved. (See Station 55 Agreement, Section 1(D), 1(E), 1(F).) The District has yet to receive any of these documents. We request that the City fulfill these outstanding commitments under the Station 55 Agreement.

**3. The City's continued delays in updating its impact fees degrades the District's ability to provide fire protection services.**

The District is disappointed in the City's continued delays in updating its impact fees. District staff worked with staff from the City of Oakley, the City of Brentwood, and Contra Costa County for over a year to produce a study that more accurately reflects the District's capital needs and new development's fair share contributions according to growth projections provided by all three land use authorities. Adoption of a uniform districtwide fee will also resolve inequities resulting

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from development in different areas of the District paying different amounts, and promote a more regional approach to fire protection service consistent with the formation of the District.

The District is concerned by comments at the August 11, 2020 City Council Meeting suggesting that the City may continue to discount impact fees for nonresidential development. While the District understands and supports the City's efforts to promote development, new development that does not generate sufficient capital or operating revenue to allow the District to protect that development puts the entire region at greater risk. When the City waives fees funding operating or capital costs for city services, such as police or streets, the City backfills these funds from its general fund. The City has not made any similar considerations when waiving payment from revenue streams that fund the District.

We also understand that City staff is concerned that updating the fees may compound the City's liability for its improper waiver of fees under the Logistics Center DA. Refusing or delaying the fee update would perpetuate the effects of a past wrong, further exacerbate the District's capital funding deficits, and hamper the District's efforts to provide service to the City (and the region) at levels consistent with national standards. We request that the City adopt the updated impact fees – as detailed in the District's Development Impact Fee Study – to prevent further deterioration to the District's services.

#### **D. Conclusion**

We request that the City cease and desist its detrimental development practices and violations of the Station 55 Agreement, and take the following actions:

<b>REQUEST</b>	<b>TIMELINE</b>
Transfer to the District the rights and documents specified in Section 1(D), (E), and (F) of the Station 55 Agreement, including a grant deed, designs, and specifications for Station 55	October 16, 2020
Transfer to the District all fire facility impact fees currently held by the City	October 16, 2020
Provide the following information to the District: <ul style="list-style-type: none"> <li>• Copies of all development agreements executed, extended, or amended since September 12, 2020</li> <li>• Copies of the formation and annexation documents for all community facilities districts supporting fire protection services in the City</li> </ul>	October 16, 2020
Repeal the City's nonresidential development fee incentive program with respect to fire facility impact fees	October 27, 2020
Update all of the City's fire facility impact fees to a level consistent with the District's Development Impact Fee Study	October 27, 2020
Establish a protocol for collaborating with the District in the land use entitlement process	November 6, 2020

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Enact measures requiring that all new development participate in a CFD or an equivalent mechanism to provide for fire protection operating funding	January 1, 2021
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We believe these actions will allow the District to better provide fire protection services to new development in the City of Oakley and throughout its service area. I appreciate your prompt attention to this matter. Please feel free to contact me if you would like to discuss this matter further.

Sincerely,  
DocuSigned by:  
*Brian J Oftedal*  
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Brian J. Oftedal  
President, Board of Directors  
East Contra Costa Fire Protection District  
*Also on behalf of:*  
Stephen Smith, Vice President  
Adam Langro, Director  
Carrie Nash, Director  
Joe Young, Director

Referenced Documents (available upon request by email to Regina Rubier at [rrubier@eccfpd.org](mailto:rrubier@eccfpd.org)):

- Oakley City Council Resolution No. 09-01 "A Resolution Adopting A Fire Impact Fee For Future Development Within The City Of Oakley Served By The Oakley-Knightsen Fire Protection District"
- City of Oakley Impact Fee List FY 18-19
- Oakley City Council Resolution "A Resolution of the City Council of the City of Oakley Continuing the City's Non-Residential Development Fee Incentive Program" & Staff Report (February 11, 2020)
- Cooperative Funding Agreement Between the City of Oakley and the East Contra Costa Fire Protection District Regarding the Construction of Fire Station #55
- Letter from Steven Aubert to Joshua McMurray "ECCFPD Comment on Oakley Logistics Center Project" (September 26, 2019)
- Development Agreement Between the City of Oakley and NP Oakley, LLC Regarding Oakley Logistics Center 6000 Bridgehead Road
- East Contra Costa Fire Protection District Development Impact Fee Study Final Report (March 11, 2020)
- Economic & Planning Systems, Inc., Oakley Logistics Center Fiscal and Economic Impact Analysis (December 11, 2019)
- Contra Costa County Grand Jury Report No. 1706 "Funding the East Contra Costa Fire Protection District" (June 6, 2017)

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- Letter from Bryan Montgomery, Oakley City Manager to Jim Mellander, Foreperson, Contra Costa County Civil Grand Jury "Responses to Contra Costa County Grand Jury Report No. 1706, entitled 'Funding the East Contra Costa Fire Protection District'" (August 9, 2017)

cc: Brian Helmick, Fire Chief  
Shayna van Hoften, District Legal Counsel  
Bryan Montgomery, City Manager  
Derek Cole, City Attorney