



ORANGE COUNTY FIRE AUTHORITY

AGENDA

BOARD OF DIRECTORS SPECIAL MEETING

Thursday, July 22, 2021

8:30 P.M.

Regional Fire Operations and Training Center

Board Room

1 Fire Authority Road

Irvine, CA 92602

Link to:

[Board of Directors Member Roster](#)

This Agenda contains a brief general description of each item to be considered. Except as otherwise provided by law, no action or discussion shall be taken on any item not appearing on the following Agenda. Unless legally privileged, all supporting documents, including staff reports, and any writings or documents provided to a majority of the Board of Directors after the posting of this agenda are available for review at the Orange County Fire Authority Regional Fire Operations & Training Center, 1 Fire Authority Road, Irvine, CA 92602 or you may contact the Clerk of the Authority at (714) 573-6040 Monday through Thursday, and every other Friday from 8 a.m. to 5 p.m. and available online at <http://www.ocfa.org>



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Clerk of the Authority at (714) 573-6040 and identify the need and the requested modification or accommodation. Please notify us as soon as is feasible, however 48 hours prior to the meeting is appreciated to enable the Authority to make reasonable arrangements to assure accessibility to the meeting.

NOTICE REGARDING PUBLIC PARTICIPATION **DURING COVID-19 EMERGENCY**

The public is permitted to convene in person for this public meeting or view and comment:

- To watch the meeting online, please go to website at www.OCFA.org
- To submit an e-comment, please email to PublicComments@ocfa.org

You may comment on items on the agenda or not on the agenda. Your comments will be forwarded electronically and immediately to the members of the Board. Comments related to a particular agenda item will only be considered prior to the close of public comments on that item.

CALL TO ORDER by Chair Shawver

ROLL CALL by Clerk of the Authority

PUBLIC COMMENTS

Please refer to instructions on how to submit a public comment during COVID-19 Emergency on Page 1 of this Agenda.

1. PRESENTATIONS – None

2. CONSENT CALENDAR - None

3. DISCUSSION CALENDAR

A. Consider request to cure and rescind action taken during the Board of Directors Closed Session meeting of June 24, 2021

Submitted by: David E. Kendig, General Counsel

Recommended Actions:

Pleasure of the Board.

BOARD MEMBER COMMENTS

ADJOURNMENT – The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, September 23, 2021, at 6:00 p.m.

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury and as required by the State of California, Government Code §54956, that the foregoing Agenda was posted in the lobby and front gate public display case of the Orange County Fire Authority, Regional Fire Operations and Training Center, 1 Fire Authority Road, Irvine, CA, not less than 24 hours prior to the meeting.

Maria D. Huizar, CMC
Clerk of the Authority

UPCOMING MEETINGS:

Budget and Finance Committee
Executive Committee
Board of Directors

Wednesday, September 8, 2021, 12 noon
Thursday, September 23, 2021, 5:30 p.m.
Thursday, September 23, 2021, 6:00 p.m.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Special Meeting
July 22, 2021

Agenda Item No. 3A
Discussion Calendar

**Consider Request to Cure and Rescind Action Taken During
The Board of Directors Closed Session Meeting on June 24, 2021**

Contact(s) for Further Information

David Kendig, General Counsel

dkendig@wss-law.com

714.415.1083

Summary

This agenda item is submitted for the Board to consider two recent requests to cure actions taken at the June 24, 2021, Board of Directors Meeting.

Prior Board/Committee Action

At the June 24, 2021, Board meeting, the Board approved a motion in closed session to extend the Board's 10:30 p.m. curfew. That motion was approved at 10:34 p.m. That action was reported out in open session, and the Board proceeded to discuss and approve items on its open session agenda.

RECOMMENDED ACTION(S)

Pleasure of the Board.

Impact to Cities/County

Not Applicable.

Fiscal Impact

None.

Background

At the June 24, 2021, Board meeting, the Board approved a motion in closed session to extend the Board's 10:30 p.m. curfew. That motion was approved at 10:34 p.m. That action was reported out in open session, and the Board proceeded to discuss and approve items on its open session agenda. A copy of the draft Minutes of the June 24, 2021, meeting are attached as **Attachment 1**.

On July 18, 2021, an individual named Kevin Hardy emailed General Counsel and several members of the Board of Directors demanding a "a cure and correct the action taken". That email asserted that agenda Items 3B (Fire Chief's Discretionary Bonus Upon Completion of Third Year of Full Service) and 4A (Review of the Fiscal Year 2021/22 Proposed Budget) were approved in violation of the curfew rules in the OCFA Board Rules of Procedure 3(c). (A copy of the July 18 email is attached as **Attachment 2**.)

On July 21, 2021, Michael McGill sent a letter to the Clerk of the Authority questioning the Board's compliance with the curfew rule in the OCFA Board Rules of Procedure and whether the action extending the curfew complied with the Brown Act, and requested OCFA to cure any violations. A copy of Mr. McGill's letter is attached as **Attachment 3**.

This special meeting was noticed at the direction of the Board Chair to enable the Board to discuss and act upon the requests, should the Board wish to do so.

Attachment(s)

1. Draft Minutes of June 24, 2021 Board of Directors Meeting
2. July 18, 2021, Email from Kevin Hardy
3. July 21, 2021, Letter from Michael McGill, Esq.

MINUTES ORANGE COUNTY FIRE AUTHORITY

**Board of Directors Regular Meeting
Thursday, June 24, 2021
6:00 P.M.**

**Regional Fire Operations and Training Center Board Room
1 Fire Authority Road
Irvine, CA 92602-0125**

CALL TO ORDER

A regular meeting of the Orange County Fire Authority Board of Directors was called to order on June 24, 2021, at 6:00 p.m. by Chair Shawver.

INVOCATION

The invocation was led by Chaplain Jeff Hetschel.

PLEDGE OF ALLEGIANCE

Director Hatch led the Assembly in the Pledge of Allegiance to the Flag.

ROLL CALL

Dave Shawver, Stanton, Chair
Lisa Bartlett, County of Orange*
Ross Chun, Aliso Viejo*
Letitia Clark, Tustin*
Anthony Kuo, Irvine
Joe Muller, Dana Point*
Sunny Park, Buena Park*
Vince Rossini, Villa Park*
Tri Ta, Westminster*
Kathleen Ward, San Clemente
Shelley Hasselbrink, Los Alamitos*

Michele Steggell, La Palma, Vice Chair
Donald P. Wagner, County of Orange
Gene Hernandez, Yorba Linda*
Joe Kalmick, Seal Beach
Frances Marquez, Cypress*
John R. O'Neill, Garden Grove*
Sandy Rains, Laguna Niguel*
Ed Sachs, Mission Viejo*
Mark Tettemer, Lake Forest
Noel Hatch, Laguna Woods
Carol Gamble, Rancho Santa Margarita*

Absent: Troy Bourne, San Juan Capistrano
Don Sedgwick, Laguna Hill

Jessie Lopez, Santa Ana

Also present were:

Fire Chief Brian Fennessy
Deputy Chief Kenny Dossey
Assistant Chief Robert Cortez
Assistant Chief Lori Smith
General Counsel David Kendig
Asst. Clerk Martha Halvorson

Deputy Chief Lori Zeller
Assistant Chief Randy Black
Assistant Chief Jim Ruane
Assistant Chief Phil Johnson
Assistant Chief Stephanie Holloman
Dir. of Communications Colleen Windsor

**Board Members participating via teleconferencing*

REPORTS

A. Report from the Budget and Finance Committee Chair (FILE 11.12)

Budget and Finance Chair Joe Muller reported at the June 9, 2021, regular meeting, the Committee reviewed and approved placing the Updated Cost Reimbursement Rates, FY 2020/21 Year End Budget Adjustment, and Third Quarter Purchasing Report on the agenda for the Board of Directors June 24, 2021, meeting for approval of the recommended actions. The Committee considered the agenda item Responses to Board of Director's Questions and Comments Made During the Review of the Fiscal Year 2021/22 Proposed Budget. Following the review and discussion of the responses and information provided, by a 7-0 vote, the Committee directed staff to include the information with the June Fiscal Year 2021/22 Proposed General Fund and Capital Improvement Program (CIP) Budget for the Board of Directors June 24, 2021, meeting.

Report from the Fire Chief (FILE 11.14)

Fire Chief Brian Fennessy reported last week the Quick Reaction Force (QRF) Program was launched with a press conference and demonstration held at Los Alamitos Joint Forces Training Base. It included Ventura County Fire, Los Angeles Fire, OCFA, and Southern California Edison. Academy 52 Graduation was held last week, notably the first time all 47 firefighter trainees passed the academy. Many thanks to the Academy Cadres led by Captain Levi Medina, and thanks to those Board Members who were able to attend as well.

PUBLIC COMMENTS

Chair Shawver opened the Public Comments portion of the meeting. Chair Shawver closed the Public Comments portion of the meeting without any comments from the general public.

CLOSED SESSION (FILE 11.15)

CS1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION pursuant to Government Code Section 54954.5: Fire Chief

CS2. CONFERENCE WITH LABOR NEGOTIATOR pursuant to Government Code Section 54957.6

Chief Negotiators:

Board Chair Shawver, Vice Chair Steggell,
Immediate Past Board Chair Hasselbrink and Budget
& Finance Committee Chair Muller

Position:

Fire Chief

CS3. CONFERENCE WITH LEGAL COUNSEL - SIGNIFICANT EXPOSURE TO LITIGATION pursuant to paragraph (2) and (3) of subdivision (d) of Section 54956.9 of the Government Code: Two (2) Cases

CS4. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION pursuant to Paragraph (1) of subdivision (d) of Section 54956.9 of the Government Code: Desiree Horton v. OCFA et al, Case No. 30-2021-01200267-CU-WT-CJC

CLOSED SESSION REPORT (FILE 11.15)

General Counsel David Kendig reported that at 10:34 p.m. the Board approved by a vote of 17-3 (Directors Kuo, Rains and Wagner opposed and Directors O'Neill, Sedgwick, Hasselbrink, Bourne and Lopez absent) to suspend the curfew for said meeting.

1. PRESENTATIONS

No Items.

2. CONSENT CALENDAR

On motion of Director Ward and second by Director Kalmick, and following a roll call vote, declared Agenda Item 2A-2D passed 20-0 (Directors Bourne, Hasselbrink, Lopez, O'Neill, and Sedgwick absent).

A. Minutes from the May 27, 2021, Regular Meeting of the Board of Directors (FILE 11.06)

Action: Approve as submitted.

B. Third Quarter Purchasing Report (FILE 11.10H1)

Action: Receive and file the report.

C. Updated Cost Reimbursement Rates (FILE 15.12)

Action: Approve and adopt the proposed Cost Reimbursement Rate schedules to be effective July 1, 2021.

D. FY 2020/21 Year End Budget Adjustment (FILE 15.04)

Action: Approve and authorize FY 2020/21 budget adjustments to increase net revenues by \$4,494,276 and net appropriations by \$3,535,745 as further described in this staff report.

3. DISCUSSION CALENDAR

A. Mutual Aid Agreement with Los Alamitos Joint Forces Training Base (JFTB) (FILE 18.09D)

Chief Fennessy introduced the Mutual Aid Agreement and Assistant Chief Jim Ruane who provided a brief summary of the document.

On motion of Director Kalmick and second by Director Tettermer, and following a roll call vote, declared approved 20-0 (Directors Bourne, Hasselbrink, Lopez, O'Neill, and Sedgwick absent) to:

1. Approve and authorize the Fire Chief or his designee to execute the proposed Mutual Aid Agreement with the Joint Forces Training Base, Los Alamitos in a form acceptable to OCFA legal counsel.
2. Approve and authorize the revision to the QRF program budget by \$150,000 to reflect the estimated JFTB facilities use reimbursement costs.

B. Fire Chief's Discretionary Bonus Upon Completion of Third Full Year of Service (FILE 17.10A2)

General Counsel David Kendig introduced the Fire Chief's Discretionary Bonus Upon Completion of Third Full Year of Service.

Todd Baldridge, President of Firefighters Local 3631, requested a delay of the consideration of the item until Local 3631 has completed a survey of its own members.

On motion of Chair Shawver and second by Director Ward, and following a roll call vote, declared approved 11-5 (Directors Bartlett, Kuo, Rains, Tettermer, Wagner opposed, Directors Bourne, Gamble, Hasselbrink, Lopez, Muller, O'Neill, Rossini, Sedgwick, absent, and Director Clark abstained) to approve the discretionary bonus to the Fire Chief of \$20,000.

4. PUBLIC HEARING

A. Review of the Fiscal Year 2021/22 Proposed Budget (FILE 15.04)

Chief Fennessy addressed the Board in follow up to questions directed to staff at the May 27, 2021, Board meeting. He introduced Assistant Chief Robert Cortez who provided the Review of the Fiscal Year 2021/22 Proposed Budget.

On motion of Director Kuo and Second by Chair Shawver, and following a roll call vote, declared approved 17-1 (Directors Bourne, Hasselbrink, Lopez, Muller, O'Neill, Rossini, Sedgwick absent, and Director Bartlett opposed) to:

1. Conduct a Public Hearing.
2. Adopt the FY 2021/22 Proposed Budget as submitted.
3. Adopt the resolution entitled A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY BOARD OF DIRECTORS ADOPTING AND APPROVING THE APPROPRIATIONS BUDGET FOR THE ORANGE COUNTY FIRE AUTHORITY FOR FISCAL YEAR 2021/22.
4. Approve and authorize the temporary transfer of up to \$90 million from the Fund 190 Workers' Compensation Reserve Fund to the General Fund 121 to cover a projected temporary cash flow shortfall for FY 2021/22.
5. Approve and authorize the repayment of \$90 million borrowed funds from Fund 121 to Fund 190 along with interest when General Fund revenues become available in FY 2021/22.
6. Approve transfers from the General Fund 121 to CIP Funds and Settlement Agreement Fund totaling \$17,032,518.

BOARD MEMBER COMMENTS (FILE 11.13)

Director Ward requested that staff return at the next Board of Directors meeting with the staff report where the special procurement policy was implemented in order to have a full Board discussion.

Director Gamble reported her inability to participate fully during the meeting because of interrupted teleconference service.

Director Rains reported her agenda packet arrived late and asked for review of the delivery process. She reported the city of Laguna Niguel had a meet and greet recently, firefighters interacted with the public, and a demonstration of brush abatement to prevent potential fire hazards was given using goats.

Assistant Chief Cortez reported staff will research the problems with the delivery of mail to the board members.

Chair Shawver reported staff will research both the mail delivery and the internet service problems before the next board meeting.

ADJOURNMENT – Chair Shawver adjourned the meeting at 11:09 p.m. The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, July 22, 2021, at 6:00 p.m.

Martha Halvorson, CMC
Assistant Clerk of the Authority

ATTACHMENT 2

Subject: Board of Directors action on June 24, 2021

Date: Sunday, July 18, 2021 at 4:13:37 PM Pacific Daylight Time

From: Kevin Hardy

To: shasselbrink@cityoflosalamitos.org, rchun@cityofalisoviejo.com, fmarquez@ci.cypress.ca.us, joneill@ggcity.org, anthonykuo@cityofirvine.org, micheles@cityoflapalma.org, dsedgwick@lagunahillsca.gov, srains@cityoflagunaniguel.org, nhatch@cityoflagunawoods.org, mtettemer@lakeforestca.gov, wardk@san-clemente.org, jessielopez@santa-ana.org, Stanton@ci.stanton.ca.us, tmoore@sealbeachca.gov, lclark@tustinca.org, vrossini@villapark.org, Lisa.Bartlett@ocgov.com, Donald.Wagner@ocgov.com

CC: David E. Kendig

Mr. Kendig and OCFA Board of Directors,

I am writing you today to demand a cure and correct the action taken by the OCFA Board of Directors on June 24, 2021 in clear violation of the Orange County Fire Authority Board of Directors Rules of Procedure (last revision; 11/21/19).

Specifically,

RULE 3. ORDER OF BUSINESS FOR MEETINGS OF THE BOARD OF DIRECTORS

(b) 9:30 p.m. Rule: At the hour of 9:30 p.m. the meeting will take a brief moment from the agenda at hand and make a determination as to which items will be considered and those that may be continued to the next regular meeting.

(c) 10:30 p.m. Curfew: All meetings will end business at 10:30 p.m. unless the hearing body elects to extend the curfew by a three-fifths vote of all members present.

In the OCFA Board meeting of June 24, 2021, the board took action on Items 3B and 4A in violation of these standings Rules of Procedures.

Additionally, Mr. Kendig, you and the Board of Directors have used these specific Rules to silence the public voice in the past on issues that the OCFA was being called into question. and you should not be allowed to just pick and chose when to follow Board approved rules.

Basically, what is good for the goose is good for the gander!

Simply put Mr. Kendig your answer to Chair Shawver when questioned about the rule of "We should be OK" is a clear indication of your hope of ignorance created by the publics' isolation from the government that has occurred with the covid-19 changes to public open meetings.

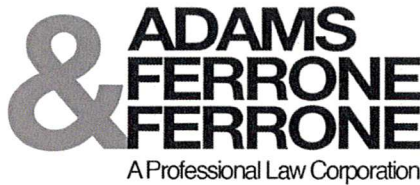
I again, call the OCFA Board of Directors to place back on the next available agenda to cure the issue by taking a vote clear of the violation.

I also, call on the Board of Directors to issue a strong censure of your General Counsel (Mr. Kendig) for misleading the Board into a clear violation of its own rules and procedures.

As a side note, a bonus to the Fire Chief Fennessy with additional taxpayer monies is so completely inappropriate and you should feel fortunate the public as a whole have no idea how much you as a Board are spending.

Thank you.

Kevin Hardy



Main and Mailing Address:
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Stuart D. Adams
John A. Ferrone
Paul F. Ferrone
E. Earl Dove
Michael T. Bannon

Michael A. McGill
Robert L. Baumann
Andrew B. Scott
Samantha M. Swanson
Ryan T. Trotta

Brittany A. Broms
Kelli M. Hemmen
Brooke A. Reno
Jennifer Krikorian
Jan Christie

Of Counsel
Mark J. Peacock
Megan Bartlett

July 21, 2021

Maria Huizar
Clerk of the Authority
Orange County Fire Authority
1 Fire Authority Road
Irvine, California 92602
Sent via email only: mariahuizar@ocfa.org

RE: BROWN ACT

Dear Ms. Huizar:

I write today as general counsel to the Orange County Professional Firefighters Association, International Association of Fire Fighters, Local 3631 (OCPFA). It is my understanding that the OCFA Board of Director's Regular Meeting of June 24, 2021, may not have complied with the requirements of the Brown Act and OCFA Board Policy. I write today to inquire as to whether my understanding is correct, and if so, whether the Board has taken steps to cure the error.

The OCFA Board maintains a 10:30 p.m. curfew which precludes any meeting from occurring beyond 10:30 p.m. unless a vote is taken to extend that time. It is my understanding that a vote to extend the closed session meeting did not occur before 10:30, but instead occurred after. As a matter of Board Policy, enacted under the authority of the Brown Act, any meeting should have ended at 10:30 p.m., with no further business being transacted. In addition, it is my understanding that the Board voted and took action on agenda items after this as well. It is unclear whether those decisions were publicly reported.

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. In addition, the Brown Act ensures that the public's business is conducted openly, and the law requires that legislative bodies post agendas prior to their meetings (Sections 54954.2, 54955 and 54956) and that no action or discussion may occur on items or subjects not listed on the posted agenda (Section 54954.2(a)(2)). In addition, the legislative body must reconvene the public meeting after a closed session and publicly report specified closed session actions and the vote taken on those actions (Section 54957.1).

Please confirm whether the following information is accurate, and if so, whether steps have been taken to address it. Please consider this a request to cure the violations in accordance with the Brown Act.

Very Truly Yours,

ADAMS FERRONE & FERRONE, APLC
A Professional Law Corporation

A handwritten signature in dark ink, appearing to be 'Michael A. McGill', written over a horizontal line.

Michael A. McGill, Esq.

cc: Association Executive Board (via email only)