

# 9212 Report Notes

March 16, 2010

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The “Brentwood Emergency Response for All Initiative Act” (“Initiative”) begins to resolve an on-going public safety emergency, a situation that is causing people to die and suffer unnecessarily. Some estimate that East County public safety services are under-funded, as a region, by \$13 million annually.

The Initiative increases public safety services funding for Brentwood residents gradually, re-directing municipal revenues slowly, so as to cause minimal disruption to other city programs and expenditures.

The Initiative supports and promotes attainment of Brentwood’s published General Plan and Strategic Plan goals and programs.

The Initiative includes provisions to address contingencies such as an economic downturn or recession, any subsequent voter approval of other public safety services funding, and the periodic review of the efficacy and efficiency of the Initiative’s designated expenditures.

**Elections Code Sec. 9212. (a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9215, the legislative body may refer the proposed initiative measure to a city agency or agencies for a report on any or all of the following:**

**(1) Its fiscal impact.**

*The Initiative would require additional, specific, annual spending from expected revenue growth on designated services to improve public safety. Beginning with \$680,714.29 to be spent in the first year, adding an additional \$680,714.29 to provide a total of \$1,361,428.59 to be spent in the second year, and building each succeeding year with an additional \$680,714.29 to the previous year’s total, will culminate in a total of \$4,765,000. in the seventh year to be spent on designated public safety services. This level of expenditures (\$4,765,000.) will be maintained each year, thereafter. Other categories of municipal spending of lower priority than public safety, would grow more slowly because of this new expense category, and it would be up to the City Manager to make the necessary budget and expenditure decisions to comply with the Initiative.*

*It is settled law that certain government entities have no "vested right" to property tax revenues and no "property interest" in those revenues "because as against the state, the county [or district] has no ultimate interest in the property under its care". By extension, departments within a municipal entity lack these same rights in future departmental funding. San Miguel Consolidated Fire Protection Dist. v. Davis, (1994) 25 Cal.App.4th 134, and Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd., (1999) 75 Cal.App.4th 327.*

**(2) Its effect on the internal consistency of the city’s general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.**

*The Brentwood General Plan Chapter 3, Community Services and Facilities, states:*

*“Goal CSF 4 Ensure the provision of high quality and responsive fire protection services.*

*“Policy CSF 4-1: Encourage and support the East Contra Costa Fire Protection District and providers of emergency medical services to maintain adequate staff and equipment to provide high quality and responsive fire protection and emergency medical services to existing and future growth in Brentwood.*

*“Policy CSF 4-2: Encourage, and work cooperatively with, the East Contra Costa Fire Protection District and providers of emergency medical services to maintain a three-to-five-minute response time for all emergency response calls within Brentwood.*

*“Policy CSF 4-3: Support efforts to improve fire protection and emergency medical services through organizational changes, if such changes would result in a significant improvement in fire protection and emergency medical services provided to Brentwood.”*

*The current “90% Response Time Average” reported by ECCFPD (February, 2020) is 10:07 minutes and 11:24 minutes for Brentwood West and Brentwood East areas, respectively. These actual response times far exceed published goals.*

*The Brentwood Strategic Plan, Focus Area 2, Public Safety, states:*

*“Item 4. Implement strategies to enhance fire and medical levels of service.”*

*The Initiative supports both the General Plan and Strategic Plan goals and programs.*

*California Government Code Section 65860 states:*

*“(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:*

*(1) The city or county has officially adopted such a plan.*

*(2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.”*

*California Government Code Section 65867.5 states:*

*“(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.”*

*California Government Code Section 66499.34 states:*

*“No local agency shall issue any permit or grant any approval necessary to develop any real property which has been divided, or which has resulted from a division, in violation of the provisions of this division or of the provisions of local ordinances enacted pursuant to this division if it finds that development of such real property is contrary to the public health or the public safety.”*

*The City of Brentwood has consistently ignored state government codes in the continual approval of zoning actions that are inconsistent with the City’s General Plan programs and contrary to the health and safety of Brentwood residents.*

**(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs. *No effect.***

**(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.**

*As explained in Item (1), the Initiative will require additional spending for designated public safety services. The Initiative would require the spending of \$680,714.29 in the first year, then an additional \$680,714.29 each succeeding year, added to the previous year’s total, building to a total of \$4,765,000. in the seventh year, and each year, thereafter. The incremental increases over a seven-year period are intended to lessen the impact of this new expense category on the City budget, and to the other categories of municipal spending, including infrastructure, which would be expected to have slower growth beyond the revenues they currently receive. The City Manager would be expected to make budget and expenditure decisions that ensue due to the increased resources directed to higher priority public safety services.*

**(5) Its impact on the community’s ability to attract and retain business and employment.**

*The inadequate level of fire and emergency medical response services provided by the regional fire district is a well-known fact. The inadequate level of services and the cause has been studied and documented by the county Grand Jury, the county Local Agency Formation Commission, an Inter-Jurisdictional Government Task Force, industry consultants and the regional fire district itself. The root cause of this inadequate level of services is inadequate funding.*

*Any business exploring a relocation or formation event would rationally use caution when evaluating Brentwood as a business location. A visible, extraordinary municipal expenditure of public funds to counteract this funding deficiency can only have a positive impact on Brentwood’s ability to attract business and employers.*

**(6) Its impact on the uses of vacant parcels of land. *No effect.***

**(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization. *No effect.***

**(8) Any other matters the legislative body requests to be in the report. (Items “a - e” are from the City Council discussion of the motion to request the 9212 Report, February 11, 2020)**

**a) Impact on the current services received from various agencies, such as ECCFPD, CCC EMS Division, and the impact such a move would have on the CCC EMS – ECCFPD contracted services;**

*The Initiative requires the city of Brentwood to spend a specified amount of money on services defined within the Initiative, and described in California’s Health and Safety Code section known as The Fire Protection District Law of 1987. The Initiative has no impact on the delivery of services by other local or state agencies. As the local current providers of designated services, certain local agencies would be in a position to provide these Initiative-designated services. However, the process of selecting a services provider would need to be fair, open and legal, and comply with all existing rules and regulations controlling such actions by government entities.*

**b) The option/possibility of a Brentwood-only EMS department being established;**

*Currently emergency medical response services are provided by ECCFPD on a first-responder basis under contract with CCC EMS Division. This contract specifies that for certain sums paid annually ECCFPD provides first-responder services to medical emergencies 24 hours per day, seven days per week, year-round. Due to underfunding, ECCFPD is unable to respond for significant periods of time each month, and emergency calls that are received by central dispatch are handled by other neighboring agencies, with consequently increased response time. In 2018 this unavailable time amounted to 96 hours 48 minutes, and 48 emergency calls came in during these time periods. Therefore, ECCFPD is not complying with the contract with CCC EMS.*

*CCC EMS Division has failed to comply with California EMS Authority (CEMSA) requirements to submit an approved plan of service, and consequently CEMSA has denied exclusivity to certain CCC EMS service areas, which include Brentwood. This ruling has been stayed until April 20, 2020. (See letters from CEMSA to CCC EMS dated 4-13-2018 and 8-26-2019.) By spending the designated expenditure funds on contracted or full-time-employee EMS services, Brentwood could comply with the requirements of the Initiative.*

*A newly-formed Brentwood-only EMS department could be integrated into ECCFPD and managed by the Fire Chief, or it could be included in a broadened public safety mandate of the Brentwood Police department and managed by the Police Chief.*

**c) The option/possibility of a Brentwood-only fire engine (or other resource)?**

*ECCFPD operates as a single service area organization, and as such has not designated territory-specific service zones in which certain assets could be utilized. All three fire engines and other resources are used throughout the 249-square mile ECCFPD jurisdiction. Without a major change in operating methods, ECCFPD would not be able to segregate assets to zones, and hence provision of a resource, such as a fire engine, with Initiative designated expenditures would provide system-wide benefits. As such, Brentwood residents would be subsidizing non-Brentwood residents, unless strict limitations were put in place, limitations that would run counter to existing ECCFPD operating philosophies and practices.*

**d) What would happen during economic downturns, recessions, when contracted services are used?** *Under the terms of the Initiative once the city begins expending funds as specified, it would be required to continue making such expenditures until the law is changed by a vote of the residents. Public safety services expenditures would become the highest priority expenditure for the city, which the public expects, first and foremost, from its government's use of tax revenues. During economic downturns Brentwood would be required to continue expending the designated expenditures on public safety services, while other, lower priority expenditures would not have this requirement.*

*Over extended periods of time, as the cost of providing specific services increases, the amount of services received from the static designated expenditure amount would logically decrease. Additional funding would have to be provided if the city wished to continue receiving the same level, or additional levels, of services.*

**e) Could funds be used for additional ambulance services, to reduce response times?**

*Yes. There are no provisions within the existing ambulance service provider (AMR) contract with Contra Costa Fire Protection District (ConFire) that prohibit AMR from providing additional services to entities within Contra Costa County. Also, there are other providers of ambulance services, members of the California Ambulance Association, who successfully operate within California serving a wide range of government entities.*