

**CITY OF SAN BERNARDINO
INTER-OFFICE MEMORANDUM
FIRE DEPARTMENT**

TO: Mayor and Common Council

FROM: Paul Drasil, Interim Fire Chief ^{P.D.}

SUBJECT: **Recommendations for the Fire Department Budget as part of the Pre-Pendency Plan**

DATE: September 17, 2012

COPIES: Andrea Travis-Miller, Interim City Manager; Jason Simpson, Director of Finance

On August 29, 2012, the City held a Special City Council meeting to review and discuss the City's Pre-Pendency Plan. At the meeting Council Member Chas Kelley submitted a document with several proposals that he recommended be included in the Fire Department's section of the Pre-Pendency Plan presented to Council for consideration. At a subsequent Council meeting on September 5, 2012, the Fire Department budget was removed from the Pre-Pendency Plan, and I was directed to return with a new proposed budget on September 17, 2012. I have reviewed the proposals outlined in Mr. Kelley's document and I am providing my findings in this memo. The summary section contains my proposal for the Fire Department budget to be included in the Pre-Pendency Plan.

Overview

The following 8 proposals have been presented to the Mayor and Common Council in place of the recommendations presented in the City's Pre-Pendency Plan for the Fire Department.

1. Staffing Efficiencies Previously Adopted by Council (\$950,000)
2. Cut One Battalion, reassign personnel to engine companies (\$713,431)
3. Eliminate P1 position (4th FF on ME231) (\$150,000)
4. Eliminate Dispatch Supervisor (\$100,000)
5. Eliminate Discretionary Money (\$82,000)
6. Eliminate Vacant Fire Prevention Officer (\$83,000)
7. Consolidate Fire and City Mechanic Shops (building lease amount \$60k, staff, utilities, economy of scale) (\$60,000 - ???)
8. Eliminate Emergency Medical Services (EMS) Coordinator Position (\$100,000)

As identified by Councilman Chas Kelley each proposal has an associated projected annual savings, for a combined total of \$2,238,430 (Attachment A). (Attachment A provides a comparison of the proposal presented by Mr. Kelley and budget numbers we were able to verify.) My best estimate of savings associated with Mr. Kelley's proposal, based on the actual budget amounts is \$1,964,640.

In reviewing the document, there are some valid proposals that the Fire Department had taken into consideration and had incorporated in the City's Pre-Pendency Plan prior to the release of Mr. Kelley's proposal. The Fire Department section did include the adoption of the Staffing Efficiencies proposal (based on Council's figure), elimination of discretionary funding, the elimination of firefighter positions(s) and vacating the Fire Prevention Officer position.

Council Member Kelley's Proposal:

The document contains eight proposals, four of which are contained, at least in part, in the current proposal. I will briefly discuss each below.

1. Staffing Efficiencies Previously Adopted by Council (\$950,000) – This was included in the original proposal, after closer review of the numbers projected savings would be \$748,496 (Attachment A). The City Council adopted these efficiencies on July, 2, 2012; therefore, I included them in the City's Pre-Pendency Plan for the Fire Department. I am not in favor of these cuts and I have attached a memo that addresses my concerns which I directed to the Mayor, in July, concerning this action (Attachment B).
2. Cut One Battalion, reassign personnel to engine companies (\$713,431) – My estimate of actual annual savings is \$681,722 (Attachment A). I am opposed to this proposal, this would effectively cut our Chief Officer ranks by 60% from 2008 levels. The City Attorney's Office issued an opinion, in 1995 that outlines the legal concerns if Battalion Chiefs are cut (Attachment C). Please refer to the summary at the bottom of page 3. This document was prepared in 1995, not only are the concerns still valid today, I believe in light of the challenges we face today as a result of the attacks on 9/11, the need for Chief Officers is greater than ever. Below is a partial list of my concerns.

Our ability to provide the following essential services would be severely compromised or eliminated:

- a. Adequate command and control of large incidents (earthquake, high rise and large commercial fires, large wildland fires, multiple fires or rescues etc.)
- b. Staffing for the Emergency Operations Center during times of disaster, leaving the City unable to manage an incident to mandated standards (National Incident Management System)
- c. Daily supervision of both routine and emergency operations 24/7, 365 days a year. There would only be one shift Battalion Chief on duty 24 hours a day, they would have a span of control that doubles the accepted standard of 1 to 7. This will increase the risk to firefighter's lives and the public's safety, as well as expose the City to more liability (Attachment C).

The Kelley proposal indicates that administrative duties may fall behind and assistance from other qualified personnel would be implemented. Fire Administrative staff has analyzed this over the past several years and have been unable to identify a method to complete these duties

(personnel investigations, maintaining training records, hiring new employees, promotional testing, oversight of safety equipment, uniform budgets, IT, radio support, oversight of Dispatch, the EMS Coordinator, Shop equipment, resolve specific discipline issues, applying for and management of grants, etc.). The Kelley proposal does not identify any personnel or method to absorb these functions, at the same time it does propose to eliminate more non-safety personnel, the Dispatch Supervisor and EMS Coordinator, further impacting the remaining Chief Officers.

Some of these tasks could be assumed by on-duty safety personnel or those on "Injury" but released to modified duty status by their doctor. Currently, safety members released to modified duty are not required to report for duty. Fire Administration has tried to re-instate a "Modified Duty" program to provide administrative assistance throughout the department, but has not been able to get agreement from the labor group. If this program were to be re-instated some of the proposals, including items #1, 2, 4, 6 & 8 outlined in the Kelley Proposal document could be viable.

The Kelley Proposal further states:

"This initial assignment would reduce the initial attack capability by one person, rather than the "Brown Out" alternative, which reduce the initial fire attack by one engine and **THREE** firefighters, eliminating any possibility of rescuing a person in need."

This statement is false and misleading. The quote refers to an Engine Company Captain assuming the Incident Commander duties on an incident thereby reducing there crew strength to two, and fragmenting the crew for the duration of the incident. Currently our initial response to a structure fire is 4 Engine Companies, 1 Truck Company and 1 Chief Officer. The quote states that this initial response will be reduced by 1 Engine Company during a "Brown Out", this is not true. We will continue to send the same number of units to a structure fire; if a station were "Browned Out" the next closest Engine Company would respond. This happens daily under our current staffing configuration. The quote also mentions that the possibility of rescuing a victim would be eliminated. This is also a false and confusing statement; any two firefighters can perform a rescue of a victim involved in a fire or other emergency. The statement is very confusing, the author does not state why or how the opportunity to perform a rescue with on scene firefighters would be eliminated.

There reaches a point when the expectation for staff members to continue to absorb more responsibilities becomes irresponsible. With three fewer Battalion Chief Officers, it will be virtually impossible to perform essential emergency operations and administrative duties. The City will also recognize a decrease in service to the community, and an increase in unsafe working conditions.

3. Eliminate P1 position (4th FF on ME231) (\$150,000) – The actual annual savings would be approximately \$137,003. This position was included in our original proposed savings, in addition the 4th firefighters on both truck companies were also included, and this provided a projected annual savings of \$946,879.

4. Eliminate Dispatch Supervisor (\$100,000) – Actual annual savings would be approximately \$105,505. The Fire Communications Manager (FCM) position provides daily supervision of our Emergency Communications operations, as well as performing other essential tasks that we are mandated to perform to maintain compliance with EMD and our AMR contract. As part of our Emergency Medical Dispatch (EMD) system we are mandated to perform quality assurance (QA) reviews on an on-going basis in order that we stay in compliance. I have met with both American Medical Response (AMR) and Inland Counties Emergency Medical Agency (ICEMA) they have significant concerns of our ability to maintain compliance with mandated standards if this position, as well as the EMS Coordinator are eliminated. The immediate effect, of the loss of FCM, would be the loss of our current AMR contract which currently generates approximately \$250,000 annually. Additionally if we were unable to complete the QA portion of the EMD program we may have to consider eliminating the EMD program, which would increase the call volume for our engine companies.

The Kelley proposal mentions that “a shift Battalion Chief who is assigned as the administrator of dispatch can remain responsible to oversee administrative operations, and the on duty Battalion Chief would be able to make day to day decisions....” The Kelley proposal advocates the reduction of three additional Battalion Chiefs (BCs), this already doubles the supervision responsibilities of the one remaining BC per day, and it is not safe or reasonable to expect that the additional daily oversight of Emergency Communications Program could be assumed by a 24 hour shift BC.

As mentioned in the original Pre-Pendency Plan proposal we are exploring the option of outsourcing our fire dispatch operations to Comm Center. This will take several months to see if it is viable to enter into an agreement with them, once all the information has been obtained we will bring it forward for consideration. We are also in discussion with the Police Department on the feasibility of combining the police and fire dispatchers within our dispatch center. We may be able to realize a costs savings and improve some of our operations by combining. Our staff will analyze both options, out-sourcing with Comm Center and combining police and fire within our own dispatch center. We will bring back to Council our recommendation if one of them should be adopted, or to maintain status quo.

5. Eliminate Discretionary Money (\$82,000) – The actual saving is estimated to be \$82,200 annually. This was included in the original proposal. After further review of the discretionary budget I have identified an additional \$124,700 in savings, bringing the total to \$206,900. These additional savings will result in the elimination our Wellness & Fitness program and the restructuring of our Traffic Collision Recovery Program.
6. Eliminate Vacant Fire Prevention Officer (\$83,000) – The actual estimated annual savings is \$85,689. This was also included in the original proposal. The Kelley proposal would eliminate this position, I support that we leave the position vacant with the option to fill the position at a later date. This is a revenue producing position. Additionally a limited number of future openings can be left vacant, for a period of time. Revenues and the associated work with those positions will not be realized and they will need to be filled at some point in time. Contrary to the Kelley proposal which states the duties have

effectively been reassigned, many of these duties are not being performed and revenue and service are being lost. See page 43 of the Pre-Pendency Plan under the heading "Community Risk Reduction Program" for more detail.

7. Consolidate Fire and City Mechanic Shops (building lease amount \$60k, staff, utilities, economy of scale) (\$60,000 - ???) – There are no projected savings from the Fire Department's budget if adopted. The building and subsequent lease are part of EDA, therefore, there is no savings to the Fire Department's budget associated with this proposal.

This option has been explored several times and again recently while developing our proposal. The Kelley Proposal states that our current Fire Department Fleet & Equipment Program can be consolidated with the City Maintenance operations. This is not possible for several reasons. The current City Maintenance shops do not have enough room to allow for the added volume of work required to maintain our fire equipment, expansion of the current facilities would be required. At our current shop facility we store our reserve apparatus and fire equipment, both of which have to be secured inside a building, and have 24 access and security. Again there is no room at the current city maintenance facility to store this equipment, additional secured storage areas would have to be identified. When we looked at the possibility of combining maintenance facilities previously we also found that very little of the parts stock is compatible, as stated in the Kelley Proposal document. In addition, there would be an increased delay in maintenance and repairing fire apparatus due to that the City's Maintenance Shop services the Police Department, Integrated Waste, Public Works, and all other city vehicles. Also, the City's Maintenance personnel will need to be trained and certified to perform maintenance on the fire apparatus due to the specialized equipment, communications, and repairs. Additionally we anticipate a relocation cost of approximately \$25,000 to facilitate the move to the City Yard facility.

Fire management staff will explore this option again if the City's Refuse division is out-sourced at some point in the future. The relocation of the Fire Maintenance shop to the current City Maintenance facility may become viable if this were to occur.

As I mentioned in my presentation to Council there are opportunities for our shop to provide maintenance for other fire agencies in our local area. Approximately one year ago we had entered into talks with the U.S. Forest Service and were close to reaching a tentative agreement with them, but were unable to continue due to financial hurdles. This is still a viable option that would help to off-set the cost of our maintenance, fire management staff will re-evaluate this option again and bring recommendations to the Council when appropriate.

8. Eliminate Emergency Medical Services (EMS) Coordinator Position (\$100,000) – The actual estimated annual savings is \$124,024 if adopted. I am opposed to the elimination of this position as I mentioned on page 44 of the Pre-Pendency Plan. The Kelley proposal alludes that the duties of the EMS Coordinator can be assumed by two current Captains at Station 221 as well as the EMS Committee. I have spoken with the two Captains and they have both said they would be willing to take on the added duties of the EMS Coordinator position, if asked. They also acknowledged that it would add a tremendous work load for

them personally, and take away time from their daily job as a Fire Captain. I anticipate that the Captains would have to be relieved of their duties as a shift Captain on a daily basis for several hours; this would require that other personnel do their work, as well as causing the truck or engine company to be on "2nd call" which would delay their response, or backfill with an off-duty Captain. The last sentence of this section of the Kelley Proposal states "In addition, EMD should become the responsibility of the EMS Coordinator and Committee with the elimination of the dispatch supervisor." This sentence makes no sense, as the Kelley Proposal calls for the elimination of the EMS Coordinator position, therefore how can the duties be re-assigned to that position?

The EMS Coordinator is essential to the entire Fire Department operation. Our current contract with AMR requires that the City have employed at all times key personnel responsible for the following: Quality Improvement Program, Training and Education Programs, Overall Analysis and Coordination of Resource Deployment, and a Safety Committee. The EMS Coordinator performs several of these duties, in addition to assisting with the oversight of the EMD program with the Fire Communications Manager. It should be noted that the Safety Committee was under the supervision of the Training Division Chief, and this responsibility has not been reassigned as of yet. It is unknown if the shift Captains will be able to perform these duties and others, additional time may be needed requiring them to work overtime on their day off, this would require overtime and off-set projected savings.

ICEMA is in the process of an overhaul of the emergency medical transportation plan throughout the entire County. This will allow all first responder agencies to determine how they would like to provide emergency medical service within their jurisdiction. This is mentioned on page 13 of the Pre-Pendency Plan under the Fire Department heading, 5th bullet point. The EMS Coordinator will play a key role in this process and his expertise is essential to ensure we pursue the correct course. Along with the transportation plan review, ICEMA has required all agencies to participate in electronic Patient Care Reporting (ePCR). While we are currently one of the few first responders in the County that meet this requirement, the software that supports this is changing as well as other components. The EMS Coordinator has played an essential role in this process and will continue to do so over the next several years, without direct involvement in this process we may not be able to meet our obligations. It is doubtful that shift personnel can fulfill these duties.

The cost benefit achieved by the elimination of the EMS Coordinator would be minimal, due to the projected need for overtime, and the work load that would be placed upon on-duty shift personnel would exceed their ability to perform the EMS Coordinator responsibilities adequately. As I mentioned above I have met with ICEMA and AMR, both agencies have identified this position as essential to allow us to continue to operate as an Advanced Life Support provider. There is a critical need for this position and I am not in favor of eliminating it from our operation.

Efficiencies to Defer Administrative Expenses

- 1) "Reduce Firefighter Overtime by Filling Vacant Firefighter positions" – Currently there are 20 vacant safety positions within the department, these are backfilled each shift. Filling the vacancies will eliminate a portion of the overtime for existing firefighters as stated; the associated costs of filling these vacancies would then become salary and benefits. Estimated costs to equip a new firefighter with uniforms and safety clothing is over \$5,000.00 per individual, therefore an additional \$200,000 would have to be identified from within the budget.

The proposal I am presenting will require the immediate hiring of 7 new PM/FF's rather than 20. With expected retirements, I would anticipate the department will need to hire an additional 10 personnel by the end of the fiscal year. This will be necessary regardless of which plan is adopted. I would recommend that we begin the testing process to establish a new hire list as soon as our current list is exhausted. This should occur by the end of the calendar year.

- 2) "Extend Current Promotional Lists until exhausted" – The current lists will likely be exhausted prior to their expiration dates, due to anticipated retirements. This will necessitate new promotional tests to have to be held. If the lists are not exhausted, I would extend them, per Civil Service rules.
- 3) "Train new firefighters during shift training, instead of a Fire Training Tower" – The statement provided is inaccurate in many areas as to what is required for our new employees. I will only mention one as an illustration. The author states that no medical training is performed, while part of this is true, there is training required for new personnel to learn ePCR procedures and to become accredited in the ICEMA region if they are not currently. There is training and a minimum number of supervised calls personnel must perform as part of the accreditation process. This is but one example; I do not feel this is the document to explain why all of this training is necessary. We would look at shortening the length of the training tower to the absolute minimum required to provide mandated training, thereby minimizing costs.

Summary

If the proposal presented by Councilman Chas Kelley were to be adopted, approximately \$1.9 million in savings would be realized. There would be a minimum of 2 layoffs, 8 demotions and would include the elimination of essential positions from within the department.

I am proposing a plan that will save approximately \$2.9 million annually. If adopted there will be no layoffs or demotions, although there will be a loss of 13 vacant safety positions. The loss of these positions will cause all engine and truck companies in the City to be staffed by 3 people and the loss of a 2 person paramedic squad. There will be no fire station closures or "Brown-outs".

I would urge the Council to restore all safety positions that have been lost since 2008 when financially able. Once this is started, I would like to develop a plan to re-establish the non-safety positions that have also been deleted to enable the department to begin to build back the entire organization.

The proposal will also work towards including several of Mr. Kelley's ideas into future cost saving measures. These include:

- Re-location the Fire Maintenance Shop to the City Maintenance facility if feasible. This may be possible if the Refuse division becomes out-sourced. Staff will again look at the possibility of marketing our shop to provide maintenance for other local fire departments to off-set our costs.
- We are currently evaluating the feasibility of out-sourcing our Fire Communications division to Comm Center or combining the Fire and Police dispatchers within our own communications center. If either option proves workable and provides a cost savings we will pursue the appropriate option.

The following table contains the new recommendations for the Mayor and Common Council to consider being included in the City's Pre-Pendency Plan for the Fire Department's section.

Description	# of Positions	Annual Estimated Savings	Estimated Savings (9 months)**
Staffing Efficiencies Proposal (deleted Public Education Officer; Reassigned Chief Officers; Vacant Deputy Chief & Fire Marshal)	3	\$748,496	\$748,496
Fire Prevention Officer	1	\$85,689.21	\$78,548.47*
Eliminate the Traffic Collision Program	N/A	\$112,500	\$112,500
Eliminate the Wellness & Fitness Program	N/A	\$12,200	\$12,200
Reduction of Discretionary Funds	N/A	\$82,200	\$82,200
Firefighter	7	\$959,023.31	\$719,267.24
Paramedic/Firefighter	6	\$914,258.73	\$685,693.49
Totals	17	\$2,914,367.24	\$2,356,705.10

*employee retired on August 1, 2012-savings is for 11 months

**The table above identifies both estimated annual savings and the actual savings for the F/Y assuming an implementation date of October 1, 2012.

Traffic Collision Program:

In the memo that was submitted to the City Manager regarding the reduction of discretionary funds for the Fire Department, there was a reference to the potential elimination of the Traffic Collision Program. This program was established in 2009 for the Fire Department to start charging insurance companies for hazardous spills resulting from traffic collisions. The fee is to recover costs for actions taken at traffic collisions that leave hazardous materials on public right of ways. The projected revenue for the program was \$197,900 and the City has received \$26,025.35 for the past three years of the program. We will re-structure the program to eliminate any costs the department currently incurs and only charge for traffic control services and victim extrication costs. Staff will bring this to Council as soon as possible.

Additional Discretionary Funds:

The Fire Department is recommending that the funding appropriated to the Wellness & Fitness Program for safety personnel be included as a cost savings for the City. The potential savings for this program is \$12,200 annually.

Respectfully,

Paul Drasil
Interim Fire Chief

Proposed Elimination	Program #	Council's Proposal 7/2/12	Budgeted FY 12/13	Position Status
Firefighter Cadet Program	0046-2020	\$ -	\$ 48,700.00	Personnel-10 cadets
Public Education Officer	0047	\$ -	\$ 80,600.00	Deleted
TOTAL PROPOSED (elimination):		\$ -	\$ 129,300.00	

Proposed Vacant Position	Program #	Council's Proposal 7/2/12	Budgeted FY 12/13	Position Status
Deputy Chief	0044	\$ -	\$ 271,300.00	Filled
Division Chief/Fire Marshal	0047	\$ -	\$ 223,200.00	vacant
Emergency Services Manager	0048	\$ -	\$ -	Filled*Grant funded, \$138,800
TOTAL PROPOSED (vacancy):		\$ -	\$ 494,500.00	

Proposed Reorganization	Program #	Council's Proposal 7/2/12	Budgeted FY 12/13	Position Status
Reassigned 3 Division Chiefs to Battalion Chiefs	multiple	\$ -	\$ -	Filled no additional savings/costs
Extra Regular Hrs (BC Coverage)		\$ -	\$ 124,696.00	
TOTAL PROPOSED (reorganization):		\$ -	\$ 124,696.00	

TOTAL PROPOSED SAVINGS (Personnel) \$ 950,000.00 \$ 748,496.00

Proposed Elimination	Program #	Council's Proposal 8/29/12	Budgeted FY 12/13	Position Status
Fire Communications Manager	0051	\$ 100,000.00	\$ 105,505.21	Filled
Fire Prevention Officer	0047	\$ 83,000.00	\$ 85,689.21	Vacant
Emergency Medical Svs Coordinator	0044	\$ 100,000.00	\$ 124,024.83	Filled
TOTAL PROPOSED (elimination):		\$ 283,000.00	\$ 315,219.25	

Proposed Elimination	Program #	Council's Proposal 8/29/12	Budgeted FY 12/13	Position Status
Battalion Chief (56 HR)	0044	\$ 237,810.33	\$ 227,240.74	
Battalion Chief (56 HR)	0044	\$ 237,810.33	\$ 227,240.74	
Battalion Chief (56 HR)	0044	\$ 237,810.33	\$ 227,240.74	

TOTAL PROPOSED (elimination): \$ 713,430.99 \$ 681,722.22

Firefighter 0044 \$ 150,000.00 \$ 137,003.33

Proposed Maintenance & Operations	Program #	Council's Proposal 8/29/12	Budgeted FY 12/13	Position Status
Eliminate discretionary money		\$ 82,000.00	\$ 82,200.00	
Consolidate Fire & City Mechanic Shop		\$ 60,000.00	\$ -	
TOTAL PROPOSED M&O		\$ 142,000.00	\$ 82,200.00	

TOTAL PROPOSED SAVINGS (Personnel & M&O) \$ 1,288,430.99 \$ 1,216,144.80

GRANT TOTAL PROPOSED SAVINGS \$ 2,238,430.99 \$ 1,964,640.80

**SAN BERNARDINO CITY FIRE DEPARTMENT
INTEROFFICE MEMORANDUM**

To: Honorable Mayor Patrick Morris
From: Interim Fire Chief Paul Drasil 
Subject: July 2, 2012 Council Item "Fire Department Staffing Efficiencies"
Date: July 10, 2012
Copies: Interim City Manager Andrea Travis-Miller

Mayor Morris,

On July 2, 2012 the City Council voted to adopt the agenda item entitled "Fire Department Staffing Efficiencies" introduced by Councilperson Chas A. Kelly. The adopted motion identifies the "efficiencies" as a method to have the least impact on service delivery and further identifies them as "non-critical". The staff report also refers to "several meetings and gathering of information", I am unaware of any meetings that any Council member had with Fire Management regarding this proposal. I feel strongly that before a proposal like this is brought before the City Council it should be discussed with the affected department head, so that potential liabilities can be vetted.

I did meet with Labor, San Bernardino City Professional Firefighters Union (SBCPFF) Local 891 President Scott Moss, and Interim City Manager (CM) Andrea Travis-Miller on two occasions to discuss our budget reduction proposal, as requested by the CM, and the SBCPFF proposal, which is the same as this agenda item. We were unable to reach agreement on how to incorporate the two proposals, SBCPFF declined to discuss any proposal other than their own. The CM and I had deep concerns regarding the depths of their cuts proposed to the Fire Administrative Staff, and we discussed the implications of these cuts with Mr. Moss.

I do not agree with all of the components of the agenda item, I do not feel that the Fire Department can operate safely or efficiently given the severity of the actions called for. I also fear that if all of these proposed vacancies were to go unfilled, the City and Fire Department could be exposed to serious liabilities that are preventable.

The Council action calls for the following:

- Eliminate the Fire Cadet Program.
- Reassign the three Administrative Battalion Chiefs to shift duty.
- Temporarily leave the following positions vacant through attrition, until such time the City can afford to fill the positions: Deputy Chief, Division Chief and Fire Marshal (FM).
- Vacancy through attrition of the Disaster Preparedness position.
- Eliminate the Public Education Position.

While I have concerns about each of these items, and the negative impact each will have on our operation, I want to focus on the three chief officer (CO) positions and the Disaster Preparedness position.

Maintaining the vacancy of the three CO positions will effectively cause a 30% reduction in the CO ranks as compared to 2008 staffing levels. The Fire Management staffing that will result from this plan will only leave the Fire Chief and six shift Battalion Chiefs. The Fire Chief will be responsible for the duties of the Fire Marshal, Deputy Chief, and directly supervising the Battalion Chiefs as well as the day to day operation of the entire Fire Department. Below are a few of the areas of concern that I have:

- We will have limited operational depth to be able to respond to large scale emergencies within or adjacent to the City. Surrounding Departments have also reduced their COs (Colton, Rialto, Loma Linda and San Bernardino County) the ability to rely on them for mutual aid assistance, at the CO level, is limited. The result will be an inadequate command and control presence at these incidents, which will result in: an increased risk to firefighter and public safety, the inability of the Fire Department to properly manage an incident by following accepted best practices (Incident Command System ICS) which could result in the exposure of the City and Chief Officers to liability claims.
- The ability to apply, manage and seek out grants for both personnel and equipment will be severely limited. The effort and time to perform all of these functions cannot be done by shift personnel. Currently all grants are applied for and managed by the Deputy Chief, Fire Marshal or the Disaster Preparedness coordinator. The City was just awarded 3.3 million dollars in the form of a SAFER grant; this will continue funding for 12 firefighter positions, further grants such as this are in jeopardy.
- There are numerous standards and regulations (NFPA, OSHA, CFR, Health and Safety Code etc.) that spell out accepted best practices and dictate certain requirements be met concerning how Fire Departments are to be organized and managed. Our ability to comply with these regulations and standards will be severely comprised.
- The ability of our Fire Prevention bureau to adequately complete their duties will not be possible without a full-time Fire Marshal. This will result in a direct loss of revenue from inspection fees, the inability to respond in a timely fashion to developers who wish to build in our City. (The Southgate development is an example) Several developers have stated that they will go elsewhere if there are more delays than then currently endure.

- Attached are two memos written by the City Attorney's office that highlight many of my concerns, all of the items are still valid today, if not more so. The memos are;

“Liability Exposure of Fire Department Cuts” June 23, 1995, Dennis A. Barlow, Sr. Asst. City Attorney.

“Fire Inspection Services” February 16, 1990, Denice E. Brue, Sr. Assistant Attorney.

I would like to quote from each of the memos:

Barlow Memo –
Page 1

In February of 1995, OSHA cited the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) for unsafe conditions on the South Canyon Fire, which resulted in 14 firefighter fatalities.

“The unsafe conditions were primarily the fact that the agencies failed to provide sufficient management oversight to ensure that existing safe firefighting practices were followed. The citation noted “plain indifference” on the part of management”

I believe our inability to provide adequate management on large scale incidents could expose us to a similar citation.

Brue Memo –
Page 3

“The common sense approach to the requirements set forth in these sections (referring to the Government Code) is that the legislative intent is to make sure that fire protection and fire protection services are carried out by people who are specifically trained in fire protection services to provide for the health, safety and welfare of the public at large. Therefore the code section mandates that these duties be carried out by none other than regular full-time members of an organized fire department of a city, county, or district providing fire protection services and cannot be delegated to other departments with a local entity.”

My professional opinion is that the duties of the Fire Marshal are unique and specialized to the degree that other personnel cannot “assume these duties” as has been suggested by some. I feel that without a full-time FM, or a similar position, our Fire Prevention bureau will be unable to fulfill their mission, thereby putting the public at further risk, cause a loss of revenue and cause unacceptable delays in the building permit and plans check process.

In light of the severity of the current budget situation and this Council action, I would like to bring to your attention another quote from the Brue memo. (Page 9)

“Therefore the City may also contract with the County for fire prevention and suppression services which include fire inspection services.”

Given the state our Fire Department will be left in, if these “efficiencies” are implemented for any considerable length of time, our ability to manage the organization may leave us vulnerable and alternative solutions, as mentioned in the above quote, may need to be explored. I hope this is not what the City Council had in mind when they adopted this item. I am convinced that our department has the means and ability to provide all the services required, if we are allowed to manage the organization ourselves.

I feel that it is incumbent on me to inform you of the implications of these “efficiencies” that the Council has adopted and the risk at which they put our citizens, firefighters, chief officers and the City. I cannot take responsibility for any negative outcomes that may occur as a result of this action imposed on the Fire Department by the City Council.

Respectively Submitted,

Paul Drasil
Interim Fire Chief

CITY OF SAN BERNARDINO

INTEROFFICE MEMORANDUM

TO: Mayor and Common Council

FROM: Dennis A. Barlow, Sr. Asst. City Attorney

DATE: June 23, 1995

RE: Liability Exposure of Fire Department Cuts

The Mayor and Common Council have before them proposals to reduce the number of fire department Battalion Chiefs and to eliminate a truck company from the Fire Department. With only two truck companies serving the City this results in a 50% cut with a resultant loss of 3 captains, 2 engineers, and 3 firefighters. These cuts and others are apparently directed to reorganize the day to day management of the department and of the conduct of fire suppression.

In this context it is important to note serious challenges faced by other fire suppression agencies due to alleged management failings.

In February of this year the Federal Occupational Safety and Health Administration (OSHA) cited the United States Forest Service and the Bureau of Land Management (BLM) for various unsafe conditions that led to the death of 14 firefighters in a wildland fire near Glenwood Springs, Colorado (The South Canyon Fire). The unsafe conditions were primarily the fact that the agencies failed to provide sufficient management oversight to ensure that existing safe firefighting practices were followed. The citation noted "plain indifference," on the part of management.

Closer to home the San Bernardino Sun reported on Saturday, June 17, 1995 (page B3) that the U.S. Forest Service and BLM settled a \$2 million suit relating to the death of a young firefighter working out of the Corona office while fighting a 1990 fire northwest of Sacramento. Also alleged in this suit were serious management deficiencies.

In 1970 the City faced the Bear fire which burned 53,100 acres and destroyed 51 homes and 11 structures. Then in 1980 San Bernardino experienced one of the most devastating fires in this state's history. The Panorama fire destroyed 325 homes, burned 23,600 acres, resulted in a property loss of \$40,000,000, and took the lives of 4 individuals. The Panorama fire cost \$6 million in suppression efforts. To now make significant cuts in the City's ability to respond to such disasters just because we haven't faced such fires in recent years, is both shortsighted and exposes the

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City's residents and firefighters to unnecessary danger. With the mediterranean climate of San Bernardino and the regular hot, Santa Ana winds it is not a question of if another devastating fire will occur, but when.

In addition, by making such cuts, the City itself could face a loss of its historical immunity by such an unfounded action in light of all the facts and circumstances, similar to what occurred in relation to the U.S. Forest Service and BLM noted above. It is a maxim among lawyers that bad cases make bad law. Not long ago the governmental entities in this state enjoyed broad immunity to protect their decisions in a whole myriad of activities. Gradually, more and more of these immunities have been lost through "bad cases". For instance, the design immunity is provided to public agencies by Government Code §830.6. It states that such agencies are not liable for injuries due to a defective design of a construction or improvement to public property where such plan or design was approved in advance by the legislative body or by an employee exercising discretionary authority. However, judicial decisions have significantly eroded this immunity by finding negligence on the part of the public agency independent of the design (Hefner v. County of Sacramento (1988) 197 Cal.App.3d 1007), or by finding changed circumstances (Bane v. State of California (1989) 208 Cal.App.3d 860; Compton v. City of Santee (1993) 12 Cal.App.4th 591), or by finding, in the situation of a bridge, that it was not the design of the bridge that caused the accident but the accumulated ice (Flourney v. State (1969) 275 Cal.App.2d 806), or where the court decided that the design was unreasonable (when faced with the death of a 4-year old child) (Davis v. Cordova Recreation & Park District (1972) 24 Cal.App.3d 789).

In addition, as the City is encouraging the construction of several taller buildings both in the downtown area and on Hospitality Lane, it seems both foolish and dangerous to eliminate the ability to respond to fires and to provide rescues on higher stories.

It should also be remembered that San Bernardino lies at the conjunction of several major earthquake faults including the San Andreas Fault. Seismologists tell us that this area is seriously overdue for a major quake. It is well known that a major effect of earthquakes is not only the initial damage but includes the resultant fires. The fire suppression needs and rescue efforts following a major earthquake will be extensive. A court might find it unusual and significant that a city sitting on several major

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earthquake faults and overdue for a disaster would cut its truck companies in half and thereby its ability to respond to such a disaster.

Finally it is certain that these cuts combined with others that are proposed in the Fire Department will seriously affect the City's ISO rating. The rating now stands at a 2 and will certainly go to a 3 and perhaps to a 4 with such cuts. This will translate into higher insurance rates for property owners in the City, because what it reflects is an inability of the City to provide as high a response as it has in the past in fire situations.

All of the above will be relied upon by a court in determining whether the traditional immunity of the City in case of a significant fire loss should be sustained.

We also note that it may be contended that mutual aid will satisfy the need for fire response in serious fire incidents. Mutual aid, however though important and necessary in finally putting out a fire, does not satisfy the need for immediate, initial response. It is the response at the inception of the fire which determines whether the fire will be contained or will result in a long, expensive fight. It is consistently shown and can be demonstrated in both the Panorama fire and the Malibu fire of the 1960's, that mutual aid cannot be relied upon for that all-important initial response. For that each agency must look to its own resources. A court will look to the management decisions to maintain and use the resources versus their elimination; and false reliance on other agencies for early response.

In summary, we have the following legal concerns if the number of Battalion Chiefs is reduced and/or a truck company is eliminated:

1. Federal or state administrative action against the city for management failure,
2. Workers' compensation lawsuits by survivors of firefighters killed, or lawsuits by firefighters injured due to management failure,
3. Loss or erosion of traditional municipal immunity and resulting damages in civil lawsuits.


Dennis A. Barlow