

What Orinda Voters Were Promised MOFD Would Deliver

(Orinda Emergency Services Tax Force; July 2016)

Overview

For people who can remember back to 1997 when MOFD was formed as a consolidation of Orinda and Moraga Fire Districts; or who have read the media accounts of the “arguments” leading up to the vote to consolidate; or have read the voter’s pamphlet for the June 3 election in which the consolidation was approved by the voters; it is clear that from the Orinda voter’s perspective there were two main reasons for the merger:

- 1) Better emergency paramedic service (both on first-responder engines and a locally stationed paramedic ambulance).
- 2) Use all tax dollars paid by Orinda taxpayers earmarked for emergency service for services in Orinda and not elsewhere in the County (including Moraga).

There is no question that Objective #1 has been achieved with the majority of MOFD firefighters being paramedics and an ambulance stationed at each of Orinda’s three stations.

However, the status of Objective #2, which this paper will call “Tax Funding Equity”, is in doubt.

* Some claim (mostly those from Moraga) that it was never an objective.

* Some claim (again, mostly from Moraga) that even if it was an objective, that objective is being met.

* But most of those (from Orinda) cognizant of the subject claim, at least from Orinda’s perspective, that

A) It was a clearly voiced objective by the framers of the merger.

B) It is not being met (**Orinda is subsidizing service in Moraga with \$2.5 million annually**).

C) MOFD has the power to meet the goals that the framers set for MOFD.

What MOFD has to determine to clear this issue up is:

- 1) From Orinda’s perspective, was Tax Funding Equity an objective of the creation of MOFD?
- 2) Was it anticipated that different areas of MOFD might have different needs and service levels?
- 3) Is Tax Funding Equity defined, prescribed or prohibited by MOFD formation documents?
- 4) If it is not defined, how should it be defined?
- 5) Once it is defined, what would be the mechanism to achieve it; short term and long term?

There are six basic documents that should be referenced in this discussion:

- 1) Orinda City Council Resolution 48-96
- 2) LAFCO Resolution 96-27
- 3) Board of Supervisors (BOS) Resolution 97-16
- 4) Board of Supervisors (BOS) Ordinance 97-1
- 5) Language of the ballot measures themselves.
- 6) The official voters’ pamphlet for the June 3, 1997 vote on (Orinda) Measures A, B & C

The **Orinda City Council Resolution** (adopted 9/3/96) requested of the County, via LAFCO, that the Orinda Fire Protection District and the Moraga Fire Protection District merge to form the Moraga-Orinda Fire Protection District. The terms of the merger were pretty much spelled out and had obviously been pre-negotiated as LAFCO agreed one month later to the request (in pretty much the same language) and the County agreed and called for the election for public agreement three months after that.

This was the “initiating” document along the path of merger. There was most likely a similar resolution passed by the Moraga Town Council. In the document, there was no stated reason given for the merger. There was no “condition” that “tax dollars paid in Orinda stay in Orinda” nor was there any restriction put on the new district to not allow this to happen. The topic was simply not addressed. The resolution did state that directors would be elected by (geographic) divisions.

There is one clause in the City’s resolution of interest: “The Moraga-Orinda Fire Protection District shall establish separate service zones coterminous with the boundaries of the existing Moraga Fire Protection District and Orinda Fire Protection District.” It spoke no more of what those zones were to be used for. Since the only difference between the two zones was the existence of separate Fire Flow Parcel Tax within each zone, maybe the sole purpose was to preserve the ability to maintain the Moraga tax. It was not necessarily to “carve out” part of Orinda and “deed it” to Moraga for emergency services or other tax revenue purposes (nor change the “tax funding equity” boundaries).

The main import of this document is that it shows that the Orinda City Council (in cooperation with the Moraga Town Council) was the “framer” of the new district. There may have been a bi-city commission formed to work out the details of the merger (as described by Dick Olsen), but it was on the City Council’s desk where “the buck stopped”. So if the City Council informed the electorate that the purposes of newly formed district were X, Y and Z, then those were the purposes of the new district. The language of the formation of the district did not work to guarantee the Council’s intent and to date circumstances have not allowed the intent to be fulfilled, but that does not mean the intent did not exist.

The **LAFCO resolution** (adopted 10/9/96) and the **BOS resolution** (adopted 1/14/97) are very similar to each other. They allow the Orinda Fire District and the Moraga Fire District to be merged into a single independent district (MOFD) by a vote of the people. The combined district would inherit the combined “assets and liabilities” of the predecessor districts including stations, personnel, service area, tax revenue, etc. The pre-existing Moraga Fire Flow Parcel tax would also be “inherited” and the district could put up for a vote of the people a similar “fire flow tax” for the area previously part of Orinda. The proceeds from the new tax are restricted for use “solely to fund activities of the Orinda Fire Protection District service area.”

Both documents state that “fire service zones” coterminous with the predecessor district (Orinda and Moraga) service areas should be established. Neither state what the purpose of creating these zones is.

Both documents state that MOFD will be governed by a five member Board of Directors directly elected by division (not at large). No reason for this is given.

Neither document mentions Tax Funding Equity by that name or any other name. They **do not define** it; they **do not prescribe** it; they **do not prohibit** it.

The LAFCO document identifies the City of Orinda and Town of Moraga as the “petitioners” for the merger. The merger was an official City action. It was not an action brought about by the citizenry.

The BOS document states “The purpose of the boundary change is to provide better and more efficient fire protection and emergency medical (paramedic) services to the affected territory.” Period. It does not state how those services are to be allocated across the territory.

The **BOS Ordinance** (adopted 1/14/97) defines the new Orinda Fire Flow Parcel Tax including:

- 1) It is to be used for (a wide variety; virtually any expense) services within the Orinda Service Zone (this may be the reason that the Zones needed to be defined in the BOS Resolution).
- 2) The formula for determining the cost per parcel include a defined cap on the “rate” of six cents.

Language of the Ballot Measures

On June 3, 1997 the question was put to the voters. In Orinda (the Orinda Fire Protection District; the Orinda Service Zone) there were three ballot measures: A, B & C. In Moraga (the Moraga Fire Protection District; the Moraga Service Zone) there were two ballot measures: AA & BB.

Measures A and AA were identical: “Shall the order adopted on January 14, 1997 by the Board of Supervisors of Contra Costa County to order the consolidation of the Orinda Fire Protection District and the Moraga Fire Protection District into a single district known as the Moraga-Orinda Fire Protection District be confirmed, subject to the terms and conditions specified in the order including the election of District directors by five geographical divisions.”

Measures B and BB were identical identifying the new district’s “special appropriations limit”.

Measure C on the Orinda ballot was to create the Orinda Fire Flow Parcel Tax. The passage of this tax was a condition for passing Measure A. Moraga already had a tax in place.

Neither **Measure A nor Measure AA** mentions Tax Funding Equity by that name or any other name. They **do not define** it; they **do not prescribe** it; they **do not prohibit** it. The only special “feature” prescribed in the election measure was “the election of District directors by five geographical divisions”. This paper contends the reason for this is that each division may have its own “special needs”, like securing Tax Funding Equity or fixing fire hydrants, that needs local representation.

Official Voters’ Pamphlet

We have been able to obtain the official Orinda voters’ pamphlet but not the Moraga pamphlet. We tried the County elections office, the Town of Moraga and MOFD. No one had a copy of this document that we could find. The lack of a Moraga voters pamphlet may be irrelevant

because it does not change what the Orinda voters were “promised” and who promised it. If the Moraga pamphlet said “Moraga taxpayers’ service cost will decrease because there will be a tax subsidy from Orinda”, then the divisions representing Moraga taxpayers would clearly have a different objective than those representing Orinda taxpayers’ interests. But we doubt such a promise was made.

What “promises” were made and who made them?

First, who made them? The arguments for the creation of MOFD (Measure A, B and C) to Orinda voters were submitted by a number of Orinda’s civic leaders including all five members of the sitting City Council (Littlehale [mayor], Tabor [mayor Pro-Tem], Hawkins, Abrams, Wheatland). It was the Orinda City Council (in conjunction with the Moraga Town Council) that petitioned LAFCO and the County to allow the merger. These were the “framers” of MOFD. There may have been an Orinda-Moraga commission to “iron out the details”, but as for overriding rationale; the buck stopped on the City Council’s desk. These were not simply engaged citizens but public officials who “called the question”. The Voters Pamphlet may not be a legally binding document (as Olsen pointed out), but it certainly is a valid source of intent by the framers. Maybe the framers should have been more rigorous in insuring the results of the merger (calling for audits; defining service; etc.), but they were “rigorous” with one point: election of Directors by division. All for one and one for all is fine, as long as my division is not harmed. And spending \$2.5 million in Moraga rather than Orinda when Moraga can raise its own \$2.5 million (or cut expenses a bit) is harmful to areas in Orinda (bad fire hydrants; no brush control; etc.).

What promises were made? Pretty clear, right at the top of the voters’ pamphlet:

- 1) *Put paramedics on every Orinda fire engine (done)*
- 2) *Insure that fire protection dollars Orindans pay will stay in Orinda.* By “stay in Orinda” we assume they meant “be used for services in Orinda”. As for “insuring”, other than defining parcel tax revenue as revenues to be used in Orinda, there were no means for “insuring” that ad valorem tax dollars stay in Orinda prescribed in the founding documents other than by locally electing directors and tasking them with this job.
- 3) *Insure that Orinda has three fire stations and current staffing levels.* So far so good. But what would have Station 46 have done? My contention was the Station 46 would have had to be accompanied by a paramedic station in Sleepy Hollow increasing the response units in Orinda from 3 to 4. Maybe not following the voters’ pamphlet to the letter, but providing better service and using Orinda dollars in Orinda.
- 4) *Make local fire commissioners responsible for our local needs.* That’s the voters’ responsibility.

Definition of “Tax Funding Equity”

It is very clear that the framers of MOFD (from Orinda’s side) envisioned and clearly stated to the community that Tax Funding Equity **would** occur; not “may” occur. They told the voters that the provisions in the formation documents, mainly representation by geographic area, “insured” that this would happen. Maybe they were overstating the case but there is certainly nothing in the documents preventing Tax Funding Equity from occurring. While they did not create a mechanism to track it or mechanically insure it (or even define it), neither did they allow anything to be put in

place that would prevent the Directors from carrying out the promise to the voters. And they made sure that locally elected directors would be put in place to do just that.

The definition of equity was given by the framers: “Fire protection dollars Orindans pay will stay in Orinda.” Stated another way: The cost of services in Orinda will equal the taxes raised in Orinda, and conversely, the cost of services in Moraga will equal the taxes raised in Moraga.

What defines Orinda?

One question that must be answered before revenues and expenses are allocated between Orinda and Moraga is “where are the boarders separating Orinda from Moraga?” If “Orinda tax dollars” are to “stay in Orinda”, what defines “Orinda”?

99.99% of people asked to define “Orinda” would find a map with the boarders of Orinda clearly defined separating it from Moraga, Lafayette, Berkeley, Oakland and unincorporated Contra Costa County. Only a tiny percent would even be aware that there is something defined as “the Orinda Zone” by MOFD which excludes 750 Orinda households. However, that zone (and the associated Moraga Zone which includes those 750 households) was specified by all of the “founding” resolutions (City, County and LAFCO) noted above and was referred to in the Impartial Analysis contained in the Voters’ Pamphlet. It is no secret that 750 homes in South Orinda, defined as Tax Rate Area 18012, are part of incorporated Orinda but are included in MOFD’s Moraga Service Zone, not the Orinda Service Zone. So are these homes part of Orinda, for the purposes of determining Tax Funding Equity, or not?

Accompanying this paper is a more detailed discussion of this issue. The conclusion in that paper is that TRA 18012, and the \$1 million of tax it provides to MOFD, is part of incorporated Orinda and should be considered part of Orinda from an emergency services perspective. The area is close to Moraga’s Station 41 but it is equally close to Orinda’s Station 44. Both stations are staffed with paramedic firefighters and both stations have an ambulance (this was not the case before MOFD was formed but it is now). Either station can provide 100% benchmark response times to this area. In other words, this area is double-served. It probably has the best service in Orinda. The fact that TRA 18012 is in incorporated Orinda is the tie-breaker when determining whether it should be considered part of Orinda or Moraga from a Tax Funding Equity perspective. Even though the people in this area did not vote for Orinda’s Measure A in 1997 (they were part of the Moraga Fire Protection District so they voted for Measure AA), they were still represented by the Orinda City Council which stated *that fire protection dollars Orindans pay will stay in Orinda*. Unless there is some use of the “Service Area” designations that we are not aware of, other than defining where the two parcel taxes are imposed, then we don’t see why this area of Orinda would be considered part of Moraga and why its tax dollars should be used to support Moraga’s emergency services when at least half the service to this area comes from Orinda stations.

What are Revenues?

The question here regards tax revenue, not other operating revenues from fees or other sources. These non-tax revenues would be deducted from expenses to arrive at the net cost (which should equal net tax revenue if the budget is balanced).

Once boundaries have been defined, tax revenues are easily provided by the County Auditor's office for both Orinda and Moraga. That calculation for the 2016/17 tax year based on assessed values released by the Assessor's Office for 2016/17 and a detailed list of assessed values by Tax Rate Area (TRA) obtained from the Assessor's Office for 2015/16 is attached.

What are Expenses / Cost of Services?

This is the more difficult question. Currently the vast bulk of services provided throughout the MOFD service area are emergency (and non-emergency) medical, fire, rescue and other types of responses by MOFD's six response units stationed in five stations. In addition, the District provides ancillary services such as plan checks (which it charges a fee for), public service classes, fire hydrant maintenance, annual weed abatement inspections and notices, etc. Most of the ancillary services are provided by the firefighters whose main responsibility is responding to emergency and non-emergency calls.

The populations of Orinda and Moraga, the number of incidents in Orinda and Moraga, and the number of firefighters stationed in Orinda and Moraga are all in about the same ratio. About 47% in Moraga and 53% in Orinda. Until Orinda and/or Moraga starts receiving some significant and "special" service (like major hydrant pipe upgrades in Orinda), then I, and others, have suggested that the simple expedient for allocating service costs is by allocating costs based on firefighters stationed in Orinda (9) vs. Moraga (8).

There is a wide variant in what firefighters cost, from first year non-paramedic Firefighter to a paramedic Captain. To assume that this variation is ratably spread across the district then using an average cost (total cost divided by 17) is not unreasonable. If there are factors (like the dedicated ambulance crew in Moraga which may be more or less expensive than average), then those can be taken into account.

Allocating administrative costs across all firefighters is a reasonable and simplifying assumption.

85% of MOFD's costs are labor related (responders and admin). The other 15%, or some of the other 15%, might be allocated by some factor other than where firefighters are stationed. Orinda has 3 of the 5 stations so station operating costs (exclusive of labor and administration costs) might be allocated 60% to Orinda. Station 43 is being rebuilt. The cost of that rebuild might be allocated to Orinda (my understanding is that it is being financed so the cost would be spread out). If additional services were provided to Orinda or Moraga, the costs of these services would be allocated to the respective community. If a cost saving measure was instituted, like the Moraga ambulance was staffed by non-firefighter paramedics, then those savings would be allocated appropriate.

Any cost allocation "scheme" would have to be reasonably simple. It cannot take a major accounting effort. It does not need to account for every roll of toilet paper. In general, MOFD is a unified district. 53% of the firefighters are stationed in Orinda. If Orinda taxpayers paid 51% or 55% of the cost, and this fluctuated year by year, then there would not be an issue. But Orinda taxpayers are paying 65% of the cost; that percent has been consistently increasing over the years; and that is 65% of \$23 million. It is a lot of money.

Historic and Other “Issues”

A couple of “arguments” have arisen over the years suggesting a simple allocation by firefighter’s needs to be modified.

Significant operations from Moraga into Orinda

At the 2009 and 2010 Tri Agency meetings, MOFD claimed there were significant operations from Moraga-based responders to Orinda incidents which justified Orinda taxpayers paying part of the operating costs of the Moraga stations. They did not quantify “significant” with actual operations statistics but instead used “first due” maps to show Moraga-based responders service into Orinda (these maps are further discussed below). However, in its 2012 report, the Orinda Citizens Emergency Services Task Force report tallied (Table III-1) all MOFD operations over a full year (2009) and found that for the year, of the 173 engine operations from Moraga to Orinda incidents and the 244 ambulance operations, all but 9 of the engine operations were reciprocated by operations from Orinda and all but 93 of the ambulance operations were reciprocated. The total, 102 non-reciprocated operations, represents 2 percent of MOFD’s total operations and 4 percent of Moraga’s total. While 4% of Moraga’s total operations is not insignificant, 2 operations a week is not stressing the system. In the same time period, ConFire provided 260 operations of mutual aid into the MOFD service area while MOFD only provided 145 mutual aid operations to all other districts including ConFire. ConFire did not charge MOFD for the imbalance.

At the time (2009), Moraga had a full time ambulance stationed at Station 41 and Orinda had a full time ambulance stationed at Station 45, 4.4 miles from Orinda’s southern border. Now, Moraga still has the one ambulance at 41 while Orinda has three cross-staffed ambulances including one at Station 44, 1.8 miles from Moraga. It is possible that Orinda is now providing net ambulance service to Moraga but the volume would still be small.

Bottom line: Orinda and Moraga stations provide mutual aid to each other’s community but most of it is reciprocated. Records can be kept and if one community is continually providing net aid to the other and not visa-versa, then compensation could be made. But records must be kept.

First Due Maps

At the 2009 Tri Agency meetings, to demonstrate how many operations came out of Moraga into Orinda (and claiming no reciprocal operations) MOFD produced a series of “First Due” maps for stations 41 and 42 (attached). These maps indicated that:

* The Moraga ambulance was designated the first responder to 1,504 parcels in South Orinda (not necessarily constructed on but since virtually every lot in South Orinda is constructed on, most would contain homes). This is approximately 20% of Orinda.

* The fire response units from Stations 41 and 42 were designated first responders to about 700 parcels in South Orinda, about 10% of all of Orinda.

Point One: Our understanding is that emergency response units are dispatched to incidents by ConFire dispatch using a computer model that calculates which unit, based on its real time GPS coordinates and those of the incident. They do not use some pre-arranged maps based on where equipment is based (but may not currently be). We are not sure how long this system has been in place but we think at least five years. We believe that it was in place in 2009 when MOFD first presented the maps to the Tri Agency Meeting.

Point Two: According to the maps, Moraga engines should have provided 10 percent of all responses to Orinda incidents and Orinda engines zero reciprocal responses to Moraga incidents. In fact, based on the 2012 Orinda Task Force analysis of all 2009 incidents, Moraga engines responded to 173 incidents in Orinda out of 1,431 total responses (12 percent) but Orinda equipment reciprocated with 123 responses into Moraga when the maps said there should have been none.

Point Three: The same story for ambulance responses. According to the maps, the Moraga ambulance should have provided 20 percent of all ambulance responses to Orinda incidents and the Orinda ambulance zero responses to Moraga incidents. In fact, the Moraga ambulance responded to 244 incidents in Orinda out of 988 total ambulance responses (25 percent) but the Orinda ambulance reciprocated with 139 responses into Moraga when the maps said there should have been none.

Point Four: The maps ignored the fact that MOFD equipment also provides mutual aid outside the District in return for mutual aid being provided to MOFD by other districts. As was previously noted, where MOFD equipment provided 145 mutual aid responses out, MOFD received 260 responses in return from ConFire alone (plus an unknown [to me] amount from other local agencies). And Orinda equipment providing 100 out of MOFD's 145 mutual aid responses (Moraga 45) while ConFire's response back went more to Moraga (140 out of 260) than to Orinda.

At the June 15, 2016 Board Meeting Fred Weil again brought up these maps and their import and "proof" of the volume of service Moraga stations provide into Orinda with no reciprocation of service from Orinda into Moraga. Either:

- 1) Fred understands the import of these maps better than we do.
- 2) Fred does not understand that these maps are no longer used to dispatch response units.
- 3) Fred does understand that they are no longer used and he is not being honest.

It needs to be determined if these "First Due Maps" have any current relevance or if they are just a red herring.

Battalion Chiefs

MOFD currently has three Battalion Chiefs, one for each shift. Their office is in Orinda's Station 45. In the past, MOFD has tried to include these administrators as Orinda firefighters, increasing the number of firefighters in Orinda from 9 to 10 (so, if costs were prorated by firefighters, Orinda would bear a 10 of 18 (56%) as opposed to 9 of 17 (53%) share of the cost.

These firefighters are administrators, not responders. They can be responders; they are trained and capable of being responders; and maybe they should be responders (does a 5-station

system really need 3 BC's costing over \$300,000 per year each?), but they are not responders. At least not mainly in Orinda.

In the Orinda Task Force study, these administrators' vehicles were tracked in the operations analysis. In the year studied, they attended 291 (out of 2,400) incidents in the year; 154 (53%) in Orinda and 137 in Moraga. They also attended 59 incidents outside the district. In other words, the number of incidents they attended in Orinda vs. Moraga was in the exact ratio to the number of firefighters stationed in Orinda vs. Moraga. Sounds like administration to me.

Another red herring.

Appropriate Measure of Service

There are a number of metrics which could be the "appropriate" measure of service.

- 1) Firefighters stationed in a community prepared to provide service (this could be a case for the "first due" maps if they accurately reflected where the units actually went).
- 2) First responder service. The crucial element for many emergencies is response time and the most important responder is the first responder.
- 3) Total service; all responses. If there are 5 engines at a fire, is the first engine that much more important than the other four? If an engine, even one staffed by a paramedic, is first responder to a medical emergency, is its presence more important than the "backup" ambulance?
- 4) Service received vs. service provided. If Moraga sends an engine to an emergency in Orinda, is it any less "missed" in Moraga (where it is no longer available as a responder) if it is the first or backup responder in Orinda or if it is the most appropriate piece of equipment (engine vs. ambulance) responder to the specific emergency? Is it the value **TO** Orinda or the value **TAKEN AWAY FROM** Moraga that should be measured?

These are complexities that could tie the entire "measure of service" into a Gordian knot. My opinion is that unless there appears to be significant shifts of service from one community into the other (as MOFD attempted to show by the use of First Due Maps which implied 10-20 percent of Orinda's service came out of Moraga) by any measure, then a very simple measure of service (firefighters stationed in each community) should be the measure. If Orinda and Moraga were still separate districts they would pay for the firefighters stationed in their city/town and mutual aid would end up providing the same service we now have. If that mutual aid was "out of whack", one district would negotiate with the other for remuneration.

Conclusion

Stepping back, if all of Orinda and Moraga were as well served (engine and ambulance paramedic service to all) and well equipped (appropriate and well maintained equipment and stations) as they are today; and the Orinda Fire District and the Moraga Fire District were formed and then merged, there would be less controversy:

1) South Orinda's TRA 18012 would not be part of the Moraga Fire District. While the "break even" dividing line of equal response times to this area is not at the city limit sign (Miramonte High School), nonetheless, units from Orinda's Station 44 could still make it all the way to Miramonte in well under the benchmark 6 minutes so the area would be well serviced by Orinda units alone with Station 44 containing fire suppression equipment, an ambulance, and staffed by paramedic firefighters. The fact that the southern portion of this area is even closer to Moraga's Station 41 is a bonus and the mutual aid provided by Moraga well appreciated. But how much is it "worth"?

2) If the merger was today, it would be obvious that Orinda had a lot more money for emergency services than Moraga. It would not even need a parcel tax if it did not want it and still have \$2 million for "ancillary" services such as pipe upgrades to fire hydrants; a brush removal program in the very severe fire hazard areas of North Orinda; and maybe a satellite paramedic station in Sleepy Hollow to provide appropriate response times to 10 percent of Orinda. Conversely, Moraga would need its parcel tax at the full 30 cents to afford the 8 firefighters it wants.

3) In 1997 the Orinda City Council was somewhat prescient in stating that Orinda tax dollars need to stay in Orinda. At the time some were being used for other purposes elsewhere in the County. They did not have today's 20-20 hindsight that Orinda's tax base would grow much faster than the rest of the County (and inflation) while the population and need for more "basic" service, would remain static, thus providing more dollars for enhanced services.

Unfortunately the City Council's goals for the newly formed MOFD have not been met. No "guarantees" for Orinda tax dollars staying in Orinda were put in place. Only general guidelines. At the same time, they did not allow any prohibitions to be included in MOFD's charter that would not allow for what they envisioned to be carried out.

MOFD can be made into what we thought it would be. It can be re-crafted into what it would be if it were to be formed today. This can be accomplished relatively quickly with an increase in Moraga's parcel tax. It will take longer (and the "inequity" should be accounted for and aggregated while the slow cure is being implemented), but a cure can be devised if basic costs are controlled (employee total compensation growth limited to inflation) as even Moraga's tax base is growing faster than inflation. Once reasonable reserves are established and "debt" repayments scheduled, all revenue gains would be dedicated to extra services in Orinda until equity is achieved.