

July 17, 2023

Via Email (amontescardenas@smcgov.org)

San Mateo LAFCo
c/o Angela Montes Cardenas
455 County Center, 2nd Floor
Redwood City, CA 94063

Re: Public Comment Re: Items nos. 6 and 7 Broadmoor Police Protection District Update

Dear Commissioners:

I write to express my continued exasperation at the Broadmoor Police Protection District's response to the LAFCo's Special Study detailing the financial malfeasance plaguing the department. The BPPD has been aware of the Study's findings since November 2022, but has yet to articulate a coherent response to, let alone take action to address, the many shortcomings the Study identified. Instead, it continues to blame LAFCo, the County, and me, a private citizen, for its own inability to balance its budget. It thumbed its nose at LAFCo and the county's taxpayers by passing yet another unbalanced budget in June 2023. Consequently, I must continue to insist LAFCo take action to disband the department, including immediately undertaking a municipal services review.

The department's primary response to the Study has been to say that the data it cites is incorrect. LAFCo, however, did not pull the data in the Study out of thin air. Rather, the BPPD supplied it to LAFCo. Because the BPPD is unhappy with the unflattering picture that data paints of its incompetence and bloat, it now seeks to replace that data. It provides no source for this new data. It claims it receives nine times the number of calls for service it previously said. The BPPD will not disclose how it defines a "call for service," nor will it explain why its original numbers were off by a factor of nine. It claims it has "statistics going back to 1999" and that it implemented a new dispatch tracking system in 2021, but it refuses to share any of those alleged metrics. The BPPD is a publicly funded police organization. Its operations should not be cloaked in secrecy. Its records should not go missing every time a new chief takes over.

Even its own metrics do not suggest that the BPPD do much of anything. Less than half of its alleged 6,772 calls are actual responses to residents. 1,489 of its "calls" are not calls at all but rather passing checks in which the BPPD decides on its own something looks suspicious. Another 542 are "follow up," implying that the district is counting single incidents twice, once for the initial encounter and twice for follow up. There is no reason to trust the department's figures.

Its extremely belated response to the matrix LAFCo asked the BPPD to complete is similarly disappointing and disingenuous. It apparently intends to take no action in response to the Study as it responds N/A in the column where it is supposed to supply the "details of changes or implementation." Its other responses are hardly more fulsome.

Even as it acknowledges insurance and litigation costs drive much of its budget shortfall, the department still resists sharing human resources and other compliance staff with neighboring entities or providing more transparency about its expenses. The BPPD claims it “would not be a good use of precious tax dollars.” As a litigator myself, I deeply respect and value our state’s judicial system. As a taxpayer, however, I cannot fathom how paying inflated insurance premiums and costly litigation expenses is a more efficient use of tax dollars than paying compliance staff to avoid them. This simply makes no sense. The BPPD resists any attempt to reign in its finances. It refuses to reduce its reliance on ERAF and suggests that it is no different than other grants, even as the County’s budget projections suggest ERAF will be less than half what it has been in prior years. See County of San Mateo FY 2023-25 Recommended Budget, p. B-21, <https://www.smcgov.org/media/144158/download?inline=>

The department also states that it need not comply with the Gann Spending Limit in the state’s constitution. This is ludicrous. Section 9 of Article XIII B does not exempt certain local government entities. Rather, it carves out certain items from the Gann Appropriation Limit. To wit, section 9 excludes certain categories of appropriations “for each entity of government.” It does not exempt all appropriations of some entities entirely. See, e.g. *City of Sacramento v. State of California*, 50 Cal. 3d 51, 76 (1990)(“the courts and the Commission must respect the governing principle of article XIII B, section 9, subd. (b): neither state nor local agencies may escape their spending limits. . .”) Nothing supports the BPPD’s position that it can spend whatever it likes, regardless of its income and the actual costs to provide service.

Finally, while the BPPD does not respect LAFCo’s recommendations, given its spending on litigation, it does appear to respect the authority of our Courts. Thus, I put this choice to the BPPD: either the BPPD can comply with the state constitution and amend its FY2024 budget commensurate with its appropriations in FY2023 or, on November 22, 2023, I will sue the BPPD in San Mateo County Superior Court for an injunction requiring it to do so. *White v. Davis*, 30 Cal. 4th 528, 556–57 (2003) (“a taxpayer’s general interest in not having public funds spent unlawfully (including not having such funds spent in alleged contravention of fundamental constitutional restrictions) is “sufficient to afford standing to bring a taxpayer action under Code of Civil Procedure section 526a and to obtain a permanent injunction after a full adjudication on the merits.”)

Along with an injunction, my complaint will seek a declaration that the special assessment the BPPD collects from its residents is unconstitutional because the BPPD provides services outside of the special district. Cal. Const. art. 13D, § 6(b)(5) (“No fee or charge may be imposed for general governmental services including, but not limited to, police. . . where the service is available to the public at large in substantially the same manner as it is to property owners.”) I will also demand the BPPD return all amounts it has unjustly collected from residents since the passage of Proposition 218 in 1997. All of the remedies this complaint will seek are equitable and thus generally uninsurable and, if my claims succeed, the BPPD will be liable for my fees. Cal. Civ. Proc. Code § 1021.5. I certainly hope the department has sufficient reserves to defend against it and pay my fees, but I rather doubt it.

Sincerely,

