

County of Santa Clara

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Megan Doyle
Clerk of the Board

September 10, 2019

The Honorable Deborah A. Ryan
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

(ENDORSED)
FILED
SEP 12 2019
Clerk of the Court
Superior Court of CA County of Santa Clara
BY Antney Huelbig DEPUTY

RE: Grand Jury Report: The Santa Clara County Fairgrounds: A Diamond in the Rough.

Dear Judge Ryan:

At the August 27, 2019 meeting of the County of Santa Clara Board of Supervisors (Item No. 44), the Board adopted the responses from response from the Facilities and Fleet Department, Office of Asset and Economic Development, and Planning and Development Department to Final Civil Grand Jury Report entitled, The Santa Clara County Fairgrounds: A Diamond in the Rough.

As directed by the Board of Supervisors and on behalf of the Board President, our office is forwarding to you the enclosed copy of the response to the Final Grand Jury Report. The response constitutes the response of the Board of Supervisors, consistent with provisions of California Penal Section 933(c).

If there are any questions concerning this issue, please contact our office at (408) 299-5001 or by email at boardoperations@cob.sccgov.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jessica Schmidt', is written over a horizontal line.

Jessica Schmidt
Deputy Clerk, Board of Supervisors
County of Santa Clara

Enclosures

County of Santa Clara

Facilities and Fleet Department

County Center at Charcot
2310 North First Street, Suite 200
San Jose, California 95131-1011
(408) 993-4600



Date: July 30, 2019

To: Miguel Márquez, Chief Operating Officer

From: Jeff Draper, Director, Facilities and Fleet Department
Bruce Knopf, Director, Office of Asset and Economic Development
Jacqueline Onciano, Director, Planning and Development Department

Subject: Response to Santa Clara County Civil Grand Jury Final Report: The Santa Clara County Fairgrounds: A Diamond in the Rough.



Adopted: 08/27/2019

The Santa Clara County Civil Grand Jury's Final Report, **The Santa Clara County Fairgrounds: A Diamond in the Rough** contained multiple findings and recommendations that require a response from the County of Santa Clara. This memo contains the joint response to the report from the Facilities and Fleet Department (FAF), Office of Asset and Economic Development, and the Planning and Development Department.

Finding 1a

"The Santa Clara County Fairgrounds is a financially unproductive asset for the County of Santa Clara which is accruing millions of dollars in deferred maintenance and has continually required the County's financial support to address deferred maintenance."

Response to Finding 1a: The County agrees with Finding 1a.

Finding 1b

"There is no realistic chance that Fairgrounds Management Corporation (FMC) will have sufficient financial ability to address the backlog of deferred maintenance."

Response to Finding 1b: The County agrees with Finding 1b.

Recommendation 1

"The County should develop a realistic financial plan to address the deferred maintenance of the County's property and buildings by June 30, 2020."

Response to Recommendation 1: The County agrees with Recommendation 1 and expects to complete needed further analysis and implement the Recommendation within the prescribed time frame.

The County has initiated a two-pronged strategy to incorporate the Recommendation as stated below:

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith

The first prong involves maintenance and repair items. In December 2017, the Office of the County Executive (CEO) assigned responsibility for addressing code compliance issues and deferred maintenance of facilities at the Fairgrounds to FAF, with the understanding that FMC would continue to be responsible for operational maintenance of the facilities. FAF has since:

- Hired a consultant to perform a condition assessment and prepare a report that included Americans with Disabilities Act (ADA) improvements to be used as a basis for developing maintenance, repair, and minor improvement projects. The report is complete and FAF has begun planning deferred maintenance projects for upcoming years. FAF will coordinate the implementation of projects with FMC to minimize impacts on Fairgrounds operations and events.
- Established projects to replace the most critical HVAC units and address other ADA improvements.
- Addressed concerns raised by the County Fire Marshal and County Office of Building Inspection regarding bringing electrical work up to code as well as resolving sanitary sewer issues.
- FAF is responding to and resolving major building systems failures as they arise, for example, mechanical, electrical, fire-life safety, plumbing, roofing, etc.

As part of the revised agreement with FMC that is currently being negotiated, the CEO, FAF, and FMC will more tightly identify the definition of operational maintenance for which FMC will be responsible as well as the support FAF will provide in terms of an annual inspection and testing program to improve facility readiness and reliability.

The second prong is an outcome of the Fairgrounds Master Plan process that started with the County's decision in November 2013 to retain a consultant with Fairgrounds expertise to identify the strengths, weaknesses, and opportunities as well as future potential of the Fairgrounds. This involved an analysis to determine what areas of the Fairgrounds are not producing optimal public benefit, and began a visioning process including engagement of the Board of Supervisors, the local community, stakeholders, and business and government partners to better understand their needs and concerns and get input on ways to use the Fairgrounds properties to better benefit the entire community.

FMC is currently preparing a redevelopment strategy and operating proposal that is consistent with the Fairgrounds Master Plan. This will be presented in the fall of 2019 as part of FMC's request for an extension of the Management Agreement between the County and FMC beyond December 31, 2019. The County will work with its consultant team to evaluate and make recommendations to the Board of Supervisors regarding the FMC proposal, including a financial plan and priorities for continued County investment to address deferred maintenance, and selected facility and infrastructure upgrades.

Finding 2a

“Many of the current uses of Fairground property are inconsistent with FMC's purpose to provide ‘...county fair and similar educational, cultural, and community functions.’ The County knows that these uses are inconsistent with FMC's purpose.”

Response to Finding 2a: The County agrees in part and disagrees in part with Finding 2a.

Some of the current uses of Fairground property would appear to be inconsistent with FMC's purpose as stated in its Articles of Incorporation. However, the County disagrees with Finding 2a in so far as the

parties who negotiated the Management Agreement intended to allow FMC to take on other ancillary or supporting activities in connection with the managing the Fairgrounds so long as such activities do “not interfere” with the use of the property for Fair purposes. The County acknowledges that the Articles of Incorporation are not entirely clear on this point and will require FMC to amend its Articles of Incorporation to provide clarity accordingly.

Finding 2b

“FMC is not adhering to the Agreement. The County knows that FMC is not adhering to the Agreement.”

Response to Finding 2b: The County agrees in part and disagrees in part with Finding 2b.

The Management Agreement dated April 18, 2000, as Amended, articulates multiple responsibilities for FMC and it establishes an inherent hierarchy of responsibilities. The Management Agreement states several responsibilities that are obligations, and it permissively allows FMC to enter into agreements for other certain uses that do not interfere with the conduct of the annual County Fair.

The Management Agreement states as follows (emphasis added):

- FMC **shall** annually present an Annual Fair and it shall pay all expenses of the Fair (Section 1.02.);
- FMC **shall** cover annual operating expenses and capital improvement expenses (Section 3.01.); and,
- FMC **shall** maintain and repair the existing improvements (Section 6.01.).
- Section 4.01 of the Agreement again restates that FMC “...**shall** permit the Residual Property to be used and occupied for purposes of conducting the annual County Fair on behalf of the County of Santa Clara.
- Section 4.01 goes on to permissively state that FMC “...**may** allow the property to be used for promotion of any educational, charitable, informational, cultural, entertainment, or amusement purpose...and no events **shall** be permitted which shall interfere with the conduct of the annual County Fair.”

The County recognizes that the Management Agreement is silent on whether FMC may allow the property to be used for any use which is not an “educational, charitable, informational, cultural, entertainment, or amusement purpose.”

Many of the current uses of the Fairgrounds are temporary, short-term uses of otherwise empty land and do not “interfere with the conduct of the annual County Fair.” FMC enters into such licenses to provide revenue in support of FMC’s obligation to cover all operations costs, to cover the cost of maintenance and capital improvement, and to cover the cost of presenting an Annual County Fair, an event that for years has required financial subsidy. Furthermore, all revenue generated from such, temporary, short-term uses remain with FMC for operations of the Fairgrounds consistent with the terms of the Management Agreement.

Numerous events conducted at the Fairgrounds are community-based and do not cover the full cost of the operations of the Fairgrounds. Those opportunities for non-profit and community events to take place would not be possible without the additional revenue provided by short-term uses that cover other operational and maintenance costs. However, in light of the Grand Jury’s observations, the County will consider which allowable uses are consistent with the Agreement. The County agrees that the Management Agreement should be revised to provide guidance regarding short-term, revenue-producing

uses until they can ultimately be replaced as opportunities arise with other educational, cultural and community activities that can be both financially viable and widely supported.

See also Response to Finding 2c, and Response to Recommendation 2 below.

Finding 2c

“The 25-year old Management Agreement is woefully outdated and in need of review and revision.”

Response to Finding 2c: The County agrees with Finding 2c but notes that the current Management Agreement is up-to-date and incorporates all relevant current County and Board policies. The County is currently negotiating an Amended and Restated Agreement to replace the current Management Agreement when it terminates on December 31, 2019.

Recommendation 2

“By December 31, 2019, the County should either enforce proper use of the FMC property consistent with FMC’s purpose and the Agreement or revise the governing documents to accurately reflect the use of the Fairgrounds.”

Response to Recommendation 2: Recommendation 2 will be implemented within the December 31, 2019 time frame.

The County is drafting a new, updated, and significantly revised Amended and Restated Agreement that will clearly spell out the parties’ roles and responsibilities and explicitly address ancillary and supporting activities on the Fairgrounds property. The renegotiation of the Management Agreement will be completed within the time frame of Recommendation 2, prior to December 31, 2019.

The County will also require FMC to amend its Articles of Incorporation by December 31, 2019 to clarify that FMC’s purpose includes taking on other ancillary or supporting activities in connection with the managing the Fairgrounds so long as such activities do not interfere with the use of the property for Fair purposes.

Finding 3

“Contractor storage yards, the RV park, RV/(Boat) storage and vehicle auctions are inconsistent with FMC’s purpose to provide ‘...county fair and similar educational, cultural, and community functions.’”

Response to Finding 3: The County agrees in part and disagrees in part with this finding. See Responses to Finding 2a and Finding 2b above, which reiterate the County’s understanding that the parties who negotiated the original Management Agreement intended to allow FMC to take on such ancillary or supporting activities to produce revenue to support Fairgrounds operations, so long as such activities do “not interfere” with the use of the property for Fair purposes. Furthermore, the County understands that FMC terminated the RV/Boat Storage use as of June 30, 2019.

Recommendation 3a

“By October 31, 2019, the County should evaluate and determine if each of the current uses and activities carried out by FMC at the Fairgrounds comport with FMC’s purpose to provide ‘...county fair and similar educational, cultural, and community functions.’”

Response to Recommendation 3a: Recommendation 3a requires further analysis and will be implemented by December 31, 2019. As stated in the Response to Recommendation 2 above, the County is negotiating a revised Management Agreement with FMC that will explicitly address acceptable ancillary uses of the Fairgrounds property. The County will also require FMC to amend its Articles of Incorporation to clarify its purpose.

Recommendation 3b

“If the report prepared in response to Recommendation 3a identifies uses and activities carried out by FMC at the Fairgrounds that are not consistent with FMC’s purpose, the BOS should prohibit the inconsistent uses and activities by December 31, 2019.”

Response to Recommendation 3b: Recommendation 3b will be implemented within the December 31, 2019 time frame if such uses and activities are identified.

Finding 4

“FMC’s bingo games do not comply with many County bingo regulations.”

Response to Finding 4: The County agrees in part and disagrees in part with Finding 4 to the extent that it is conducting further analysis, including research into bingo operations at other venues, to determine the extent of compliance and/or non-compliance and to obtain FMC compliance.

Recommendation 4a

“By October 31, 2019, the County should ensure that FMC’s bingo games adhere to the County’s bingo regulations.”

Response to Recommendation 4a: The Recommendation has been partially but not fully implemented; it will be implemented by October 31, 2019. The Office of Asset and Economic Development, County Counsel, Planning Department, and FMC have established a working group to implement Recommendation 4a. FMC has already implemented certain agreed-upon actions and further research is underway. FMC will be in complete compliance with all bingo regulations no later than October 31, 2019.