

County of Santa Clara

Office of the Clerk of the Board of Supervisors

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Megan Doyle
Clerk of the Board

September 12, 2019

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

(ENDORSED)
FILED
SEP 16 2019
Clerk of the Court
Superior Court of CA County of Santa Clara
BY Briana Huebner DEPUTY

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

Dear Judge Ryan:

At the August 28, 2019 meeting of the Fairgrounds Management Corporation (Item No. 7), the Corporation adopted the response from County Administration to the Final Grand Jury Report entitled The Santa Clara County Fairgrounds: A Diamond in the Rough.

As directed by the Fairgrounds Management Corporation and on behalf of the Chairperson, our office is forwarding to you the enclosed copy of the response to the Final Grand Jury Report. This response constitutes the response of the Fairgrounds Management Corporation, 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,

Danika Relth
Deputy Clerk, Board of Supervisors
County of Santa Clara

Enclosures

Board of Supervisors:
Mike Wasserman
District 1

Cindy Chavez
District 2

Dave Cortese
District 3

Susan Ellenberg
District 4

S. Joseph Simitian
District 5

Date: August 22, 2019
To: Fairgrounds Management Corporation Board of Directors
From: Abraham Andrade, Santa Clara County Fairgrounds Management Corporation
Re: Response to Santa Clara County Grand Jury Report: 2018-19 Civil Grand Jury –
The Santa Clara County Fairgrounds: A Diamond in the Rough

The Santa Clara County Grand Jury Report – The Santa Clara County Fairgrounds: A Diamond in the Rough contained ten Findings and twelve Recommendations. The Grand Jury requests responses by the Santa Clara County Fairgrounds Management Corporation (FMC) to eight of the Findings and seven of the Recommendations. FMC’s responses are below.

Finding 1b.

There is no realistic chance that FMC will have enough financial ability to address the backlog of deferred maintenance.

Response to Finding 1b.

Agree.

In 2018 the County’s Facilities and Fleet Department assessed the Fairgrounds buildings and other capital improvements and summarized their findings of the deferred maintenance in a report issued in May 2018. FMC and the County’s Facilities and Fleet Department are working together to develop a plan prioritizing the corrective actions and identifying the necessary funding to complete the work.

Finding 2b.

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

Response to Finding 2b.

Disagree.

The current Management Agreement between the County of Santa Clara and the Santa Clara County Fairgrounds Management Corporation (“Management Agreement”) permissively allows FMC to utilize the buildings and grounds in generating income for the purpose of funding the operations and maintenance obligations of the County Fairgrounds, with the exception that “no events shall be permitted which shall interfere with the conduct of the annual County Fair.” FMC enters into agreements for interim uses that do not interfere with the conduct of the annual County Fair.

Finding 2c.

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

Response to Finding 2c.

Agree.

Finding 3.

Contractor storage yards, the RV park, RV storage and vehicle auction are inconsistent with FMC's purpose to provide "...county fair and similar educational, cultural, and community functions."

Response to Finding 3.

Disagree.

The current Management Agreement permissively allows FMC to utilize the buildings and grounds to generate income for the purpose of funding the operations and maintenance obligations of the County Fairgrounds, with the exception that "no events shall be permitted which shall interfere with the conduct of the annual County Fair." FMC enters into agreements for interim uses that do not interfere with the conduct of the annual County Fair.

Finding 4.

FMC's bingo games do not comply with many County bingo regulations.

Response to Finding 4.

Agree in part.

FMC believes it is currently compliant with State law and County bingo regulations but will reassess compliance and or non-compliance and take whatever corrective action if necessary, by October 31, 2019.

Recommendation 4b.

By October 31, 2019, FMC should ensure that the bingo games are following the County's bingo regulations.

Response to Recommendation 4b.

Agree.

Finding 5.

The FMC Board exerts inadequate fiscal oversight of FMC's financial reporting of its operations and has failed to address the numerous inconsistencies in its financial reports.

Response to Finding 5.

Disagree.

The FMC Board practices fiscal oversight through the establishment of a Finance Committee to preview monthly financial results prior to the monthly presentation to the Board and an Audit Committee to review the annual Financial Audit, independently with FMC's audit firm. The FMC Board reviews monthly Financial Reports at Board meetings and addresses questions to staff when additional details or clarification is sought.

Recommendation 5a.

FMC should direct its auditor to address and comment by December 31, 2019, on the appropriateness of FMC's reporting of building improvements and landscaping as capital assets and the depreciation of those assets.

Response to Recommendation 5a.

Implemented.

The FMC's Fiscal Department and FMC's financial auditors agree that FMC should continue its current accounting of assets, depreciation and amortization.

In reference to reporting of building improvements and landscaping, as capital assets and depreciation taken against such assets, the below footnote has been added to the draft 2018 Audited Financial Statement:

IMPROVEMENTS, FURNITURE AND EQUIPMENT

In accordance with the terms of the management agreement with the County of Santa Clara, all improvements become the property of the County of Santa Clara upon purchase, however, the Organization has the beneficial use of all assets purchased. In the event the agreement is canceled or otherwise terminated in any manner, title to the improvements shall be and remain the property of the County of Santa Clara. Since the County of Santa Clara owns the improvements, these "right to use assets" are amortized rather than depreciated by the Organization over their estimated useful lives. The Organization is responsible for maintaining insurance coverage on all improvements.

Additionally, research showed that the FMC treatment is consistent with other Fairgrounds operations in California.

Recommendation 5b.

FMC should take steps to have FMC’s financial reporting revised to be more transparent and consistent across all its reports by December 31, 2019.

Response to Recommendation 5b.

Implemented.

With the draft 2018 Audited Financial Statements, FMC’s financial auditors and FMC staff reviewed the revenue/expense heading “Events” derived from a mixed grouping of operations and disaggregated into four specific profit centers: Events (Licensee fee for the temporary use of building or outdoor space), Parking, RV Park & Storage and Anchor Licensees. In addition, Bingo and Hosted Events (Events produced by SCCFMC including the Hop ‘N Vine Festival and Market, Fourth of July Celebration and Pubtoberfest have been retitled and better defined for clarification. Future financial reporting will show these business units separately for ease of understanding and assessment no later than the Grand Jury target date of October 31, 2019.

Finding 6.

FMC’s bookkeeping lacks transparency regarding the actual revenue received from different activities and events, specifically the profitability of bingo and the County Fair.

Response to Finding 6.

Agree.

FMC has better defined each of its significant revenue sources with a footnote in the draft 2018 Audited Financial statements as follows:

**SIGNIFICANT REVENUE AND SUPPORT CATEGORIES
AND DESCRIPTIONS FOR EACH ARE AS FOLLOWS:**

Anchor Licensees - FMC enters into a License Agreement with licensees for the temporary use of a designated location on the Fairgrounds for a specified term. The licensee agrees to pay SCCFMC a monthly license fee plus any additional charges for labor, services and equipment in connection with the permitted use.

Off Track Betting - Revenue generated from satellite wagering commissions and city tax from Golden Gate, Los Alamitos, and other horse racing locations.

County Fair An annual event produced by FMC. Revenues are generated from admission fees, parking fees, food and beverage sales, sponsorships, and vendor revenue sharing.

Events - FMC enters into a License Agreement with licensees for the temporary use of a building or outdoor space on the Fairgrounds for a specified event within an agreed upon term. The licensee pays FMC a use fee plus any additional charges for labor, services, and equipment used in relationship to the event.

Food and beverages - Income generated from concession and catering services provided by FMC staff at events. FMC also enters into a License Agreement with caterers and food truck vendors for the temporary use of space and equipment in the commercial kitchen. In consideration, the licensee pays FMC a use fee.

Parking - Direct charges for using a parking space.

RV Park and Storage - Income generated from the daily use of Recreational Vehicle (RV) spaces in the RV park and monthly revenues from RV and boat storage.

Bingo - Revenue generated from Bingo and Bingo flashcards games conducted twice a week, Tuesdays and Thursdays.

Hosted Events - In addition to the annual County Fair, FMC produces three (3) events during the year; Hop 'N Vine Festival & Market, Fourth of July Celebration, and Pubtoberfest. Revenues are generated from admission fees, parking fees, food and beverage sales, sponsorships, and vendor revenue sharing.

Other Income - Other income consists primarily of proceeds from an insurance claim

Recommendation 6a.

FMC should immediately establish a separate account for bingo income consistent with the County Ordinance Code in order to enhance clarity around the financials of bingo.

Response to Recommendation 6a.

Partially implemented.

FMC has opened a separate bank account for the Bingo operations in compliance with SCC Ordinance.¹ Additionally, FMC's Fiscal Department is analyzing the Bingo revenues and expenses to transfer funds to this account based on historical accounting data regarding Bingo proceeds and expenses. The analysis will be completed by October 31, 2019.

Recommendation 6b.

By October 31, 2019, FMC should ensure that FMC's public financial reports accurately reflect the revenue earned by FMC's bingo operations and the County Fair.

Response to Recommendation 6b.

Implemented as of draft 2018 Audited Financial Statement. FMC will continue to identify clearly in its Financial Reporting those funds from Bingo that are transferred as a subsidy to the Fair account. The FMC Bingo operation advertises that the proceeds are used to benefit the Youth Fair, and differing amounts of funds have been transferred annually to the Fair consistent with that commitment. In order to make this transaction more apparent, a note was added to the draft 2018 Audited Financial statements showing the transfer of \$135,000 from Bingo to the Fair (as reflected in the draft 2018 Audited Financial statement – Schedule of Support, Revenue and Expense).

Recommendation 6c.

FMC should seek financial advice on the proper reporting of income from pull tabs which appear to constitute unrelated business income; reporting of building improvements as capital assets and depreciation taken against such assets and file all necessary tax forms.

Response to Recommendation 6c.

Partially implemented.

FMC is seeking advice and will take appropriate action.

In reference to reporting of building improvements as capital assets and depreciation taken against such assets, a footnote has been added to the draft 2018 Audited Financial statements. Reference response to Recommendation 5a.

¹ SCC Ordinance Chapter V. Bingo Sec. B3-85 - Proceeds must be kept in a special fund or account and shall not be commingled

Finding 7.

The FMC appears to be using the closed session personnel discussion exception to discuss other business which is not permitted by the Ralph M. Brown Act.

Response to Finding 7.

Disagree.

Recommendation 7.

The FMC Board of Directors key staff should undergo training to comply with the Ralph M. Brown Act by October 31, 2019.

Response to Recommendation 7.

Agree.

Updated Brown Act training will be provided before October 31, 2019.