
From: carolynbeaver
Sent: Tuesday, May 7, 2024 6:29 PM
To: nkovacevich@ocfairboard.com
Cc: bbagneris@ocfairboard.com; rruiz@ocfairboard.com; tbilezikjian@ocfairboard.com; dlabelle@ocfairboard.com; npham@ocfairboard.com; nrubalcava-garcia@ocfairboard.com; djackson@ocfairboard.com; Michele Richards; OCF Executive; BMiller@sheppardmullin.com
Subject: OC Fairgrounds Equestrian Center - Violation of Board Policy Manual
Attachments: OCFEC Board Rental Rate Vote and Gift of Public Funds Letter 4860-0481-2732 v.1.pdf; Agricultural Education Public Programs Community Outreach Events.pdf

Please see the attached letter from Brooke Miller for Sheppard, Mullin, Richter & Hampton LLP. Please consider this information as you develop the agenda for the May Board meeting.

Sincerely,
Carolyn Beaver

619.338.6530 direct
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May 7, 2024

VIA ELECTRONIC MAIL ONLY

Nick Kovacevich
President of the Board
OCFEC Board of Directors

Re: Violation of OCFEC Board of Directors Governing Policy Manual
OCFEC Board Meeting of March 28, 2024, Item 9C

Dear Chair Kovacevich:

This firm represents a group of equestrians and long-term, nonprofit boarders of the OC Fairgrounds Equestrian Center (OCFEC) continuously operating community- and youth-serving programming including agricultural education, free and low-cost community programming and therapeutic treatment for veterans, at-risk youth and other vulnerable populations.

Most urgently, upon review of the approved minutes of your Board's March 28, 2024, meeting, we have determined that pursuant to Policy 3.05, Board Meetings and Agendas, of the OCFEC Board of Directors Policy Manual, the motion on Item 9C of that meeting's agenda ("to approve the new Equestrian Center phase-in rental rates as presented"), failed, and the approved minutes are inaccurate and subject to challenge, as is any action to implement the disapproved action to increase rental rates at the OCFEC.

Specifically, Policy 3.05 states:

Decisions of the Board are made as a group at Board meetings at which a quorum of the Board (50% plus one) is present. A quorum is required for the transaction of any business of the 32nd DAA. Decisions will ideally be made through a consensus development process leading to a formal vote to record the decision. This process is intended to encourage full discussion and development of a decision that all, or at least the largest possible majority of, board members can support, prior to a vote. Where disagreements continue to exist, dissenting members may request that their objections be recorded in the minutes. ***A favorable vote of a majority of the members present, regardless of abstentions, is required for approval.*** Board Members have the right to discuss questions before the Board and make their decisions in an uninhibited atmosphere.

(Emphasis added.)

In this instance, the approved minutes reflect that a total of six Board members were present at the time of the vote. A majority constitutes more than 50%, or, in this instance at least four

favorable votes. Here, the motion on item 9C received three "Aye" votes, two "Nay" votes and one abstention. **Therefore, the motion failed to receive a majority of the total members present.**

We request your Board immediately correct its minutes to reflect the failure of this motion and cease any activities undertaken pursuant to the failed motion, specifically including but not limited to implementation of rental rate increases.

Additionally, we urge your Board to direct staff and counsel to further investigate and advise you of the legal standards governing a determination pursuant to Article XVI, Section 6 of the California Constitution relating to "gifts of public funds" so that your Board may be fully informed of its discretion to consider the public benefit provided by current boarders within the OCFEC in making decisions relating to future operations, including rental rates.

The courts have confirmed time and again that the appropriation of public funds that serves a public purpose is *not* considered a gift for purposes of this limit. (*Kizziah v. Department of Transportation* (1981) 121 Cal.App.3d 11, 22.) This is true notwithstanding whether private individuals are also benefitted. (*Ibid.*) Moreover, the determination of what constitutes a public purpose is primarily a matter for legislative discretion, which is not disturbed by the courts so long as it has a reasonable basis and "will be upheld unless illegality clearly and unmistakably appears" or the purpose is "expressly forbidden by general state law or the city's charter." (*County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281.)

The current boarders, including nonprofits, at the OCFEC provide extensive benefits to the public:

1. *Therapeutic programs.* Currently OC Vaulting, Changing Strides, and other nonprofits operate at the OCFEC to provide treatment by certified instructors and therapists to the public. The public benefitting from these services include veterans, at-risk youth, survivors of domestic violations, families, and individuals with PTSD, depression, cerebral palsy, dementia, ADHD, autism, or other mental and physical disabilities. For example, Changing Strides provides monthly camps that include children from orphanages in Orange County and weekly lessons with at-risk youth.
2. *Free public exhibitions.* The non-profit organizations currently on site, including OC Vaulting, provides free public exhibitions including barn tours, Halloween events, and OC Fair exhibitions. OC Vaulting's contributions to the OC Fair have been recognized by the International Association of Fairs & Expositions.
3. *Educational programs for youth and adults.* The current boarders run educational programs available to the public. These education programs are sponsored by the Girl Scouts, Boy Scouts, Save Our Youth, United States Equestrian Federation Community Outreach Organization, United States Pony Club, certification clinics for equine professionals, Equestrian Vaulting USA, and other community-serving organizations.

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4. *Equine instruction.* The current boarders provide horseback riding programs to all members of the public via individual and group lessons and in camps. Several camps have fees subsidized by community service organizations to further accommodate low-income individuals.

Additional public benefits are summarized in the attachment.

One of the primary purposes of the 32nd District Agricultural Association (DAA), in accordance with the provisions of the state Agricultural Code, is to construct, maintain, and operate "recreational and cultural facilities of general public interest" in Orange County. (Cal. Food and Ag. Code §3961(b); 32nd District Agriculture Association, Board of Directors Governing Policy Manual pg. 1.) In 2022, the DAA adopted a new mission statement to effectuate this purpose by "creating equitable community access to agriculture, entertainment, cultural and educational experiences." (OC Fair & Event Center Strategic Plan 2022-2024, pg. 4.) Here, it is clear that the services currently provided by boarders at OCFEC as summarized herein *directly serve these purposes*, conferring substantial benefits to the public, and no public funds are being expended for purposes that are illegal or forbidden by law within the meaning of this legal standard. (*Paulson v. Abdelnour* (2006) 145 Cal.App.4th 400, 419; *Patterson v. County of Tehama* (1986) 184 Cal.App.3d 1546, fn. 9; *Shean v. Edmonds* (1948) 89 Cal.App.2d 315, 323.)

On behalf of the nonprofits, businesses and volunteer equestrian community currently providing these public benefits at the OCFEC, we appreciate your consideration of these comments and look forward to your further consideration of these matters. We reserve the right to further supplement these comments with written or oral comments and any and all rights and remedies at law.

Sincerely,



Brooke Miller
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4860-0481-2732.1

Attachment: "Agricultural Education, Public Programs, Community Outreach & Events currently at the OC Fairgrounds Equestrian Center"

Agricultural Education, Public Programs, Community Outreach & Events, currently at the OC Fairgrounds Equestrian Center

Currently the public uses the facility 7 days a week, 365 days a year. The following is a sampling public benefits and programs already provided by on-site businesses, non-profits & existing volunteer equestrian community:

A. Public Boarding (ocfec): Public boarding opportunities available to any member of the public, without membership requirements or fees.

B. Emergency Services (ocfec):

1. Currently the only designated large animal evacuation facility in all of Orange County, for which the entire County's horses rely on in emergencies, fires, flooding, mudslides, etc.

C. Education for youth & adults:

1. USEF/United States Equestrian Federation, the national governing organization for all equine sports & breeds.
 - a. OC Fairgrounds EQC is home to a *USEF "Community Outreach Organization"*, a highly "vetted" and coveted title, which only 27 organizations in USA, (& 4 in California), are qualified as.
2. USPC/United States Pony Club
 - a. the largest recognized Equine Education program for all ages, earning high accolades for its breadth & depth of equine educational & safety learning opportunities offered to both children, and adults. Highly recognized and lauded as preparation for higher learning & life experiences.
3. Certification Clinics
 - a. Licensed equine medical professionals
 - b. Certified Equine safety & evacuation training
 - c. Equine athletes & trainers
4. EVUSA/Equestrian Vaulting USA
 - a. The National governing organization for Equestrian Vaulting, offering many educational opportunities, including mounted & unmounted activities.

D. Hands on Instruction:

1. Riding programs providing lesson horses for group instruction.
2. Riding & horse training instruction
3. Low cost vaulting instruction
4. Hands-on Horsemanship, with horses provided
5. Current disciplines offered
 - a. Western
 - b. Bareback
 - c. English
 - d. Dressage
 - e. Jumping
 - f. Vaulting

E. Camps:

1. Week-long Day camps offered in Summer, Spring & Winter months.
2. Camp fees for low-income youth are often subsidized by community service groups and/or on-site programs.

F. Free Public Exhibitions, Demonstrations & Fundraisers: On-Site non-profit OC Equestrian Vaulting has used their horses & volunteers to provide free Educational Exhibits, and Demonstrations for many public events, *since 2013*, including:

1. **Free Facility Barn Tours**, includes safety/education session & hands on grooming/equine experience
2. **Annual “Horsey Halloween”** free public event & equine costume contest
3. **Heroes Hall** Veterans Day events
4. **Centennial Farm** supplemental camp programs
5. **Imaginology**, entire weekend event
6. **OC Fair**, Week-long appearances
 - a. Equestrian Vaulting exhibit won First Place in 2021 for “UNIQUE EXHIBIT/PROMOTION/SPECIAL EVENT/COMMUNITY ENGAGEMENT/COMPETITION SHOWCASED DURING THE YEAR” from IAFE (International Association of Fairs & Expositions), **for** OCFEC.
7. **Day of the Horse** celebrations at Huntington Central Park Equestrian Center
8. **Holiday Fairs** at Huntington Central Park Equestrian Center
9. **Fundraising events** at OC Polo

G. Free Public Community Programs & Field Trips through current collaborations with:

1. SOY (Save Our Youth)
2. 4-H
3. Girl Scouts
4. Boy Scouts
5. Group Homes
6. Skilled Nursing & Senior Facilities
7. Many Charter & Homeschool groups & programs
8. Riph Raph Riding Club (active Seniors who stay active with riding & horse care).

H. Low-Cost Public Programs: reduced-cost public classes offered via local cities recreation departments, (including Costa Mesa, Newport Beach, Lakewood):

1. Introductory Vaulting for Youth and Adults
2. Yoga on Horseback for Adults
3. Horsemanship Classes for all ages
4. “Try-It” events
5. Holiday & Summer Camps.

I. Therapeutic Programs: The following nonprofit programs currently provide treatment, (by certified & licensed instructors) for veterans, at-risk youth, families, individuals/groups with PTSD, depression, anxiety, abuse, ADHD, and autism to name just a few:

1. Mustard Seed Ranch
2. Surf and Turf Therapy
3. Changing Strides