

FILED

JUN 8 2010

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

2009-2010
FRESNO COUNTY GRAND JURY



FINAL REPORT
#10

**Fresno County
2009 - 2010 Grand Jury
Report # 10**

Orange Cove BMX Park

INTRODUCTION

The grand jury received questions regarding the operations of the City of Orange Cove and the building of a Bicycle Motor-Cross (BMX) Park in the City. The grand jury understood it was built with the thought in mind that it would attract national groups. It seemed unusual to the grand jury, a professional BMX Park was built in a city whose demographics would not support a multi-day event. Further, the City does not have sufficient infrastructure to support groups that would normally be associated with state or national organizations. There are no hotels, R.V. Parks, or sufficient restaurant capacity to support large groups.

PURPOSE OF THE INVESTIGATION

The grand jury formed a sub-committee to investigate the construction of the BMX Park, known as the Diane Feinstein Skate and BMX Park. Many people were interviewed concerning the justification for building the park, including its funding. The Committee elected to limit their inquiry to funding issues and related concerns regarding BMX equipment loss.

DISCUSSION

Interviews revealed the City decided to build a BMX Park next to the Skate Park. Testimony indicates that the BMX Park was built under an emergency declaration thus allowing the park to be built without competitive bids. However, after interviewing several witnesses and reviewing City Council minutes, no justification for the emergency declaration was found. No record was found that an emergency declaration was adopted by the City Council prior to the grant application to the State of California and the subsequent commencement of construction.

An emergency declaration is normally used to provide immediate, essential city services such as wells, wastewater, fire suppression, etc. that support the health or welfare of the people. However, a city official stated in this instance that the emergency declaration was needed to expedite construction of the BMX Park in time to hold enough regional events to qualify for a State competition. The official touted the benefit to the city for hosting the two-day State event. The grand jury noted that when the State event was

held, the city received little financial benefit, as they did not have the tourism infrastructure to support incoming visitors.

A reason given to the grand jury by city officials for building the park were for recreational activities for the kids of Orange Cove, which serves as a gang deterrent. Because the cost of competition BMX bikes range from \$1,000 to \$3,000, few, if any, children or their families in Orange Cove possessed competition BMX bikes before or after the building of the park. The City bought six bikes and associated parts for City youth recreation. The National Bike League (NBL) also donated six bikes for Orange Cove to form a team and to compete in their sanctioned BMX races. The City was unable to document which bikes they purchased and which were donated to their team.

For the record, the security guard took possession of all twelve bikes. Subsequently, the security guard signed purchase orders for over \$8,000 for parts and accessories to upgrade the twelve bikes.

The committee visited Orange Cove to view the park, the bikes and equipment associated with the bikes. The park is located within the City and across from the high school. The park was in excellent condition and was esthetically pleasing. There were only a few signs of graffiti and that was located in the Skate Park that is in the same complex and adjacent to the BMX facility. The park was locked and the committee was told that it is open only on weekends. We were also told that nobody uses the BMX Park and the Skate Park is rarely used.

The grand jury noted no bikes are available for public use because the building housing the bikes was broken into and they were stolen. No theft report was filed with the Sheriff's Office. Security cameras surround the facility, however they were not reviewed for two reasons. One person testified burglars cut the lines to the cameras and they did not record; however an inspection showed the lines were not cut. Another person stated the positioning of the cameras and the glare from the lights from the school across the street prevented them from recording properly. There was no burglar alarm on the shed and no telephone line was connected to the building.

In the past, the city employed a security guard to protect the BMX Park. It was subsequently determined the guard did not possess a valid security guard card issued by the State of California, thus the guard was terminated. We received testimony that one of the bikes was offered for sale on Craig's List by the former security guard. The sale took place in a parking lot in Reedley between the guard and a private citizen. The security guard stated that the bikes were given to him by the NBL and he had the right to sell them and keep the proceeds.

Currently, the City of Orange Cove does not operate the park but maintains it on an as-needed basis. They have turned operation over to the NBL. No formal signed agreement was produced by the city to show the contractual relationship. The current arrangement leaves open liability issues. During an interview with an NBL official, it was stated that they liked the park, but were unaware of the bikes being stolen. They did acknowledge giving the bikes to the Orange Cove BMX Team so they could compete.

The NBL claims they do not maintain the BMX Park. When they have a competition, they have a contact within the City and the City opens the park for them.

The City sought a grant to cover seventy percent (70%) of the construction costs through the Office of Grants and Local Services (OGALS) of the Department of Parks and Recreation for the State of California. A grant for \$490,000.00 was approved by the State, with the city to provide 30 percent (30%) matching funds, or \$210,000.00. To expedite the construction of the park, without competitive bidding, the Mayor declared an emergency without City Council approval. M.C. 3.08.100 requires that those expenditures of \$15,000.00 or more go out for competitive bidding. The grand jury was unable to substantiate any competitive bidding except for the asphalt used on the banks of the BMX Park. There are no facts supporting an emergency as required by Municipal Code (M.C.) 3.08.070. While the park needed to host three regional events to qualify for a State event, it does not qualify as an emergency. Part of the facilities that were to be built have not been completed such as restrooms and a snack bar.

The State has not paid the City for money spent because of lack of financial and construction documentation. Outstanding issues include lack of competitive bidding substantiation, questionable vendor invoices and checks, which were written to vendors for amounts greater than the invoices. City officials stated they could produce the bids and reconcile the differences. However, this has not been completed to the satisfaction of OGALS even after two years. The latest attempt by the City to support their claim has been forwarded to the Audit Department of the California Department of Parks and Recreation.

The grand jury did not find that the City appointed a Project Manager. We did, however, find the security guard at the site assumed some managerial functions including issuing purchase orders and signing construction change orders without proper authorization. The City Financial Officer (CFO) was not involved in the project. Testimony revealed that the CFO was never brought into planning or discussions involving any Capitol Projects.

CONCLUSION:

The grand jury found the City did not appear to follow its Municipal Code for declaring an emergency. The City violated Municipal Code 3.08.100, which requires any expenditure of more than \$15,000.00 go through competitive bidding. The City had no Project Manager and the security guard performed some of those duties. The grand jury could not find any plausible rationale for building a BMX park that could benefit the children, as they did not have bikes, nor did they have access to those provided by the City. Without the proper tourism infrastructure, little revenue was generated for the City.

Any benefit to the children being able to compete on a high level of BMX racing disappeared when the bikes were stolen and/or sold. The City does not control the BMX Park any longer, but maintains it as needed and is still planning to build a snack bar and restrooms. There is no written formal agreement between the NBL and the City of

Orange Cove allowing the NBL to operate the BMX Park for scheduled events. Lax record maintenance has resulted in insufficient documentation of the project.

FINDINGS

- F1001 A City official stated that an emergency declaration was adopted by the City Council, allowing for construction of the BMX Park without competitive bidding. However, no record of an emergency declaration could be found.
- F1002 A City official touted the economic benefits to the City for hosting a two-day event. The City did not realize those benefits.
- F1003 The City purchased BMX bikes for use by the children of Orange Cove, however, they were unable to provide ownership documents.
- F1004 There are currently no City owned BMX bikes available for use by the children of Orange Cove.
- F1005 No burglar/security alarm was connected to the building on the BMX Park site that contained the various BMX equipment and bikes.
- F1006 The Fresno County Sheriff's Office was not notified of the burglary at the BMX Park and the loss of equipment and bikes.
- F1007 The BMX Park security guard stated under oath that the six BMX bikes were donated to the City team were given to him. He further stated that he had the right to sell them and keep the proceeds. However, no documentation was submitted to support this claim.
- F1008 The City no longer manages the BMX Park. The grand jury could not find a written agreement between the City and the NBL for management of the park.
- F1009 The California Department of Parks and Recreation has not reimbursed the City of Orange Cove due to irregularities in City accounting practices.
- F1010 The City did not provide bids showing it used the competitive bidding process except for a contract to place asphalt on the banks of the BMX track.
- F1011 The City paid vendor invoices for more than the corresponding invoice amount.
- F1012 The City did not appoint a Project Manager to supervise the project and be responsible for construction change orders.
- F1013 The City Financial Officer (CFO) was excluded from the BMX project or any other capital improvement projects.

RECOMMENDATIONS

- R1001 The City should follow its Municipal Code and vote on any emergency declaration. (F1001)
- R1002 The City officials need to factually support their rationale for the economic benefits to the City. (F1002)
- R1003 The City should have an inventory system accounting for all City owned property. (F1003, F1007)
- R1004 City storage facilities should have a functioning security system. (F1005)
- R1005 All breaches of the law should be reported to the appropriate law enforcement agency or agencies in a timely manner. (F1006)
- R1006 A formal agreement between the NBL and the City of Orange Cove must be completed. (F1008)
- R1007 The City should hire an independent auditor for reconciliation of payments and invoices for the BMX Park project. (F1009, F1011)
- R1008 The City should adhere to their Municipal Code and submit for competitive bidding any items over \$15,000.00. (F 1001, F1010)
- R1009 The City should appoint a Project Manager for all capital projects that exceed the \$15,000.00 threshold. (F1012)
- R1010 The CFO should be involved in all capital projects in the City. (F1013)

REQUEST FOR RESPONSES

Pursuant to Penal Code 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within sixty days of the receipt of this report and ninety days for all others.

RESPONDENTS

Alan Bengyel, City Manager, City of Orange Cove (R1001, R1003-R1010)

Orange Cove City Council (R1001, R1002, R1006 - R1009)

SOURCES

- Documents provided by the City of Orange Cove.

- Interviews with various members of the Orange Cove City Council.
- Interviews with various previous and present City officials.
- Interviews with concerned citizens of Fresno County.