

Hotline Report of the City's Lease with Barnes Tennis Center

Fraud Allegation

OCA received a Fraud Hotline allegation regarding the City's lease with the Barnes Tennis Center alleging that the lessee illegally graded an undeveloped area of the leasehold, covered it with gravel, and used it for parking.

Investigative Conclusions

Our investigation determined that the allegations of illegal grading and other violations were substantiated.

Conclusion 1: Numerous violations of lease, permitting, environmental requirements, and grant terms occurred.

- In 2024, the City ordered the lessee to immediately stop parking in an area that the lessee had illegally graded in violation of lease terms, permitting requirements, and environmental laws.

Exhibit 2: Neighbors Complained Using Signs About the Unpaved Parking Lot in 2023



Source: Image obtained from City site visit inspection report dated September 28, 2023.

- Despite this directive, we found that the lessee has been continuously using the area for parking since illegally grading the area in 2022.
- Nearly a year after the City's directive, the lessee sent a reply letter falsely asserting the area had been routinely used for parking since 1994 and proposing only to address required permits as part of new lease negotiations. The current lease expires on June 30, 2029.

- The eight contractual, regulatory, and other violations we identified include violations of:
 - San Diego Municipal Code;
 - Existing lease terms;
 - Conditional Use Permit;
 - Environmental Impact Report;
 - California Coastal Commission regulations and permit requirements;
 - State grant and funding agreement requirements;
 - Ocean Beach Community Plan; and
 - Stormwater Best Management Practices.

Exhibit 3: Before: Parcel A Was Not Used for Parking Prior to July 14, 2022



Source: OCA generated based on Google Earth image captured July 14, 2022.

Exhibit 5: Again: Parcel A Was Illegally Graded a Second Time Prior to June 20, 2023



Source: OCA generated based on Google Earth image captured June 20, 2023.

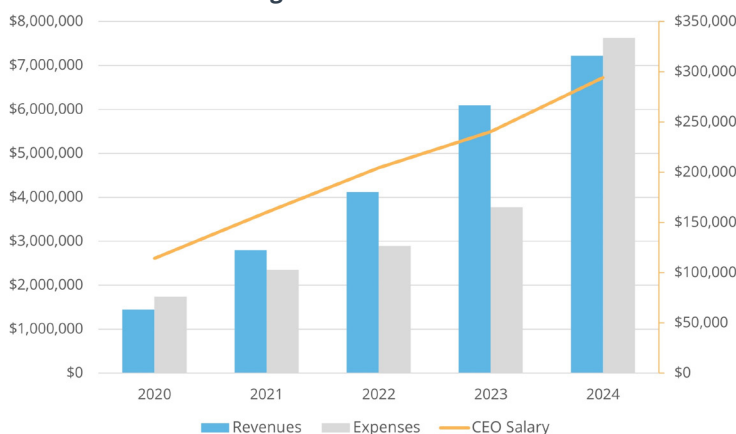
Conclusion 2: No code enforcement on City-owned land has occurred, which has allowed violations to persist.

- Although City staff evaluated the grading and determined that it was illegal, City representatives stated that the City does not formally investigate or take enforcement action against City lessees as it would for violations on private property.
- A Notice of Violation was never issued, and fines were not imposed.
- We were unable to identify a legal prohibition against enforcing building and land use code violations on City-owned property, and there is no City policy requiring this disparate practice.

Conclusion 3: Lease amendments appear to be necessary, which could significantly increase revenue to the City.

- Our investigation found that the lessee's revenues have increased roughly 400 percent between 2020 and 2024, reaching over \$7.2 million in 2024.

Exhibit 11: Annual Revenues and CEO Compensation Have Been Growing



Source: OCA generated based on IRS Form 990s.

- The current 35-year flat-rate lease from 1994 requires an annual payment of only \$600 per year, is not adjusted for inflation or any other factor, and does not include a percentage of gross revenues.
- Newly revised City policies provide mechanisms to recover a portion of a nonprofit's gross revenues and evaluate whether the nonprofits public benefit is commensurate with the lease subsidy related to newly-issued or amended leases.

What OCA Recommends

We make three recommendations to address the numerous violations by the lessee, and to ensure the City receives adequate compensation for the property in the future.

Key recommendation elements include:

- Requiring the lessee to comply with regulatory requirements, the Ocean Beach Community Plan, and State grant provisions;
- Potentially amending or terminating the existing lease and Conditional Use Permit;
- Creating a Citywide policy regarding Building and Land Use Enforcement Division investigations and enforcement procedures involving City-owned properties;
- Determining (upon lease amendment or new lease issuance) the current market rate rent versus the existing flat rate related to the leasehold based on the Barnes Tennis Center's operations and issuing a memorandum to the City Council describing the activity, the City's revenue recovery percentage (if any), and a determination whether a public benefit related to each activity exists that furthers a specific public policy; and
- Based on the market rate determination above, ensure that the difference between the current market rate and the proposed lease terms are commensurate with the public benefit determination.

Management agreed with all three recommendations.

For more information, contact Andy Hanau, City Auditor, at (619) 533-3165 or cityauditor@sandiego.gov.