

BCC Mtg. Date: September 1, 2020

**Follow-up of the Audit of
Orange County Magic
Recreation Center Instructor
Revenue**



**Phil Diamond, CPA
County Comptroller
Orange County, Florida**

www.occompt.com



**Report No. 487
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Orange County Comptroller's Office

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The mission of the Orange County Comptroller's Office is to serve the citizens of Orange County and our customers by providing responsive, ethical, effective, and efficient protection and management of public funds, assets, and documents, as specified in the Florida Constitution and Florida Statutes.

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The vision of the Orange County Comptroller's Office is to be recognized as a highly competent, cohesive team leading the quest for continuing excellence in the effective safeguarding and ethical management of public funds, assets, and documents.

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August 20, 2020

Jerry L. Demings, County Mayor
And
Board of County Commissioners

We have performed a follow-up of the Audit of Orange County Orlando Magic Recreation Center Instructor Revenue (Report No. 429). The original audit, issued March 2013, reviewed the period from October 2012 through December 2013. In order to test the status of the previous recommendations, we reviewed the period from July 2018 through December 2018.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The accompanying Follow-up to Previous Recommendations for Improvement summarizes the previous audit's findings and recommendations. Following each recommendation is a summary of the current status as determined in this review. A response to our recommendations was included from the Manager of the Parks and Recreation Division.

We appreciate the cooperation of Parks and Recreation Division personnel during the course of the audit.

Phil Diamond, CPA
County Comptroller

- c: Byron Brooks, County Administrator
Chris Testerman, Assistant County Administrator
Lonnie Bell, Director, Community and Family Services Department
Matt Suedmeyer, Manager, Parks & Recreation Division

Background

The Parks & Recreation Division works to improve the quality of life for Orange County citizens with over 100 parks. The division manages, preserves, and maintains open spaces set aside for outdoor recreation, leisure, or preservation. In addition, trails, gymnasiums, classes, and fitness facilities increase community health and wellness.

The Division operates 12 recreation centers (Centers) with instructor led classes within Orange County ¹:

- Barnett Park
- Capehart Park
- Fort Gatlin Recreation Complex
- Goldenrod Recreation Center
- Marks Street Recreation Complex
- Meadow Woods Recreation Center
- Orlo Vista Park
- Renaissance Senior Center
- Shadow Bay Park
- Silver Star Recreation Center
- South Econ Recreation Center
- West Orange Recreation Center



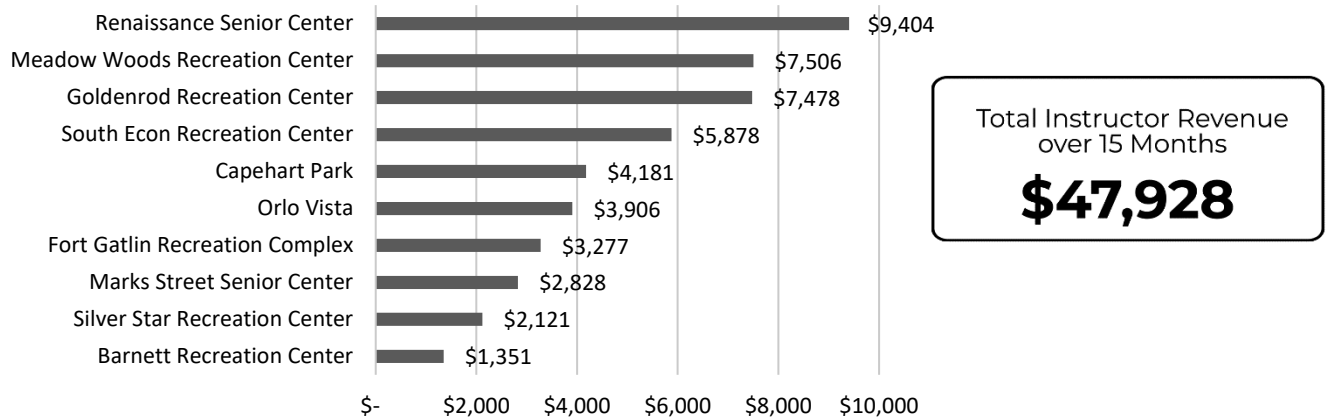
The Centers offer a wide variety of fitness and recreational activities for preschoolers, youth, adults, and seniors. The County has signed uniform instructor agreements with independent fitness instructors to provide these programs at the Centers.

Students pay class fees directly to their instructors. In turn, instructors are required to pay the Division a commission fee equal to 20 percent of total revenues that they collect from students.

¹ The original audit focused on instructor revenues at only the five Magic Recreation Centers. The Magic Recreation Centers were built by the Orlando Magic as part of the agreement to help fund the cost of the Amway Center. This follow-up audit focused on instructor revenue at all Parks Recreation Centers, not just the Magic Recreation Centers.

The following chart shows instructor revenues collected by the Division from July 2018 thru September 2019.

Total Instructor Revenue Collected by Park July 2018 - September 2019



Audit Scope, Objective, and Methodology

We have conducted a follow-up of the March 2013 Audit of the Orange County Orlando Magic Recreation Center Instructor Revenue (Report No. 429). The prior audit report can be viewed at www.occompt.com/county-audit/audit-reports/. The audit scope and objective were limited to a determination of whether the recommendations issued in the prior audit report have been implemented. The audit period for the follow-up audit was July 2018 through December 2018. The audit period was extended until December 2019 to provide the Division with additional time to implement changes.

During the audit, we performed tests necessary to verify if the prior recommendations were implemented. We have described the specific methodologies utilized later in this report.

Implementation Status of Prior Audit Recommendations

There were two recommendations in the previous report. Neither recommendation had been implemented at the time of our follow-up testing. The Department is currently in the process of revising the Instructor Agreements and required fee payments.

1. The Division Should Consider Charging Instructors a Fixed Space Rental Fee instead of a Percentage of Revenues Collected by the Instructors

Prior Audit Finding

According to the Instructor Agreements, the instructors are required to pay the County “20% of gross receipts or 20% of the gross receipts for the required minimum number of registrants, whichever is greater.” In the prior audit, we reviewed attendance logs submitted by the instructors to test the accuracy of commission payments received. Although we noted that commission payments were materially accurate, the instructors were responsible for reporting attendance. A system that depends on individual independent contractors reporting collections is inherently subject to the risk of underreporting of revenue. Requiring the instructors to calculate the amount that should be paid increases the risk of underreporting.

Prior Recommendation

The Division should consider charging instructors a fixed rental fee for the space needed to conduct classes in lieu of percentage commissions.

Current Status

Not Implemented. At the start of the follow-up review, Division management stated that they considered the recommendation to charge instructors fixed room rental fees instead of a percentage of fees collected. Management advised us that in 2013 they had decided it was not feasible to change the fee structure.

We reviewed the current procedures for calculating the amount of instructor fees due at three recreation centers. At each location, the instructors were responsible for:

- Collecting fees;
- Preparing a list of participants in each class; and,
- Calculating the amount due based on the list the instructor prepares.

Two site supervisors informed us they do not verify the number of participants reported by the instructors for any classes at their locations. A third site supervisor told us his staff verifies participants, but they do not document that verification.

Without any reconciliation, there is no assurance that the correct amount was remitted by the instructor or that cash paid by the instructor was not misappropriated by Parks employees receiving the cash. As noted above, the Division reported \$47,928 in instructor revenue over a 15-month period. Performing the procedures required to verify the amounts collected are accurate requires a disproportionate amount of staff time compared to the amounts ultimately received by the Division.

In addition to the Division's inconsistent verification of the number of participants in each class, we noted the following issues:

- A) Class attendance logs were missing for five of the 62 sampled classes.
- B) Minor students in one class simply wrote their names on various sheets of paper and turned those in as attendance logs. Some names were not legible or complete.
- C) One instructor did not pay at least the minimum class attendance amount required in the Agreement.² Facility records showed the last commission payment received from him was for March 2018. Additionally, we noted that other instructors appeared to pay smaller amounts or made no payments during the 15-month period compared to the minimum amounts required in the contracts.
- D) Instructors for five of the seven reviewed programs did not report class attendance to a site supervisor at the close of each class day, as required by the Agreement.

We advised management that the same 2013 control weaknesses still existed in March 2019. The Division then began modifying the standard Agreement in May 2019. A draft contract provided by management stated, "Recognizing the Instructor is a community partner providing specialized instruction, the County will extend a reduced rental rate to the Instructor. The Instructor agrees to pay \$10.00 per hour". This new Agreement would address our original recommendation. However, as of July 2020, the new Agreement had not been implemented.

² The Agreement provides that every instructor must pay the Division a monthly minimum amount.

Management has informed us the new agreement is scheduled to be approved at a future Board of County Commissioners meeting.

Recommendation:

The Division should finalize the Instructor Agreements and obtain approval by the Board of County Commissioners to charge instructors a fixed rental fee rather than a percentage of fees collected for the space used to conduct classes. In addition, a reconciliation should be performed periodically to ensure all amounts are received from instructors according to the Agreements.

Management's Response:

Concur. See Appendix for full response.

2. Appropriate Steps Should Be Taken to Ensure Registration Cards Are Completed

Prior Audit Findings

Class participants are required to complete registration cards prior to participating in any classes. The registration cards include important participant information as shown on the following page:

Registration Card / Tarjeta de Registración

For Office Use Only: Additional Forms YES NO
 ORANGE COUNTY RESIDENT NON RESIDENT

PARTICIPANT'S NAME / NOMBRE DE PARTICIPANTE
 LAST NAME / APELLIDOS: _____ FIRST NAME / NOMBRE: _____ MI: _____
DATE OF BIRTH / FECHA DE NACIMIENTO
 MONTH / MES: ____ DAY / DIA: ____ YEAR / AÑO: ____

PARK NAME & PROGRAM NAME / EL NOMBRE DEL PARQUE AND NOMBRE DE PROGRAMA

PROGRAM START & END DATES / FECHA DE COMIENZO Y CULMINACIÓN DEL PROGRAMA
 START DATE: MONTH ____ DAY ____ YEAR ____ END DATE: MONTH ____ DAY ____ YEAR ____

STREET ADDRESS / DIRECCIÓN POSTAL _____ **CITY / CIUDAD** _____ **STATE / ESTADO ZIP / CÓDIGO POSTAL** _____

PHONE NUMBER / NÚMERO DE TELÉFONO (____) ____ - ____ **E-MAIL / CORREO ELECTRÓNICO** _____

SCHOOL ATTENDING / ESCUELA A LA CUAL ASISTE _____ **GRADE / GRADO** _____ **AGE / EDAD** _____ MALE / MASCULINO
 FEMALE / FEMENINA

PARENT / LEGAL GUARDIAN / PADRES / TUTOR LEGAL _____ **RELATIONSHIP / RELACIÓN** _____ **HOME PHONE / NÚMERO DE TELÉFONO DE LA CASA** (____) ____ - ____

FATHER'S / GUARDIAN'S WORK PHONE / TELÉFONO DEL TRABAJO DEL PADRE (____) ____ - ____ **MOTHER'S / GUARDIAN'S WORK PHONE / TELÉFONO DE TRABAJO DE LA MADRE/TUTORA** (____) ____ - ____

LIST ANY ACTIVITIES IN WHICH YOU / YOUR CHILD IS UNABLE TO PARTICIPATE / LISTA CUAL QUIERA ACTIVIDAD EN LAS QUE SU NIÑO NO PUEDE PARTICIPAR

← Restricted activities

EMERGENCY CONTACT INFORMATION / INFORMACIÓN DE EMERGENCIA MEDICA

PARENT / LEGAL GUARDIAN / PADRES / TUTOR LEGAL	RELATIONSHIP / RELACIÓN	WORK PHONE / TELÉFONO DE TRABAJO	OTHER PHONE / OTRO NÚMERO DE TELÉFONO
_____	_____	(____) ____ - ____	(____) ____ - ____
EMERGENCY CONTACT NAME / NOMBRE DE CONTACTO DE EMERGENCIA	RELATIONSHIP / RELACIÓN	WORK PHONE / TELÉFONO DE TRABAJO	OTHER PHONE / OTRO NÚMERO DE TELÉFONO
_____	_____	(____) ____ - ____	(____) ____ - ____
EMERGENCY CONTACT NAME / NOMBRE DE CONTACTO DE EMERGENCIA	RELATIONSHIP / RELACIÓN	WORK PHONE / TELÉFONO DE TRABAJO	OTHER PHONE / OTRO NÚMERO DE TELÉFONO
_____	_____	(____) ____ - ____	(____) ____ - ____

← Emergency Contact

NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN
 READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT, EVEN IF ORANGE COUNTY USES REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER FROM ORANGE COUNTY IN A LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND ORANGE COUNTY HAS THE RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

PARTICIPANT CONSENT RELEASE
 I (OR MY CHILD/REN) AM VOLUNTARILY PARTICIPATING IN THIS PROGRAM, CLASS OR EVENT WRITTEN ABOVE. IN RETURN FOR THE OPPORTUNITY TO PARTICIPATE, I VOLUNTARILY FOR MYSELF (OR MY CHILDREN) WAIVE, RELEASE, INDEMNIFY AND HOLD HARMLESS ORANGE COUNTY AND ITS OFFICERS AND EMPLOYEES FROM ANY LIABILITIES, CLAIMS, DAMAGES, INQUIRIES, LOSSES, AND EXPENSES INCLUDING REASONABLE ATTORNEYS FEES AND COST WHATSOEVER, INCLUDING THOSE FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, WHICH MAY ARISE FROM OR IN CONNECTION WITH PARTICIPATION IN THIS PROGRAM, CLASS OR EVENT.
 IF THIS REGISTRATION IS FOR ONE OF MY MINOR CHILDREN, I HEREBY CONSENT TO EMERGENCY TREATMENT AND TRANSPORTATION OF MY MINOR CHILD FOR ANY CONDITION WHICH MAY ARISE DURING, FROM OR IN CONNECTION WITH PARTICIPATION IN THIS PROGRAM, CLASS OR EVENT AND I SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS ASSOCIATED WITH SUCH EMERGENCY TREATMENT OR TRANSPORTATION. FURTHER, I HEREBY GIVE PERMISSION TO ORANGE COUNTY TO USE ANY PHOTOGRAPHS TAKEN BY THE COUNTY, ITS OFFICERS, EMPLOYEES, OR AGENTS, OF EITHER ME OR MY CHILDREN DURING PARTICIPATION IN THIS PROGRAM, CLASS OR EVENT. I AGREE SUCH PHOTOGRAPHS SHALL BE THE PROPERTY OF ORANGE COUNTY AND I AM NOT ENTITLED TO COMPENSATION OF ANY KIND FOR THE USE OF SUCH PHOTOGRAPHS.
 I AGREE TO ABIDE BY ALL COUNTY ORDINANCES AND PARKS & RECREATION RULES AND REGULATIONS, AND UNDERSTAND THAT ORANGE COUNTY HAS THE RIGHT TO CLOSE REGISTRATION AND TO CHANGE FEES AND REQUIREMENTS WHEN NECESSARY. THIS RELEASE SHALL REMAIN IN EFFECT UNTIL CANCELED IN WRITING.

← Legal disclaimer holding the County and employees harmless against participants' physical injuries, property damages,

SIGNATURE REQUIRED OF ALL PARTICIPANTS
 Signature of Parent/Legal Guardian (if under 18)
 Firma de Padres/Guardian (Si menor de dieciocho años)

10/14

 Original - Site Copy - Customer

DATE / Fecha _____

VEA EL LADO REVERSO →

During the prior audit, we found:

- A) In some classes, 25 percent of the participants had not submitted registration cards;
- B) No registration cards could be located at the South Econ Recreation Center;
- C) Some registration cards were not signed, failed to list participant ages, preexisting medical conditions, or emergency contact names;
- D) Registration cards were signed by minors; and,

E) Class attendance logs only listed first names. As a result, registration cards could not be identified.

Prior Recommendation

The Division should take appropriate steps to ensure all program attendees have a registration card completed prior to participating in program activities.

Current Status

Not Implemented. We selected a sample of eight classes during the month of November 2018. The classes were held at three different recreation centers. Our review found the Division had no registration cards on file for 140 of the 291 participants registered for the sampled classes. An additional 11 registration cards were dated after the initial class. Nine additional cards were not dated so we could not verify the date signed. In total, we could not confirm that 160 of the 291 (55%) participants signed a registration card prior to participating in a class.

Center	Activity	Number Participants Registered	Registration Cards Not Completed Prior	Percentage Not Completed
Renaissance	Zumba	48	25	52%
Renaissance	Cardio Boot Camp	16	11	69%
Renaissance	Cardio Dance	149	81	54%
South Econ	Brite Star Twirling	12	9	75%
South Econ	Jazzercise	33	25	76%
South Econ	Wing Chun Kung Fu	1	1	100%
Fort Gatlin	Beginning Gymnastics	11	2	18%
Fort Gatlin	Intermediate Gymnastics	10	3	30%
Fort Gatlin	Advanced Gymnastics	11	3	27%
Total Participants Sampled		291	160	55%

Employees at each of the recreation centers stated that it is the instructor’s responsibility to have participants complete the registration forms. However, the Instructor Agreements state,

Orange County will accept and process all program registration. Orange County Parks and Recreation will provide the instructor with a list of currently enrolled participants. Instructor will provide, at their own expense, a class monitor which will insure that all participants are signed in and Registration Cards have been completed prior to participation. The instructor shall not provide services to anyone not registered through Orange County.

Two of the three recreation centers do not provide a list of currently enrolled participants to the instructors. Without this list, the instructors are not able to identify participants that have not completed a registration form.

In case of an emergency, it is critical to have registration forms on file with emergency contact information. In addition, without a signed waiver of liability the County's legal exposure is increased. In order to minimize the County's liability, the Division should ensure that the registration cards are completed.

When we brought the results of our follow-up testing to management in March 2019, management began working on a revised Agreement. However a new Agreement has not been implemented and the same Instructor Agreements were still in effect for 2020.

Recommendation:

The Division should continue working with the County Attorney's Office to develop a revised Instructor Agreement outlining responsibilities related to registration requirements and class participants.

Management's Response:

Concur. See [Appendix](#) for full response.

Status of Previous Recommendations for Improvement

NO.	RECOMMENDATIONS	IMPLEMENTATION STATUS		
		IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT IMPLEMENTED
1.	The Division should consider charging instructors a fixed rental fee for the space needed to conduct classes in lieu of percentage commissions.			✓
2.	The Division should take appropriate steps to ensure all program attendees have a registration card completed prior to participating in program activities.			✓



PARKS AND RECREATION DIVISION

Matt Suedmeyer, Division Manager

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August 13, 2020

TO: Wendy Kittleson, Deputy Director of County Audit

FROM: Matt Suedmeyer, Manager, Parks and Recreation Division *M.S.*

SUBJECT: Follow-up of the Audit of Orange County Magic Recreation Center Instructor Revenue

In response to the audit conducted by the Orange County Comptroller's office of the Parks and Recreation Division's Follow-up of the Audit of Orange County Magic Recreation Center Instructor Revenue, the Parks and Recreation Division concurs with the findings and recommendation provided.

The following procedures have already or will be incorporated to ensure compliance with the recommendations provided:

On August 11, 2020 the Board of County Commissioners approved a resolution delegating authority to the manager of the Parks and Recreation Division to execute a form Instructor Rental Agreement so that routine Instructor Rental Agreements can be entered into without being placed on the Board's agenda. As part of this agenda item, exhibit A to the resolution, included an Instructor Rental Agreement which requires the Instructors to pay the County a per hour facility rental rate and outlines responsibilities related to registration requirements and class participants.

C: Lonnie C. Bell Jr., Director, Community and Family Services Department
Kyle Kent, Assistant Manager, Parks and Recreation Division