

CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: July 12, 2004

RE: A Staff Report And Action To Be Taken Regarding A Special Report From The Office Of The City Auditor On Support For Oakland Ballot Measure G

I. BACKGROUND

During the Oakland municipal election held in March, 2002, voters considered ballot Measure G, a \$59 million public bond proposal whose funds will be used to renovate and construct facilities at the following three sites: The Oakland Museum, the Oakland Zoo, and the Chabot Space and Science Center. Voters approved Measure G by approximately 75 percent of the votes cast.

Each of the three facilities is supported, in varying ways, by non-profit corporations: The Oakland Museum receives support from the Oakland Museum of California Foundation ("Museum Foundation"), the Oakland Zoo by the East Bay Zoological Society ("Zoo Society"), and the Chabot Space and Science Center by the Chabot Space and Science Center Foundation ("Chabot Foundation").

All three non-profit entities made significant financial contributions to the campaign committee formed to support voter adoption of Measure G. Among the most controversial aspects of the "Yes on Measure G" campaign was a mass mailing that included a free pass to either the zoo, museum or science center.

At its In July, 2002, the Commission considered complaints by Mr. Mix and another Oakland resident who challenged the use of the free passes to induce voters to support the ballot measure (See PEC Complaint No. 02-03). During the course of its investigation,

Commission staff also determined that the Chabot Foundation made campaign contributions drawn from an account apparently shared by both the Chabot Foundation and the Chabot Space and Science Center, a governmental joint powers authority (JPA). The Commission formally referred to the Alameda District Attorney the question of whether the free passes violated a state election law that forbids offering anything of value to induce voters to support or oppose a ballot measure or candidate. After investigation, the District Attorney declined to prosecute those involved with the "Yes on Measure G" campaign.

Also at the July, 2002, meeting, the Commission received a communication from Bruce Strothers of the City Auditor's Office advising the Commission that the City Auditor had already begun an audit of this matter in early March, 2002. The Commission directed staff to convey its interest to the Office of the City Auditor that the issues raised in the staff report pertaining to the contributions of the Chabot Foundation be addressed in any further financial review by the City Auditor's Office.

The attached report is the City Auditor's review of the Measure G campaign.

Attachment 1.

II. SUMMARY OF REPORT

The City Auditor's report analyses the non-profit entities' role in the "promotion and financing" of ballot Measure G. It reviews an extensive series of documents and rules pertinent to that inquiry. Of particular interest to the Commission are the factual findings pertaining to the Chabot Space And Science Center and its supporting non-profit corporation, the Chabot Foundation. The report states that "the operations of the Center and the Foundation are so commingled as to make the operations of each a problem to distinguish." This statement is relevant to the Commission's earlier concern that contributions to the Measure G campaign were apparently drawn from a bank account that was used jointly by the Chabot Center and Chabot Foundation. This fact initially led to the Commission's questioning of whether public funds were used to finance a political campaign. However, the report does not specifically audit the flow of money into and out of the joint account. It leaves as an "unresolved issue" whether any public funds were used to support the Measure G campaign.

The report expressly declines to reach any ultimate conclusion regarding the propriety of the Measure G campaign. It reaches no conclusion whether the non-profit corporations are subject to laws regulating the use of public funds for campaign purposes. It does, however, conclude that an "abuse of the spirit of the law has taken place." It asserts that the non-profit foundations failed to make a "fair presentation" of Measure G during the campaign that, when combined with the corporations' financial resources, placed opponents of the measure at a disadvantage. The report makes a total of nine recommendations to address the abuses it describes.

Included with the report is a response from Alix A. Rosenthal, an attorney retained by the Museum Foundation and the Chabot Foundation. Ms. Rosenthal refutes a number of statements and conclusions contained in the report. With regard to the Chabot Foundation, Ms. Rosenthal states that "in the past, certain aspects of its accounting procedures have warranted

improvement, and it has made significant changes to those accounting procedures" since the completion of the City Auditor's field work. She states specifically that the Chabot Foundation and the Chabot Space and Science Center now have separate bank accounts and have negotiated an operating agreement detailing the relationship between the two entities. The City Auditor's Office provides a detailed response to Ms. Rosenthal's comments.

III. CONCLUSION

The attached report culminates a two-year effort by the City Auditor to review the Measure G campaign. Based on the report and the responses made to it, the Commission may wish to direct staff to evaluate and further research any of the report's specific recommendations for later Commission consideration and ultimate forwarding to the City Council.

Respectfully submitted,

Daniel D. Purnell
Executive Director