Approved as to Form and Legality**

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City Attorney

City of Oakland
Public Ethics Commission
April 7, 2010

In the Matter of	)	
	)	Complaint No. 10-02
	)	

David Mix filed Complaint No. 10-02 on January 26, 2010.

I. SUMMARY OF COMPLAINT

Mr. Mix filed Complaint No. 10-02 alleging that the Commission did not address or consider seven specific questions he raised in connection with his Complaint Nos. 09-08 through 09-11, inclusive ("consolidated complaints"), at the Commission meeting of January 4, 2010. ***Attachment 1.***

II. PROCEDURAL HISTORY

Mr. Mix filed the consolidated complaints on July 13, 2009, alleging that various non-profit entities had, among other things, used City funds and resources to impermissibly support a local ballot measure ("Measure C") approved by Oakland voters during a special election in July 2009. The Commission first agendized the consolidated complaints for its December 7, 2009, regular meeting. The item was postponed to the January 4, 2010, meeting due to concerns over sufficient notice to the responding parties.

At its January 4 meeting, the Commission approved a motion to:

1) dismiss the consolidated complaints on grounds that the Commission has no jurisdiction or authority to determine the alleged violations of state law or the alleged breaches of City contracts;

2) refer to the Office of the City Attorney and the Office of the City Auditor the issue of whether the Zoological Society and/or the Museum Foundation violated any material term of their respective operating agreements with the City in connection with their campaign contributions to the Economic Stimulus for Oakland (ESO) Committee;

3) refer to the Fair Political Practices Commission (FPPC) the issue of whether the ESO Committee or any person violated provisions of the California Political Reform Act and/or the regulations thereto in connection with the use of Form 461 by a primarily formed recipient committee;

4) refer to the FPPC the issues of whether the Chabot Foundation or any other person violated provisions of the California Political Reform Act and/or the regulations thereto by making two contributions in excess of $100 each using a cashier's check;

5) refer to the FPPC the issues of whether the ESO Committee or any other person violated provisions of the California Political Reform Act and/or the regulations thereto by receiving, expending and/or failing to return two Chabot Foundation contributions in excess of $100 made by cashiers' check; and

6) refer to the FPPC the issue of whether the Chabot Foundation served as the agent or intermediary for any person in making contributions to the ESO Committee and whether the Chabot Foundation and/or the ESO Committee failed to disclose the identity of any person on whose behalf such contributions were made.

On January 14, 2010, Commission staff sent a letter addressed and hand-delivered to the Offices of the City Attorney and the City Auditor requesting that they inquire whether Zoological Society and/or the Museum Foundation violated any material term of their respective operating agreements with the City in connection with their campaign contributions to the Economic Stimulus for Oakland (ESO) Committee. ***Attachment 2.***

On January 14, 2010, Commission staff sent a letter to Gary Winuk, chief enforcement officer for the FPPC, requesting his office to investigate issues raised in the consolidated complaints, specifically, 1) whether the Chabot Space and Science Foundation, a California non-profit corporation, "violated the PRA by making two contributions to the Economic Stimulus Committee in the amounts of $13,000 and $15,000, respectively, in the form of two cashier's checks," and 2) whether the Chabot Foundation "served as the agent or intermediary for any person in making contributions to the Economic Stimulus Committee without disclosing the identity of any person on whose behalf such contributions were made." ***Attachment 3.***

Mr. Mix alleges that at the Commission's January 4, 2010, meeting the Commission failed to discuss or to determine whether the Chabot Foundation acted as a "recipient committee" by raising funds specifically for the purpose of supporting Measure C. He also contends that staff did not address nor did the Commission consider additional questions he raised about the Chabot Foundation's alleged fundraising activities in an email he sent on December 1, 2009, several days after he received a copy of the preliminary staff report. ***Attachment 4.***

III. ANALYSIS

Mr. Mix is correct when he states that he and a public speaker raised the issue of whether the Chabot Foundation acted as a recipient committee at the Commission meeting of January 4, 2010. His allegations were based on a November 5, 2009,

declaration by Jill Knowland, the Chabot Foundation's Finance Director and CFO, which Commission staff obtained during the course of its investigation. However as stated in the staff report, the Commission does not have the authority to determine violations of the Political Reform Act ("PRA"). Based on Mr. Mix's testimony at the January 4 meeting, the Commission directed staff to request the FPPC investigate whether the Chabot Foundation violated the PRA by serving as "the agent or intermediary for any person in making contributions to the Economic Stimulus Committee without disclosing the identity of any person on whose behalf such contributions were made." This inquiry necessarily implicates the factual and legal issues of whether the Chabot Foundation acted as a recipient committee and, if so, whether it properly disclosed such contributions on a campaign statement.

The other issues Mr. Mix raised in his December 1 email -- whether the Chabot Foundation misused public resources in the alleged collection of campaign contributions and the extent to which the Chabot Foundation may have engaged in campaign fundraising -- Commission staff determined to be either outside the Commission's authority to determine or constituted issues which an FPPC investigation would necessarily address. As stated in the staff report, the Chabot Foundation is a private non-profit corporation that has no contractual relationship with the City. Two other non-profit entities implicated in his complaint, the Museum Foundation and the Zoo Society, did have a contractual relationship with the City which served as a basis for the Commission's referral to the Offices of the City Attorney and City Auditor that they investigate whether these corporations violated any material term in their operating agreements with the City.

Mr. Mix argues that the Commission should direct staff to further investigate his allegations against the Chabot Foundation on grounds that the City of Oakland is the most influential member of the Chabot Space and Science Center Joint Powers Authority (JPA), the governmental agency responsible for running the Chabot Space and Science Center. Commission staff believes that most of the additional issues Mr. Mix raises would be more appropriately addressed by the FPPC since they deal with the details of alleged fundraising activities outside the scope of Commission authority.

As to allegations that the Chabot Foundation have misused public resources in connection with its alleged fundraising activities, Commission staff notes again that the Commission does not have the authority to determine whether the state laws regulating such allegations were violated, and that there is no agreement existing between the City and the Chabot Foundation that creates a contractual interest in how the Chabot Foundation conducts its activities. Thus Commission staff questions whether there is sufficient basis in law or fact to justify additional Commission inquiry into the affairs of the Chabot Foundation in the manner that Mr. Mix requests.

IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 10-02 on grounds that the issues contained in the December 1 email were either

addressed in the Commission's January 14 referral to the FPPC or constitute issues outside the Commission's scope of authority to determine.

Respectfully submitted,

Daniel D. Purnell
Executive Director

** *City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*