



Memorandum

**To: Rules & Open Government
Committee**

From: Councilmember Pete Constant
Councilmember Johnny Khamis

Subject: SEE BELOW

Date: March 21, 2013

Approved:

**SUBJECT: INVESTIGATION INTO POSSIBLE USE OF PUBLIC FUNDS FOR
PROHIBITED POLITICAL CAMPAIGN USES**

RECOMMENDATIONS

We recommend that the City Council direct the City Attorney and the City Manager to:

1. Investigate whether any city funds that were provided to either Santa Clara Family Health Foundation or VMC Foundation were used to fund any campaign activities in any manner.
2. Immediately report to the Rules & Open Government Committee if either the Santa Clara Family Health Foundation or VMC Foundation refuses to provide the city information needed to make the above determinations.
3. Review all applicable contracts to ensure that they contain a provision wherein recipients of city funding are required to provide transparency into their use of those funds and make information available for review, such as meeting minutes and the data required to complete an investigation as requested above, upon request.

BACKGROUND

A recent newspaper report brought to light information documenting that funds from the Santa Clara Family Health Foundation and VMC Foundation made their way to campaign activities (phone banks and mail campaigns) of the South Bay Labor Council in 2012, by using Measure A's campaign committee as an intermediary. Each of these organizations gave more than a quarter-million dollars last year to support a measure to the Measure A $\frac{1}{8}$ th cent sales tax increase. Subsequently in October 2012, the "Yes on A" committee made two \$45,000 payments to the South Bay AFL-CIO Labor Council (SBLC) Issues Account and gave \$10,000 to the Santa Clara County United Democratic Campaign (ID# 871053). The report also indicates that the SBLC Issues PAC provided more than \$177,000 in non-monetary contributions last year for Measure D and \$44,000 for Measure E. In addition to the ballot measures, the SBLC supported 70 candidates for local and regional offices in the November election.

While the SBLC clearly has a right to fund campaign activities and volunteers, it is impossible at this juncture to sort out which measures or candidates may have benefited from the political activities that may have been funded with taxpayer dollars.

The Political Reform Act prohibits public financing of campaigns, except for elections in charter cities and counties. Laws outside the Act prohibit the use of public resources, such as office

equipment, staff time, etc., for campaign or personal purposes. (Gov. Code Section 8314; Penal Code Section 426.) Additionally, Government Code Section 54964 prohibits an officer, employee or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a ballot measure or a candidate.

In response to media inquires, both organizations have refused to provide any information to verify whether or not public funds have been used to support political activities or who participated in decisions. This basic level of transparency should be a minimum expectation of these organizations, which have received over \$6 million from the City of San José in just the past three years. A representative from GuideStar, an information service specializing in reporting on U.S. nonprofit companies, indicated that this is basic information that transparent organizations should provide.

As the guardians of the public's money, the City Council has a responsibility to ensure that recipients of taxpayer funding do not use money for political purposes, either directly or indirectly through third parties. The City Attorney and the City Manager should investigate this on behalf of the residents. If the involved parties are not responsive to these requests, the City Attorney and the City Manager should immediately notify Rules & Open Government Committee. This will allow the Rules & Open Government Committee to discuss whether a council investigation pursuant to the subpoena power granted by Charter §416 is warranted.