THE CITY OF SAN DIEGO

December 29, 2004

San Diegans for the Protection of Responsible Beach Rights (ID # 1235129)
c/o Bob Glaser
The La Jolla Group
8304 Clairemont Mesa Blvd., Suite 213
San Diego, CA 92111-1315

Re: Ethics Commission Audit

Dear Mr. Glaser:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was presented to the Ethics Commission at a special meeting held on December 28, 2004. The report reflects findings that are material as defined in the Ethics Commission Audit Manual. As a result, the Commission decided to initiate a formal investigation pursuant to the procedures outlined on page 16 of the Audit Manual.

You will be contacted by Senior Investigator Lauri Davis regarding this investigation. If you have any questions concerning the foregoing, please contact me at your convenience. Thank you for your assistance and cooperation during the course of the audit.

Sincerely,

Stacey Fulhorst
Executive Director

SF/s

Enclosure

cc: Robert Chubinsky, Treasurer

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

December 28, 2004

San Diegans for the Protection of Responsible Beach Rights (ID # 1235129)
c/o Bob Glaser
The La Jolla Group
8304 Clairemont Mesa Blvd., Suite 213
San Diego, CA 92111-1315

Robert Chubinsky, Treasurer
750 San Gabriel Place
San Diego, CA 92109

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:
San Diegans for the Protection of Responsible Beach Rights

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, San Diegans for the Protection of Responsible Beach Rights, Identification Number 1235129 ("the Committee") for the period from July 1, 2001, through June 30, 2004. (The Ethics Commission Audit Manual prohibits an audit of any action or event that occurred prior to July 1, 2001.) The Committee was selected for audit by the Ethics Commission at a random drawing conducted on October 9, 2003. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the Political Reform Act (Government Code sections 81000 *et seq.*) and San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29).

During the period covered by the audit, the Committee reported total contributions of $41,670.00 and total expenditures of $43,664.03. The majority of the Committee's activity took place prior to the audit period. Therefore, there is no reason to expect the contributions and expenditures to reconcile. Only those transactions which occurred during the audit period were included in the audit. **The audit revealed six material findings: (1) the Committee violated San Diego Municipal Code section 27.2925 by failing to maintain complete accounting records; (2) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84211 by failing to disclose all contributions, expenditures and loans on its campaign statements; (3) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84303 by failing to report all expenditures by an agent or independent contractor; (4) the Committee violated San**

Diego Municipal Code section 27.2944 by failing to report all accrued expenses; (5) the Committee violated San Diego Municipal Code section 27.2945 by failing to pay vendor debt within ninety calendar days; (6) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84203 by failing to report late contributions received within 24 hours.

II. Committee Information

On May 15, 2001, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to oppose Proposition G (the proposed Mission Beach alcohol ban) in the March 5, 2002, election. The Committee has not terminated. The Committee's treasurer is Robert Chubinsky; however the Committee's political consultant, Bob Glaser of The La Jolla Group, assumed full responsibility for maintaining the Committee's records and filing the Committee's campaign statements.

III. Audit Authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

IV. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards and the Ethics Commission Audit Manual. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with restrictions on contributions, loans, and expenditures;
3. Accuracy of total reported receipts, disbursements, and cash balances as compared to bank records; and
4. Compliance with all record-keeping requirements.

V. Summary of Applicable Law

San Diego Municipal Code section 27.2925 – Accounting

(a) In addition to any other requirements of this division, every candidate or committee establishing a campaign contribution checking account pursuant to this division shall maintain a record of each of the following:

(1) any contribution offered to and refused by the candidate or committee; and

(2) any contribution received by the candidate or committee and returned to the contributor; and

(3) any contribution received by the candidate or committee and deposited into the campaign contribution checking account; and

(4) any disbursement made from the campaign contribution checking account.

(b) The records required by Section 27.2925(a) shall include, but not be limited to, all of the following:

(1) the name and address of the contributor; and

(2) the amount of the contribution, and the date on which it was received or offered; and

(3) if the contribution is made by check, a legible photocopy of the check; and

(4) if the contribution offered or received consists of cash, an indication that cash was offered or received, and a legible photocopy of the bank deposit slip indicating that the cash contribution was deposited into the campaign contribution checking account; and

(5) legible photocopies or originals of all bank records pertaining to the campaign contribution checking account; and

(6) if a contribution is made by the candidate to his or her own campaign, a statement disclosing the source of the funds; and

(7) if a contribution is of something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate; and

(8) for each disbursement made from or check drawn on the campaign contribution checking account, the canceled check (if requested), the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

(c) The records required by Section 27.2925 (a) and (b) shall be kept by the candidate or committee treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

(d) Each candidate and committee shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign contribution checking account.

(e) Each candidate and committee shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the candidate or committee.

San Diego Municipal Code section 27.2931 – Campaign Statement Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. Compliance with the disclosure requirements of California Government Code sections 81000 et seq. is deemed to be compliance with this section.

Government Code section 84211 – Contents of Campaign Statements

Each campaign statement required by this article shall contain all of the following information:

(a) The total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received.

(b) The total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.

(g) If the cumulative amount of loans received from or made to a person is one hundred dollars ($100) or more, and a loan has been received from or made to a person during the period covered by the campaign statement, or is outstanding during the period covered by the campaign statement, all of the following:
(1) His or her full name.
(2) His or her street address.
(3) His or her occupation.
(4) The name of his or her employer, or if self-employed, the name of the business.
(5) The original date and amount of each loan.
(6) The due date and interest rate of the loan.
(7) The cumulative payment made or received to date at the end of the reporting period.
(8) The balance outstanding at the end of the reporting period.

Government Code section 84303 – Expenditure by Agent or Independent Contractor

No expenditure of five hundred dollars ($500) or more shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section.

Government Code section 84203 – Late Contribution Reports

(b) A late contribution shall be reported by facsimile transmission, telegram, guaranteed overnight mail through the United States Postal Service, or personal delivery within 24 hours of the time it is received in the case of the recipient. A late contribution shall be reported on subsequent campaign statements

without regard to reports filed pursuant to this section.

Government Code section 82036 – Late Contribution

"Late contribution" means any contribution including a loan which totals in the aggregate one thousand dollars ($1,000) or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before the date of the election at which the candidate or measure is to be voted on but after the closing date of the last campaign statement required to be filed before the election.

San Diego Municipal Code section 27.2944 – Payment and Disclosure of Payment for Goods and Services

(b) Every candidate and committee shall disclose expenditures in the same time and manner required by California Government Code section 84211. An expenditure which has been incurred but not paid during a reporting period shall be disclosed as an accrued expense.

San Diego Municipal Code Section 27.2945(a) and (d) – Vendor Credit

(a) Vendors may extend credit to candidates or committees in the ordinary course of business in the same manner as extended to persons for other than political purposes.

(d) A candidate or committee that accepts goods or services for political purposes on credit under Section 27.2945(a), shall pay for those goods or services in full no later than ninety calendar days after receipt of a bill or invoice and in no event later than ninety calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered.

San Diego Municipal Code Section 27.2946 – Continuing Violation

A candidate or committee treasurer violates Section 27.2945(b), (c) or (d) whenever the candidate or committee treasurer fails to pay any rent or for goods or services in full within the time periods set forth in Section 27.2945. Each and every calendar day any obligation remains partially or wholly unpaid after the time periods set forth in Section 27.2945 constitutes a separate violation.

VI. Material Findings

A. Violation of San Diego Municipal Code section 27.2925

The Committee did not maintain adequate accounting records. Contributions and expenditures reported could not be verified for accuracy or completeness. The Committee did not retain a copy of every contributor check or any deposit slips. The check register was incomplete, and not all expenditures were supported by an invoice or receipt. The majority of documents that were provided for the audit were copies or duplicate originals (reprinted).

A complete list of documents required for the audit was requested on July 8, 2004, in the Audit Notification Letter. The records provided were incomplete, so a second request was sent on September 20, 2004. Although the Committee has agreed to search for missing invoices and other supporting

documentation, as of the date of this report, not all necessary documents have been provided.

At the post-audit conference and in a written response submitted on December 3, 2004, the Committee's political consultant and de-facto Treasurer, Bob Glaser of The La Jolla Group, stated that he and other Committee members have worked hard to locate records that are two to three years old. He stated that copies of canceled checks had been ordered, but it has taken the bank more time than usual because the records are on microfiche and in deep storage. Copies of the canceled checks were ultimately provided on December 15, 2004.

B. Violations of San Diego Municipal Code section 27.2931 and Government Code section 84211

The Committee did not disclose all contributions, expenditures and loans accurately or completely on its campaign statements. Contributions reported did not match bank statements, and therefore could not be verified. The auditor performed a comparison of total deposits made and total monetary contributions and loans disclosed for the corresponding nine reporting periods. Out of the four reporting periods with income activity, three did not match.

Expenditures reported did not match the bank statements and other supporting documentation provided. Two checks that cleared the bank account were not reported on the Committee's campaign statements. Check #1030 for $250 cleared on September 6, 2001, but was not reported. A copy of the canceled check, provided on December 15, 2004, revealed the payee was Suna Hurmiz and the purpose was "loan pay back". Check #1015 for $1,131.38 cleared on February 26, 2002, but was not reported. The check register revealed the vendor was The Sign Mobile and the payment was for "banners". Monthly bank fees reflected on the bank statements did not match the bank fees disclosed for the corresponding reporting periods.

One expenditure for $897.58 was reported as paid to The La Jolla Group on the campaign statement covering the period from February 17, 2002, through June 30, 2002. This amount does not appear in the check register or on any bank statement, and was not supported by an invoice or receipt.

Outstanding loans totaling $23,750 have not been disclosed since December 31, 2002. The Committee has filed Form 425 "Semi-Annual Statement of No Activity" for the last three reporting periods despite the outstanding loans and monthly bank fees mentioned above.

The campaign statements also contain mathematical errors that carry forward to the next reporting period. Seven out of the nine campaign statements filed during the audit period were late. The Committee was fined $1,270 by the City Clerk for filing its February 17, 2002, through June 30, 2002, semi-annual campaign statement 127 days late.

At the post-audit conference and in a written response submitted on December 3, 2004, Mr. Glaser claimed that it has always been the Committee's intent to disclose everything; however, he did not provide an explanation for the discrepancies listed above. He also stated that the Committee has filed the Form 425 "Semi-Annual Statement of No Activity" for the last three reporting periods because he feels the Committee has had "no activity" besides small bank fees and outstanding loans.

C. Violation of San Diego Municipal Code section 27.2931 and Government Code section 84303

The Committee did not disclose any payments made by an agent or independent contractor on its campaign statements. Invoices from The La Jolla Group show "costs advanced" totaling $25,145.45 for print, radio and television advertisements to 12 sub-vendors, none of which were disclosed on any Committee campaign statement.

At the post-audit conference and in a written response submitted on December 3, 2004, Mr. Glaser stated that he thought The La Jolla Group was the agent and that the invoices were properly reported.

D. Violation of San Diego Municipal Code section 27.2944

The Committee did not disclose an accrued expense (unpaid bill) of $3,145.15 to The La Jolla Group on any of the five campaign statement filed since the cost was incurred on March 14, 2002.

At the post-audit conference and in a written response submitted on December 3, 2004, Mr. Glaser stated that he did not believe this amount was an accrued expense because it was uncollectible. However, the balance due was never converted to a non-monetary contribution and disclosed as such on any campaign statements.

E. Violation of San Diego Municipal Code section 27.2945 and 27.2946

The Committee did not pay vendor debt within ninety calendar days. The unpaid bill mentioned in Finding "D" above has remained unpaid since the cost was incurred on March 14, 2002.

At the post-audit conference and in a written response submitted on December 3, 2004, Mr. Glaser stated that there has been an understanding between The La Jolla Group and the Committee that any balance due would be forgiven and waived when the Committee was closed. He did not realize the ninety-day vendor debt provision pertained to ballot measure committees. Mr. Glaser also stated that he plans to close the Committee by the end of this year.

F. Violation of San Diego Municipal Code section 27.2931 Government Code section 84203

The Committee did not report late contributions received within twenty-four hours. The Committee received six contributions of $1,000 or more on February 25, 2002, during the late reporting period. The Committee reported these contributions to the City Clerk via facsimile on February 27, 2002, one day late.

At the post-audit conference and in a written response submitted on December 3, 2004, Mr. Glaser stated he thought he had faxed the report in time, but was later notified the report was twelve hours late.

VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor found the Committee did not maintain the necessary documentation to support the information contained in its campaign statements. The statements themselves contained errors and were not filed

in a timely manner. **Accordingly, the audit revealed six material findings: (1) the Committee violated San Diego Municipal Code section 27.2925 by failing to maintain complete accounting records; (2) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84211 by failing to disclose all contributions, expenditures and loans on its campaign statements; (3) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84303 by failing to report all expenditures by an agent or independent contractor; (4) the Committee violated San Diego Municipal Code section 27.2944 by failing to report all accrued expenses; (5) the Committee violated San Diego Municipal Code section 27.2945 by failing to pay vendor debt within ninety calendar days; (6) the Committee violated San Diego Municipal Code section 27.2931 and Government Code section 84203 by failing to report late contributions received within 24 hours.**

_____ _____

DeeDee Alari, CPA — Date
Financial Investigator

_____ _____

Lauri Davis — Date
Senior Investigator