

Santa Monica Transparency Project Complaints Against Former City Manager Rod Gould for Violation of the Oaks Initiative

The Santa Monica Transparency Project brings these Complaints against former City Manager Rod Gould alleging violations of the law for illegally accepting employment with Management Partners, Inc. after he had approved multiple contracts between the City and his new employer while City Manager. These Complaints are filed on information and belief with the City of Santa Monica which has an obligation to fully enforce its anti-corruption laws embodied in the City Charter, Article XXII, Section 2200 et seq. (Taxpayer Protection Amendment of 2000, "Oaks Initiative"), which prohibits such conduct.

The Transparency Project calls for a full investigation into these allegations, and that appropriate and full remedies be sought and enforced. This is a matter of great public concern given the corrosive influence that can flow if the senior most official of Santa Monica's government having recommended and approved lucrative contracts between the City and a professional service company, then shortly after leaving office accepts a senior position with that same company.

The Transparency Project is an all-volunteer group of Santa Monica residents concerned about openness and accountability in our City government. We believe openness and accountability are cornerstones of our democracy. The Transparency Project formed in 2010 after a developer-funded PAC repeatedly refused to timely disclose developer contributions to Santa Monica voters. As part of our commitment, we track political contributions to city council members and the employment by senior city officials after they leave office. Members of the public served by city government must be able to rely on their public servants working for their best interests--not with an eye towards future employment opportunities when they leave the City. We previously brought Complaints against former Mayor Pam O'Connor for a multi-year pattern of violations of the Oaks Initiative by illegally accepting campaign contributions from the biggest developers in Santa Monica after she had approved their development projects. Those O'Connor Complaints are still pending; Ms. O'Connor has only returned a few of these contributions to date.

The Oaks Initiative

The Oaks Initiative was adopted to protect against city officials awarding public benefits (such as contracts) and then accepting private advantage (such as employment) from the entity. The law is clear. **The prohibition on accepting employment from an entity as to which a city manager has approved a contract is absolute.**

The time period for this absolute prohibition starts on the date the official approves the benefit and runs until either up to six years afterwards or two years after the end of their then current term, whichever is less. For Mr. Gould this would cover acts during his

entire 5-year term as City Manager and would run for 2 years after his last day in office of January 31, 2015, or until January 31, 2017.

The City Charter states that “the use or disposition of public assets are often tainted by conflicts of interest among local public officials” and that “the sources of such corruptive influence include ...future employment offers...” SM Charter, Article XXII—Taxpayer Protection, Section 2201.

The Oaks Initiative specifically covers appointed public officials acting in an official capacity such as Rod Gould acting as City Manager. Section 2202 (d). **The acts of the City Manager in approving contracts thus specifically come under Oaks.**

Penalties under the Oaks Initiative can be both civil and criminal. Civil remedies available include full restitution to the City’s general fund of all monies received by Mr. Gould from Management Partners, a civil penalty of up to 5 times that amount of money, injunctive relief to prevent further violations, and disqualification from further position with the City if the violations were willful.

Under Santa Monica law, the obligation and responsibility to comply with the Oaks Initiative falls squarely on the public official, here Rod Gould.

“City public officials shall practice due diligence to ascertain whether or not a benefit defined under Section 2202(a) has been conferred, and to monitor personal or campaign advantages enumerated under Section 2202(c) so that any such qualifying advantage received is returned forthwith, and no later than ten days after its receipt.” Section 2204(a).

Under the Oaks Initiative, backed by almost 60% of the voters, the City has few obligations. The obligation to ascertain on whom a City Manager conferred a benefit and to monitor any personal benefit is on the City Manager, here Rod Gould.

The acts alleged in these Complaints come under the Oaks Initiative, Sections 2202 and 2203 because:

1. The public benefit was covered because they each involved a “contract “ of over \$25,000 (Section 2202(a));
2. The public benefit was included because it was received by the “entity so benefiting”, Management Partners, for whom Mr. Gould now works; (Section 2202(b));
3. The personal advantage received is covered as it is an “employment for compensation” (Section 2202(c));
4. Mr. Gould as City Manager was covered as an “appointed public official acting in an official capacity” (Section 2202(d));
5. Mr. Gould’s conduct is alleged to have violated the law because he “exercised discretion” to approve “public benefits” for Management Partners and then received a “personal advantage” in the form of employment within the time frame set out in the Oaks Initiative (Section 2203(a)).

Santa Monica’s City Attorney prepared a document entitled “Implementation of the Oaks Initiative” which specifically finds:

1. The “City Manager” is a “public official” who “must comply with the Initiative”;
2. Oaks is specifically applicable to the “City Manager” conferring a “public benefit” in the form of a “contract”;
3. The City Manager has the duty to “[k]eep track of all actions which confer a public benefit”;
4. The City Manager must return all “personal...advantages,” such as “employment for compensation” “within 10 days of receipt.”

Santa Monica has a Council-Manager form of government. See City Charter, Art. V, Section 500. The City Manager is the Chief Executive Officer and head of the city’s administration. Art. VII, Section 704. He or she has the power to approve contracts under a set limit (\$70,000 and \$80,000 during Mr. Gould’s time in office) without also obtaining the City Council’s approval. Santa Monica Municipal Code, Section 2.24.073. The City Manager also plays a vital role in the approval process for those contracts that are also approved by the City Council.

Attachment “A” contains supporting documentation.

Rod Gould’s Knowledge of Oaks Initiative and Management Partners’ Contracts with Santa Monica

While knowledge of the law is not required for a violation to occur, it can be relevant to certain remedies. There can be no doubt that Mr. Gould was well aware of the Oaks Initiative during his tenure as City Manager. For example, he was on the dais at the City Council meeting when the Transparency Project raised Mayor O’Connor’s campaign contributions and she responded with a discussion of the Oaks Initiative. See 1/28/14 City Council video at 3:46, www.smgov.net. Moreover, the Santa Monica newspapers published numerous articles after the Transparency Project filed its Oaks Complaints with the City.

Mr. Gould was also well aware that his obligations under Oaks specifically extended to post-City Manager employment opportunities. Santa Monica’s website specifically states that “City management is guided by the **Code of Ethics** adopted by [ICMA].” www.smgov.net Indeed, Mr. Gould was a Vice-President of ICMA. A leading Ethics opinion by ICMA specifically deals with a City Manager’s legal and ethical obligations in

accepting post-retirement employment (“The Retired City Manager’s New Opportunities.”) ICMA’s ethics response to the question about post retirement employment includes a clear warning about local laws [like Oaks] restricting post-employment jobs with companies that have entered into contracts with the city “if the city manager had a role in negotiating or approving the contract.” www.icma.com

Likewise, Mr. Gould’s knowledge of the several and ongoing contracts between the City and Management Partners entered into during his time as City Manager is beyond doubt. In addition, of course, to his role in approving and recommending multiple contracts with them, both Mr. Gould and Management Partners prominently mentioned their close relationship in their press statements after he was recently hired only months after his leaving office.

“He [Gould] learned about the quality of the work that Management Partners can do for a client first-hand by being a consumer of our work, and we are thrilled that he is joining us to help other local governments.” Jay Newformer, President and CEO of Management Partners, May 26, 2015, Website at www.managementpartners.com (Emphasis added.)

“Throughout my career in city management, I have been consistently impressed with the quality and utility of Management Partner’s work. I’m eager to join such a committed and expert group of management consultants dedicated to excellence in local government, and I view it as another stage of service.” Rod Gould, new Vice-President for Management of Management Partners, May 26, 2015, Website at www.managmentpartners.com

Attachment “B” contains supporting documentation.

Factual Background for the First Complaint

February 25, 2013 Contract With Management Partners for Oversight of Forestry Contract with West Coast Arborists.

A public benefit was conferred on Management Partners by a contract dated February 25, 2013 in the amount of \$50,000, which is over the \$25,000 Oaks threshold. This contract is under the limit that required City Council approval, and therefore could be approved by Mr. Gould without also being subject to Council approval. See Santa Monica Municipal Code Section 2.24.073. On information and belief, the contract was approved and executed by Rod Gould in his capacity as City Manager on March 1, 2013, on behalf of the City of Santa Monica.

Attachment “C” contains a copy of the executed contract.

Mr. Gould entered employment with Management Partners at or around May 26, 2015, well within the time period covered by the Oaks Initiative for this contract. The contract was entered into within the prior 6-year period, and was also within 2 years of his having left his employment with Santa Monica on January 31, 2015.

Factual Background for the Second Complaint

Professional Service Agreement Entered into As Of October 9, 2014 With Management Partners for Performance Measurement Development

A public benefit was conferred on Management Partners by a contract dated as of October 9, 2014 in the amount of \$44,900, which is over the \$25,000 Oaks threshold, and bears the Contract No. 2940. This contract is under the limit that required City Council approval, and could be approved by Mr. Gould without also being subject to Council approval. See Santa Monica Municipal Code Section 2.24.073. On information and belief, the contract was approved and executed by Rod Gould in his capacity as City Manager on or about October 9, 2014, on behalf of the City of Santa Monica.

Attachment “D” contains a copy of the executed contract.

Mr. Gould entered employment with Management Partners at or around May 26, 2015, well within the time period covered by the Oaks Initiative for this contract. The contract was entered into within the prior 6-year period, and was also within 2 years of his having left his employment with Santa Monica on January 31, 2015.

Factual Background for the Third Complaint

Professional Service Agreement Entered into November 23, 2011 With Management Partners Re Organizational and Financial Analysis of Woodlawn Cemetery

A public benefit was conferred on Management Partners by a contract dated November 23, 2011 in the amount of \$39,500, which is over the \$25,000 Oaks threshold, and bears the Contract No. 2374. This contract is under the limit that required City Council approval, and could be approved by Mr. Gould without also being subject to Council approval. See Santa Monica Municipal Code Section 2.24.073. On information and belief, the contract was approved and executed by Rod Gould in his capacity as City Manager on or about November 23, 2011, on behalf of the City of Santa Monica.

Attachment "E" contains a copy of the executed contract.

Mr. Gould entered employment with Management Partners at or around May 26, 2015, well within the time period covered by the Oaks Initiative for this contract. The contract was entered into within the prior 6-year period, and was also within 2 years of his having left his employment with Santa Monica on January 31, 2015.

Factual Background for Fourth Complaint

First Modification to Agreement of Nov. 23, 2011 Entered into As Of April 3, 2012 With Management Partners for Review of Finance Department

A public benefit was conferred on Management Partners by a contract dated as of April 3, 2012 in the amount of \$30,000, which is over the \$25,000 Oaks threshold, and bears the Contract No. 2374. This contract is under the limit that required City Council approval, and could be approved by Mr. Gould without also being subject to Council approval. See Santa Monica Municipal Code Section 2.24.073. On information and belief, the contract was approved and executed by Rod Gould in his capacity as City Manager on or about April 3, 2012, on behalf of the City of Santa Monica.

This "Modification," for a review of the finance department, was a separate agreement than the earlier November 23, 2011 agreement, which was for a review of the mortuary operations of the public works department. They both used the same contract number, 2374. Both were separately approved and executed on behalf of Santa Monica by Rod Gould.

Attachment "F" contains a copy of the executed contract.

Mr. Gould entered employment with Management Partners at or around May 26, 2015, well within the time period covered by the Oaks Initiative for this contract. The contract was entered into within the prior 6-year period, and was also within 2 years of his having left his employment with Santa Monica on January 31, 2015.

On information and belief, Mr. Gould has not returned the money he has received from Management Partners related to these Complaints within 10 days of receipt as required under Oaks. Section 2204(a).

Other Potential Acts by City Manager Rod Gould that would Be Additional Independent Triggers of an Oaks Prohibition on His Employment by Management Partners

Any one of the four contracts alleged in the First through Fourth Complaints above serve as a complete and independent trigger under Santa Monica law of Mr. Gould's obligation to refrain from employment with Management Partners for two years after he left his position with Santa Monica, or until 2017. **No more is needed.**

There are, however, other contracts between Santa Monica and Management Partners which may also serve as further and independent triggers. Through this filing with the City, the Transparency Project is requesting that the City carry out a review of all other contracts with Management Partners during the time Mr. Gould was City Manager and determine his role in the contract approval process.

For example, on January 14, 2014 the City Council approved two contracts with Management Partners. One was for \$98,600 for "interim management assistance." The second was for \$39,500 for "an organization review." Both were submitted for Council Approval on the Consent Calendar and marked "Approved: Rod Gould City Manager." See also, Santa Monica Daily Press article of May 28, 2015 for the fact that Mr. Gould is joining Management Partners and a discussion of other of its recent contracts with Santa Monica. ("Former Santa Monica City Manager Joins Consulting Firm.") www.smdp.com

Attachment "G" contains supporting documentation.

The City Manager's approval of those contracts which were also approved by the City Council were a necessary part of the contract approval process and covered by the "approval" language in the Oaks Initiative. Contract approval cover sheets and other documents in the approval chain that the City requires indicate that there are needed approvals for a contract other than the City Council even when Council approval is also required. These documents are in the possession of the City. Clearly, the intent of the Oaks Initiative is to cover these approvals, which are both necessary and relied on by the Council (as well, of course, as those in Complaints One through Four above that were not approved by the Council.)

Conclusion, Need for Full Investigation and Remedies

The conduct described in these Complaints is extremely troubling. They allege Santa Monica's most recent past City Manager and CEO recommended and approved a series of contracts with a company that then quickly hired him to a senior position after he left office, in violation of Santa Monica law.

These Complaints require a full investigation and that appropriate remedies be taken. Based on this investigation, the funds Mr. Gould received from Management Partners should be paid into Santa Monica's general fund pursuant to the Oaks Initiative and Mr. Gould should refrain from further employment with Management Partners. To fail to do so would set a precedent allowing senior City staff to approve contracts with a company and then shortly thereafter go to work for that same entity. Santa Monica law designed to bar such conduct could be violated at will. Public confidence in government would be seriously diminished.

While the City Attorney asserted a conflict of interest when the Transparency Project raised its Complaints against then Mayor Pam O'Connor, she did so on the basis that she reported to the Mayor and the City Council. No such conflict exists now as the City Attorney does not report to the City Manager, and, in any event, Rod Gould is no longer the City Manager. He is now a Vice President for a company who works for, and regularly seeks more work from Santa Monica, and thus the City has a further interest in reviewing this matter vigorously, promptly, fairly and completely.

The Santa Monica Transparency Project

/s/ Mary Marlow

Mary Marlow, Chair. Dated: June 10, 2015

