

Transparency Project's Letter to City Council 04/25/16

Dear Mayor and Council Members,

The Transparency Project is very pleased with the Hueston Report's strong endorsement of our anti-corruption laws, especially its validation of restrictions on campaign contributions and contractor employment. This Report, by a highly respected attorney and former federal prosecutor, vindicates and validates both The Transparency Project's work and the voters who approved the Oaks Initiative.

We also thank the Council and City Manager for their support of the Report. This is a good day for Santa Monica.

As the Report says, "The Oaks Initiative contains provisions that, if enforced, fulfill important anti-corruption goals." The key to that quote is "IF ENFORCED."

Oaks can and should be enforced within and by our City. For many years, the law was ignored by our City Attorney, who offered a laundry list of excuses for her lack of enforcement. It took residents, who were willing to speak up and point out the improper conduct of Pam O'Connor and to bring their own legal action against Rod Gould using Oaks' private right to sue.

We strongly support the Proposal to Amend Oaks and the proposed Guidelines, which are intended to clarify and strengthen this important law, and we urge Council to approve the Guidelines now and to take action to place the proposed amendments on the November ballot for voters to approve. We have comments on the wording of one section in the Guidelines and two sections in the Proposal to Amend.

We don't think any changes to the language of the proposed Guidelines or the proposed amendments to Oaks should be referred to Ms. Moutrie, who has lost the confidence of residents, who has consistently refused to enforce Oaks, relying on arguments that the Hueston report calls "absurd," and who herself asserts a conflict of interest on Oaks enforcement. Either Mr. Hueston or some other independent attorney should do the work and provide the Council and City Manager with advice.

It is vital that any attempt to use this process to WEAKEN Oaks be firmly rejected.

Enforcement of Oaks needs to begin immediately, with all future complaints going directly to the head of the Criminal Division with no involvement of the City Attorney as the report points out.

We believe that it is important to have a performance evaluation of the City Attorney by the Council, with an opportunity for members of the public to provide feedback BEFORE the evaluation.

Finally, as the Hueston report points out, Ms. O'Connor has unresolved Oaks violations that have not yet been investigated. She has returned some campaign contributions from the 2014 election, but contributions from owners, officers and others from the major companies doing

business with Santa Monica, such as Hines, Macerich and Century West, have still NOT been returned. In light of the findings in the Hueston report, these complaints against Ms. O'Connor should be investigated and processed immediately.

The Transparency Project thanks Mr. Hueston and his colleagues for his Report. It upholds the importance of Oaks as an anti-corruptive law and affirms that it should be enforced...finally.

We have three comments on the Report's recommendations:

First, On the Proposal to Amend Section 2202(b)(2): We agree with the exclusion of volunteers for non-profits, but are concerned that the way it was written is too broad. Indeed, on page 54 of the Report it speaks of there being no interest in stopping donations from "VOLUNTEERS" for non-profits, not highly paid officials.

In Santa Monica we have some huge corporations, with major development projects and other business before the City, that are organized as non-profits. They have highly paid officials. For example, Saint John's Health Center (<http://california.providence.org/saint-johns/>) and the RAND Corporation (<http://www.rand.org/about.html>). St. John's will soon have a major expansion before the Council.

Therefore, the exclusion for non-profits should be worded to only apply to volunteers, which we think would be consistent with the intent of the proposed exclusion, and it should not apply to officers and directors of these non-profits, who are often highly paid and in no way volunteers.

Second, On the Proposal to Amend Section 2206(b), we think the use of "whichever applicable" before listing the remedies may be interpreted to apply only one penalty. One or more penalties may be appropriate, such as requiring restitution of an advantage received along with an injunction against future violations. Changing the wording to include more than one penalty would make clear that multiple remedies might apply.

Third, on the Guideline I-D-ii: Allowing the true owners of an entity doing business with the City to be able to hide behind corporate shells would be a mistake. It doesn't advance transparency or Oaks.

We understand it is an attempt to make the filings easier, but it opens up a big loophole. We see New York and other Cities taking action to try to uncover the true owner of projects. Without the identity of the true owners and officers being revealed, they can give donations without being subject to Oaks.

Therefore, in I-D-ii, the final sentence should be excluded as it permits a corporation that owns a corporation that is the owner of a project to not have to disclose its more than 10% owners, officers and directors. This loophole allows the reporting requirements to be avoided.

We urge you to act on the Recommended Guidelines tonight and to take action to place the proposed amendments on the November ballot for voters to approve.

Respectfully,
Santa Monica Transparency Project
Mary Marlow, Chair

Cc: Rick Cole , City Manager
Marsha Moutrie, City Attorney
John Hueston, Independent Advisor