



**Office of the City Attorney**  
City Hall  
1685 Main Street  
Room 310  
Santa Monica  
CA 90401

Marsha Jones Moutrie

June 16, 2015

**VIA E-MAIL (M.MARLOW@VERIZON.NET) AND U.S. MAIL**

Mary Marlow  
Santa Monica Transparency Group  
155 Ocean Park Blvd.  
Santa Monica, CA 90405

Re: Transparency Project Complaint Against Rod Gould

Dear Ms. Marlow:

This letter responds to the complaint you filed on behalf of the Santa Monica Transparency Project alleging that former City Manager Rod Gould violated the Oaks Initiative, City Charter Article XII, by accepting employment with the consulting firm Management Partners, Inc. after approving contracts with that firm while he was the City Manager. In addition to reviewing your complaint and the supporting documentation you supplied, I have also considered your general concerns about enforcement of the Oaks Initiative. This letter provides information about our processes, the Oaks Initiative, and its enforcement.

Your group's complaint alleges on information and belief that Mr. Gould violated the Oaks Initiative by accepting employment with Management Partners after that firm was hired on six occasions while Mr. Gould was the City Manager. In support of your complaint, you have submitted copies of: (a) an information sheet prepared by the City Clerk's Office in August of 2006, which states that the measure applies to the City Manager; a copy of Charter Sections 2200 and following (the Oaks Initiative); an excerpt from the City Manger's page of the City website which states that City management is guided by the Code of Ethics adopted by the International City Managers Association (ICMA); a copy of an article saying that the California ICMA honored Mr. Gould with an Ethics Award in 2014; a copy of a portion of an ICMA publication providing guidance to retired City Managers on accepting work from their former cities' contractors; an article, dated May 26, 2015 reporting that Rod Gould had accepted employment with Management Partners; a May 28, 2015 article from the Santa Monica Daily Press reporting that Mr. Gould was joining Management Partners; and a June 5th posting by CaliforniaCityNews.org also stating that Gould had joined Management Partners. I note that the allegations relating to the ethics code of the International City Manager's Association (ICMA) are outside the City's purview and immaterial to the contention that the Oaks Initiative was violated. Any response to those allegations would need to come from Mr. Gould or the ICMA, and one or both might appreciate the opportunity to respond.

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As to the Oaks Initiative, the complaint alleges violations of the law, based on information and belief, and it requests an investigation. Generally speaking, this office's Criminal Division does not handle initial investigations of complaints of violations of laws carrying criminal sanctions. Instead, the division refers such complaints to an investigatory agency, usually the Santa Monica Police Department (SMPD). (I note that we did not refer your group's prior complaint to SMPD because there was no dispute about what had happened; so no investigation was necessary.)

After an investigation is completed and if the Police Department or another agency files a crime report with this office, the Criminal Division evaluates the case for prosecution. However, as to Council Members and staff members that we routinely advise (including the City Manager), we can neither perform investigations nor make filing decisions because they are the office's co-workers and civil clients, and we cannot take action against them (an ethical duty which also applies to past clients). In such conflict situations, we refer crime reports to the District Attorney's office for filing decisions. In situations where the DA also declares a conflict, we refer matters to the Attorney General. These are standard procedures for misdemeanor prosecution by in-house city prosecutors.

As you know, we have received only one prior complaint under the Oaks Initiative, which was also filed by the Transparency Project. That matter was referred to the District Attorney's Office and later to the Attorney General according to these standard procedures. Both responded with letters conveying their blanket refusals to handle cases under Oaks Initiative – an unusual response. Their letters conveying and explaining their decisions are enclosed for your reference. As you will see, they suggest assignment to an attorney in this office who would be somehow insulated from both the rest of this office and from the Council, a suggestion with which I cannot concur (because among other things, I do not believe that the public would have confidence in that attorney's objectivity and independence and the attorney would apparently not be accountable to anyone). Thus, as to the instant complaint, it might be considered appropriate to seek an investigation by SMPD; but even if the police reported a violation (which seems unlikely for the reasons explained below), we would not be able to prosecute the matter. And, given the letters from the District Attorney and Attorney General's offices, neither apparently will any other higher-level serving prosecutor.

In addition to that practical impediment, it is uncertain whether the Oaks Initiative applies to the factual circumstances alleged in your group's complaint. As you know, the measure was adopted for the laudable purpose of prohibiting public officials from conferring public benefits, such as land use approvals or contracts, in order to later receive private advantages, such as campaign contributions or employment. However, as staff explained at the time of the measure's adoption, like many initiatives, it suffers from legal infirmities and drafting deficiencies that create ambiguities about its application. For instance, the application of the prohibition to City employees is unclear. As you are probably aware, the term "official" is defined differently in different contexts. The Oaks Initiative states that the prohibition applies to "appointed officials" but does not define that term. So, it is unclear whether the measure applies only to Council, the

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Rent Control Board, and the members of City boards and commissions or also to City employees.

As far as I know, there is no judicial decision clarifying the measure's applicability to City staff. The Oaks Initiative was challenged in court at the time that it was circulating in several California cities and after it was adopted. And, two courts issued decisions. Both found constitutional infirmities, but neither addressed the question of applicability to city employees.

To try to resolve this uncertainty, I reviewed the ballot materials. They focus on political corruption. The proponents' argument in favor of the measure states that it "forces a public official to represent the interest of the public and not the special interests of a potential contributor." Likewise, in their rebuttal argument the proponents argued that the measure would "ban politicians from taking money, gifts and jobs from businesses that get city contracts ..." However, the proponents did not mention or explain the application of the measure to appointed officials who are not politicians or political appointees. Thus, their arguments focus on elected officials and do not support a conclusion that City employees are considered "appointed officials" for purposes of the measure.

The opponents' argument against the measure does mention its impact on "appointed officials" as follows: "It also applies to appointed officials. Santa Monica is renowned for its high level of citizen participation ... this measure's ambiguity will put an unnecessary extra burden on people volunteering time to community service." This point went unrefuted in the proponents' rebuttal. Copies of the ballot arguments are enclosed for your reference. Thus, the ballot arguments suggest that both the proponents and opponents of the measure assumed that its application would be to members of the City Council, Rent Control Board and City boards and commissions. Based on the arguments, the voters would likely not have concluded that the measure would apply to City employees.

Moreover, in 2001 the City Clerk notified the City Council of her concerns about enforcing the measure. Her concerns were based on doubts about its constitutionality and its ambiguity. Her staff report notes ambiguity about whether the term "public official" applied only to members of the City Council, Rent Control Board and members of boards and commission, or whether it also applied to the City Manager, City Attorney, City Clerk, department heads, division managers and others. A copy of that report, with attachments, is enclosed for your reference. Given the fact that she had identified this ambiguity, I am not certain why the Clerk's information sheet, which you provided, states that the measure applies to Department and Division Heads. Perhaps the information sheet was broadly worded to further the salutary purpose of the Oaks Initiative, which no one opposes. In any event, I cannot agree with the allegation in the complaint that the Oaks Initiative clearly applies to City employees.

And, even if it does, there is another very concrete legal impediment to enforcement in this particular case: the measure does not apply outside the City of Santa Monica. This is a local law, which can only regulate conduct occurring within the boundaries of the City. And, the evidence shows that Mr. Gould accepted employment after he moved to Northern California. As

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you mentioned to me in a phone conversation, he relocated shortly after retiring in January of this year. The announcement of his employment with Management Partners came recently, within the last few weeks, months after he moved to Northern California. Moreover, your group's complaint includes no allegation that the employment agreement was made in Santa Monica. Nor are we aware of any evidence that it was. So, whether or not the measure applies to City employees, the allegations of the complaint appear insufficient to establish a violation of the Oaks Initiative, even if true. In view of these facts, I doubt that the Santa Monica Police Department would undertake an investigation. Of course, that would be their decision.

Next, I want to address the general concern about future enforcement of the Oaks Initiative. As noted above, the blanket refusals from the District Attorney and Attorney General leave no present alternatives for enforcing the Oaks Initiative through prosecution against members of the City Council and high level staff members, among others. In a proper case and at the proper time, we would certainly consider the alternative of contracting with another agency to handle enforcement, assuming the City Charter allows us to do so. And, as I have previously explained, it may also be theoretically possible to hire a so-called "independent prosecutor". However, at this point in this matter, we have no crime report from an investigative agency. Moreover, the information that we do have indicates that the Oaks Initiative may not apply to City staff and, even if it does, the alleged wrong-doing occurred outside the City of Santa Monica.

Based on the foregoing, besides sharing this information with you and with those who will receive copies of this letter, there is apparently no other action that this office can or should take at this time on this complaint. Nonetheless, I want to thank you and your group for taking the time to express and document the Transparency Project's concerns and thereby promote transparency within the City. If you have questions or comments about this, you are welcome to contact me.

Best regards,



Marsha Jones Moutrie  
City Attorney

MJM/EK

Enclosures: (4)

cc: Mayor and City Council  
Elaine Polachek, Interim City Manager  
Jacqueline Seabrooks, Chief of Police  
Joseph Lawrence, Assistant City Attorney  
Terry White, Chief Deputy City Attorney, Criminal Division