

A Brief History of Santa Monica's Oaks Initiative and Resident Enforcement

A review of Santa Monica's backbone anti-corruption law, the Oaks Initiative, shows repeated attempts by the City to eliminate it, or, failing that, gut it, or, failing that, not enforce it. This has been an expensive operation, with almost \$600,000 of taxpayer dollars being wasted, while at the same time violations of the law have been ignored.

The history:

1. The Oaks Initiative was put on the ballot in 2000 to prohibit city officials from awarding public benefits, such as development agreements and contracts, to individuals and entities and then receiving a personal benefit from them such as campaign contributions or employment. Oaks is aimed at avoiding even the appearance that public officials are looking to future personal benefits when carrying out the people's business.
2. The City strongly opposed the Oaks Initiative, even forcing the proponents to go to court for an order compelling the inclusion of their argument in favor in the ballot pamphlet.
3. None of this worked—Oaks passed by almost 60%.
4. Instead of enforcing the law, the Council decided to challenge it in court. City Attorney Marsha Moutrie instructed the City Clerk not to implement the new law. Then Ms. Moutrie sued the Clerk for not implementing the law.
5. Thousands of dollars later, by 2005, through the trial court, the Court of Appeal and the Supreme Court, no court bought this ill-conceived legal "strategy." The City lost its case and Santa Monica was ordered to pay the other side's legal fees, in addition to its own outside firms - almost \$600,000.

"City Hall suffered a third strike last month when the state Supreme Court refused to hear a case that involved the city suing itself, losing, appealing and losing again, over an initiative approved by voters more than four years ago." SM Daily Press, "City's Lawsuit Against Self Dies," 5/13/05.
6. After the lawsuit failed, Santa Monica next put a new initiative on the ballot (2006 Measure W) to try to replace Oaks. The City claimed it would promote the goals of Oaks without what it conceived of as its problems. The problem was that the new Initiative would have gutted Oaks, not improved upon it or promoted its goals.
7. Intemperate rhetoric didn't add to a solution:

“Moutrie said the measure [Oaks] has ‘sweeping bans’ that would freeze the City Council and city commissions.” The Argonaut Newspaper, “Council Continues Effort to Overturn Voter-Approved Campaign Financing Ban,” 3/17/05. (Emphasis added.) See also, City Beat, “Former Attorney General John Van de Kamp says Santa Monica is Trashing its Anti-Corruption Bill,” 8/17/06.

- 8. Of course this didn't happen. The Council has not frozen. The Council moves forward, makes decisions, good and bad, plenty of folks are lining up to fight for positions on the Council and commissions, campaigns are well financed, residents are getting more involved, not less. City jobs are prized.**

And, contrary to the rhetoric, the Oaks violations that have been reported by the Transparency Project have been significant, not slight, and we need Oaks to stop this bad conduct: (1) former Mayor Pam O'Connor's repeatedly accepting batched contributions from the biggest developers in the City after voting to approve their developments; and (2) former City Manager Rod Gould's accepting a senior position with a company that he personally recommended, and then approved, for one contract and, soon before he retired, and during a period he was discussing possible employment with them, approved another contract in their favor.

- 9. The City put its Initiative on the 2006 ballot . Election Watchdog and the Foundation for Consumers and Taxpayers Rights put up a billboard in opposition.**
- 10. The City Attorney's office then sent them a threatening letter that they have to remove the billboard “immediately.” Why? Because the sign had an image of the pier on it. The City Attorney picked on the wrong people.**
- 11. All this brought Ralph Nader out to Santa Monica: “Already the City Attorney has wasted \$400,000 in such things as suing their own City Clerk in order to invalidate the voters' preference of 2000, and they're at it again.” The LookOut News, “Billboard Challenge Focuses Spotlight on Finance Law,” 10/26/06**
- 12. The Oaks-gutting Initiative was seen for what it was and was rejected by the voters. Twice Santa Monica voters have voted in favor of Oaks.**
- 13. What happened next is better known. Now the City Attorney simply refuses to enforce Oaks. Having failed to invalidate Oaks in the court, having failed in the attempt to get a toothless version approved by the voters, having even refused to look at a strong alternative or involve residents, the City Attorney now says she has a conflict of interest and cannot and will not investigate violations of Oaks or enforce it.**

When both the L.A. District Attorney and the California Attorney General said that they do not want to become Santa Monica's prosecutors, and advised that the City

Attorney's office can prosecute, she has disagreed. She has rejected all proposed alternatives. She even rejected an easier to prove civil suit, instead of a criminal claim. Nothing happens.

The Present Day:

14. Given all this, in 2015 three members of the Transparency Project brought their own lawsuit against former City Manager Rod Gould for his Oaks violations—and won. This was a victory for all of Santa Monica. This only came after the City Attorney refused to act and, according to Mr. Gould, advised him that it was ok for him to continue to work for the company for which he had approved contracts in violation of Oaks.

But residents being forced to sue as the only way to have the law enforced is unacceptable. Our laws should be enforced by our government, which has the resources, and investigative power that private citizens do not.

15. A very positive development occurred, with City Council's hiring of independent counsel John Hueston to carry out a review of the City's handling of the Elizabeth Riel firing matter, at the request of the Santa Monica Coalition for a Livable City (SMCLC), and its handling of Oaks Initiative enforcement, at the request of the Transparency Project, and make findings and recommendations for going forward. Mr. Hueston recommended an amendment to the Oaks section of the City Charter clarifying the City Attorney's authority and enforcement responsibilities, create an exemption for volunteers serving certain City-funded non-profits, clarify the application of the Article's prohibitions, and the scope of available remedies.

Heeding Mr. Hueston's recommendations, the City Council placed Measure SM on the November 2016 general election ballot. The Measure received an overwhelming 83% 'Yes' vote.

16. In January 2017, the City finally issued a fine to a member of the City Council for accepting a political campaign contribution from a beneficiary of a city contract as specified in the City Charter Section XXII, the Oaks amendments of 2000 and 2016.

Santa Monica Transparency Project. December 2016.

