



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

January 13, 2017

Ms. Mary Marlowe, Chair
The Santa Monica Transparency Project
VIA EMAIL – m.marlowe@verizon.net

RE: ALLEGED OAKS INITIATIVE VIOLATION BY COUNCILMAN TERRY O'DAY

Dear Ms. Marlowe:

In November 2016, prior to the City Of Santa Monica Municipal Elections, the Santa Monica Transparency Project filed with the Santa Monica City Attorney's Office a complaint against Santa Monica City Councilman Terry O'Day, which alleged two violations of the Oaks Initiative.¹ In an April 18, 2016, report to the Santa Monica City Council, which was entitled "Report with Review and Recommendation of Best Practices for the City of Santa Monica", it was determined that the Santa Monica City Attorney's Office, Chief Deputy City Attorney for the Criminal Division would be the individual charged with the investigation and enforcement of the Oaks Initiative.²

The documents and materials submitted to our office by the Transparency Project show two separate campaign contributions received by Councilman O'Day's campaign committee:

1. On September 26, 2016, Councilman O'Day received a \$340 campaign contribution from Marc Luzatto, a principal of Village Trailer Park. This contribution was duly reported to the Santa Monica City Clerk's Office on October 22, 2016.
2. On August 22, 2016, Councilman O'Day received a \$340 campaign contribution from Dan Emmett, the Chairman of Douglas Emmett. This contribution was reported to the Santa Monica City Clerk's Office on September 28, 2016.

Each of these contributions violated the Oaks Initiative because, within his term of office which began in 2012, Councilman O'Day voted to approve contracts involving the companies of Mr. Luzatto and Mr. Emmett, respectively. Councilman O'Day returned both campaign contributions

¹ Santa Monica City Charter sections 2200 – 2207, Article XXIII, adopted at General Municipal Election, November 7, 2000, Measure LL.

² Pursuant to the Report, neither the receipt of this matter nor its disposition was discussed with City Attorney Marsha Jones Moutrie, Interim City Attorney Joseph Lawrence, or City Manager Rick Cole.

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in early November 2016, however, Section 2204(a) states the contributions must be returned within ten days after the receipt. Unfortunately in this case, both contributions were returned more than ten days after their respective receipt. In a letter to me dated November 8, 2016, Councilman O'Day acknowledged receiving the aforementioned campaign contributions and subsequently returning the contributions more than ten days after receiving them which, as stated earlier, violated the statute.

This violation appears to be the first violation of the Oaks Initiative by Councilman O'Day, who clearly did not exercise due diligence in his initial receipt of the contributions and the subsequent failure to return them promptly within ten days of receiving the contributions.

I do not believe the most severe penalty of misdemeanor criminal prosecution is appropriate for this first-time violation of the statute. When Councilman O'Day became aware of the violation, he quickly returned the contributions and acknowledged his error in accepting the contributions. There is no evidence to indicate this conduct was a "knowing and willful" violation by Councilman O'Day which would justify proceeding with a misdemeanor criminal prosecution. Also, due to Councilman O'Day's acknowledgement of the violations and his prompt return of the two campaign contributions, it is inappropriate to consider the filing of a civil action pursuant to Section 2206(b) of the City Charter.

Councilman O'Day and I have agreed he will pay a \$500 penalty to the City's General Fund as a penalty for these two violations of the Oaks Initiative. Hopefully all councilpersons in the future will be diligent in reviewing the receipt of contributions they receive and ensure that any inappropriately received contributions will be returned within the ten day period set forth in Section 2204(a) of the City Charter. I now consider this matter resolved and closed.



Terry L. White
Chief Deputy
Criminal Division

cc:

Rick Cole, City Manager
Terry O'Day, City Councilman
Joseph Lawrence, Interim City Attorney