

City Manager's office and City Clerk: Please receive this **Supplemental** communication and include with the 7-PM, August 22, 2017 Regular City Council meeting agenda under **Consent Item-2d, "ACCEPTANCE OF DONATIONS"** Thank You.

August 19, 2017

**To:** Hermosa Beach City Council (Justin Massey, Jeff Duclos, Stacey Armato, Hany Fangary, Carolyn Petty), City Clerk, City Treasurer, Finance Director, City Manager, and Contract-City Attorney Michael Jenkins.

**From:** Howard Longacre, a Hermosa Beach Resident.

**Regarding:** A failure by the City and the City Council to timely-disclose and publicly review and accept, likely improperly solicited, received, and utilized resident donations totaling \$162,200 during an ongoing closed-session matter of significant litigation between the City and E&B Natural Resources Management Corporation (E&B), with such occurring eight or more months ago (in December of 2016 and/or earlier), with likely violation(s) of the Brown Open Meeting Act via evident discussion by City Council members and/or by the City's legal counsel with two and/or more residents outside of closed session regarding sensitive closed-session litigation matters, all while the general public were kept uninformed.

**Reference Attachment 1:** ["Donation and Gift Policy" of Goleta, California \(A General-Law City\).](#)

## Councilmembers and others:

1. The following comments and suggestions by me are given freely, and they are entirely my views and opinions on all that I've stated herein
2. I am writing to you with concerns of the City's and Council's process to date related to two very generous donations as evidently worked-up and approved in secret some eight months or more ago, and thus in the absence of the public's right to know of such contributions and their use, prior to their use.
3. These two donations, as having been made by two Hermosa Beach donor entities, are now belatedly being announced on the current August 22, 2017 Hermosa Beach City Council regular meeting's "ACCEPTANCE OF DONATIONS" Consent Item 2-d, evidently due to inquiries I've made during the past four weeks.
4. Unfortunately this is occurring some eight months after the contributions were made and perhaps five months after the contributed money had already been

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encumbered/spent by the City and with the Council's evident approval and full knowledge, however again, in secret from the public.

5. The City's government is not to be funded significantly in secret, and with such funding then being expended also in secret. Yet that is evidently what occurred notwithstanding an after the fact vague comment made gratuitously by Councilmember Hany Fangary at the beginning of the March 14, 2017 meeting. (More on Councilmember Fangary's comment later in this communication).
6. Maintaining such funding and spending authorization secret had absolutely nothing whatever to do with a particular closed session discussion. It appears that the closed session was in fact used bogusly to hide the entire improper matter. The Council routinely contracts for legal-counsel for particular matters being discussed in closed session, and does so in open session and/or approves funding for such in open session.
7. Following is the subject Consent Item 2-d of the 8/22/2016 Council meeting agenda that lists the two donations being discussed herein.

**8/22/2017 Council Consent Item 2-d REPORT 17-0473** (view full staff report at following link)

**ACCEPTANCE OF DONATIONS**  
(Finance Director Viki Copeland)

Recommendation: It is recommended that the City Council accept the donations received by the City from donors, to be used for the purpose noted.

<http://hermosabeach.legistar.com/gateway.aspx?m=l&id=/matter.aspx?key=3130>

8. The above staff report link may not function after August 22, 2017 due to agenda materials being moved to archives; therefore I have copied the two subject donation items as listed in the above staff report here for reference. The dates listed are apparently the dates that the donations were made to the City.

<u>DATE</u>	<u>DONOR</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
December 7, 2016	Chuck and Missy Sheldon	\$87,200.00	Contribution for Legal Fees in Connection with E&B Dispute
December 12, 2016	A long-time resident of Hermosa Beach that has opposed oil drilling in Hermosa Beach (anonymity requested)	\$75,000.00	Contribution for Legal Fees in Connection with E&B Dispute

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9. NOTE: Nothing in this communication should be construed to in any manner besmirch the contributing donor couple's, or the anonymous "long-time resident's" generous contributions or intentions.
10. The concerns being conveyed herein relate to the City's and especially the present elected Hermosa Beach City Council's secret process and secret actions that somehow resulted in these two contributions totaling some \$162,200, being worked-up/solicited, received, encumbered/spent, while then never being properly and timely disclosed to the public until being requested to recently some eight months later. In all likelihood this defective process would otherwise have been left hidden by electeds and staff officials forever.
11. One has to wonder as to what the scenario was that resulted in two "outsiders", not explicitly participating in the closed-session matter, to coincidentally donate such substantial money (\$162,200) such that the Council would or could contract for additional outside legal-counsel and/or hours to perhaps further intimidate E&B by upping the litigation ante. What caused this?
12. Was there unwillingness by three members of the Council to authorize additional spending for such additional outside counsel? And if there was such opposition, did one or more members of the Council then wheel and deal by, i.e., stating that if they could drum up funding for this additional outside legal-counsel, would there then be a majority to approve the contracting of such additional legal-counsel.
13. No matter, it appears then that such members went outside the closed-session and indicated to their certain anti-oil friends and associates that there was not a majority willing to expend additional city funds to hire additional outside counsel. By doing so and being permitted to by others on the Council and probably with Contract City Attorney Michael Jenkins' knowledge, the entire Council would have violated one or more state laws one suspects. The question then is how did those individuals outside of the closed-session proceedings get to feel as though they needed to donate \$162,200 and specify with their donations that the money was to be used to support litigation by the City v. E&B.
14. The March 6, 2017 settlement with E&B has now been consummated. There is no longer any real need for secrecy in this matter. It's clear the Council did not operate honorably or correctly vis-à-vis these two donations.
15. Note also that this has nothing to do with what view one has of the E&B/City relationship. It has to do with open government, and not of government doing anything it likes because it might believe that it's on the right side of things, or doing so much good that it could not possibly be doing anything wrong.

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16. All are reminded that I personally submitted multiple communications regarding the outrageous nature of E&B's claim for additional monetary-interest, interest clearly never intended by the original March 2, 2012 settlement agreement, nor ever mentioned prior to the oil vote of March 3, 2015 in either side's position-advertisements/propaganda, nor in the "Cost/Benefit Analysis" consultant's report as to be an additional cost that Hermosa Beach Residents and the City would be burdened with should Hermosa voters not approve oil drilling.
17. Notwithstanding, the City settled the subsequent lawsuit this past March 6, 2017 re: Interest and other matters by paying what in my view was nothing less than an extortion payment to E&B in the amount of \$1.5 Million. Obviously in this case, as in many divorces, the attorneys on both sides had by then eaten up all the available litigation monies the two sides were willing to expend and thus a settlement was suddenly reached. The attorneys on both sides thus won, and E&B and City both lost.
18. This of course was due to the current Council's decision to settle and notwithstanding other items also settled which had been left hanging due to the incredibly sloppy, loop-hole-laced, original signed March 2, 2012 Settlement Agreement as made between the City, Macpherson Oil, and E&B, but as also significantly worked-up and then signed by these parties in the Manhattan Beach offices of the City's no-bid-contract-city-attorney-for-life Michael Jenkins. Jenkins, in my view, has been giving faulty, defective, legal-opinion to the City's councils and staff during his endless tenure that dates back to well before the 1998 cavalier cancellation by the Hermosa City Council of the Macpherson oil contract, that in fact lead to these 19 years of litigation and at a cost of to the City of tens of millions, and all while the city continues to pay Jenkins and utilize his services. Hermosa Beach is a non-profit corporation that never learns anything it appears.
19. Notwithstanding, the subject donations were not first placed on a public agenda to be properly accepted prior to their use and thus for the public to be fully informed about.
20. The business of government in Hermosa Beach should also not be operated via funding and spending direction from anonymous individuals without the public fully knowing that such is going on, before acceptance of such funding, no matter how innocent, well-intentioned, or honorable, such anonymous funding may appear to be.
21. It is evident that all five council members and City Staff knew of this significant funding and from whom the "anonymous" funding was emanating. Such was again unknown though by the public as to how these particular donating residents, who made such significant contributions, knew of a particular need for additional funding to pay for some special legal-counsel (i.e. attorneys). Obviously one or more government official(s), elected or otherwise, leaked something to these private residents.

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22. It is also unknown by the public if the contributing residents as such, had some influence in the selection of the legal-counsel their contribution was to be used for.
23. It is unknown why these residents would be involved in what was a significant and supposed-to-be secret closed-session matter of the Council when I myself had to write to Council on several occasions to even get them to disclose publicly what case they were repeatedly discussing in closed-session under the guise of “significant potential litigation”.
24. Obviously, one or more of the Hermosa Beach City Council were again, leaking closed session information of some sort to certain individuals with respect to perhaps votes to not hire or to hire particular legal-counsel. I.e. votes of the Council indicating they may not have desired to approve the spending for such counsel or some other reason. Who knows, but perhaps the Councilmembers and their Contract City Attorney?
25. However again, it sure seems strange that suddenly there were those in the community willing to put up significant cash to assist. With three attorneys on the City Council, how could such an obvious situation exist whereby clearly all five council members surely must have known how or why all this came to be? It almost seems as though this should be fully investigated by the County District Attorney to find out what was going on during supposed “closed session” discussions that outside residents became involved in funding of the litigation.
26. One has to wonder if the egos of some council members are so out-of-control as to require them to leak what is going on in closed sessions to their supporters outside who may have a particular interest in the results. It does appear that the present City Council believes it is above ethics and common sense.
27. Such Council actions seem to also cause the City’s staff to join in improperly on the Council’s behalf as why else would it take the City three weeks to respond to a few simple questions regarding these donations, while one or more council members and/or their counsel, City Attorney Michael Jenkins, perhaps figured out how to whitewash the entire matter and continue its underlying secrecy.
- 28. One thing appears clear. The City must fully return the two donations to the contributors. The donations were apparently solicited, received, and spent, improperly by the City Council without the public’s knowledge. Further, one donation is from an anonymous source who stated what the money was to be used for.**
29. The contributors may certainly re-donate their money for some other tax-deductible special city use, i.e. the schools, a park, whatever, however the public needs to know

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of the donation, who is making it, and what it is to be expended (for a minimum of 72 hours or more on a posted agenda) prior to the Council considering to accept it.

30. This is now over eight months later. Mistakes have been made by the Council along with its legal-counsel, contract City Attorney Michael Jenkins.
31. The Council, let alone Council's Contract City Attorney Michael Jenkins do not seem to have a clear appreciation of the common sense and ethics required to understand that the people have a need to know whom is giving money to run its government operation, and what influence they may desire or expect in return at some possibly future date.
32. No matter how honorable these two subject donations may be, they cannot be properly accepted at this late date and must be returned and no matter what mumbo-jumble the Council or its contract City Attorney Michael Jenkins may offer now.
33. These two donations cannot be allowed to set a precedent for future nefarious contributions to be secretly accepted with some action then being taken by the City without the public's knowledge. How obvious is all this to understand?
34. And under no circumstance can a donation be made to an honorable government anonymously that also additionally specifies how such contribution is to be spent. If the anonymous contributor is known by anyone of the City Staff, or members of the Council, what influence does this potentially portend a contributor?
35. My interest in this particular matter was initiated by recalling a Council meeting at the time of the most recent City/E&B lawsuit settlement wherein Councilmember Hany Fangary gratuitously had mentioned a significant contribution with some relationship to that settlement. I didn't think much of it at the time. But recently from another discussion I realized that I needed to research this further. Upon researching the archived meetings I found Councilmember Fangary's statement back on March 14, 2017, 8 days after the additional settlement wherein the Hermosa Council agreed to pay E&B \$1.5 Million.
36. Councilmember Fangary's statement was made during the meeting at the time of councilmember announcements, i.e., near the beginning of the March 14, 2017 Council meeting.
37. Councilmember Fangary offered, in conjunction with his bragging of the latest (March 6, 2017) E&B settlement, patronizing thanks to former Councilmember "Chuck Sheldon and his wife Missy" for a "significant financial contribution" given to be specifically used to aid the City's lawsuit negotiations with E&B to reach a settlement re: the post oil-drilling settlement litigation with respect to E&B. This occurred at

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1:08:17 into the recording of the meeting which included a closed-session before the start of this regular meeting.

38. Councilmember Fangary made no mention of the actual amount, nor of the fact that there was also another contributor who had made a similar contribution and for the same specific purpose. Nor did it appear that any of the other four council members desired to volunteer anything additionally regarding this odd situation.
39. A direct link to the archived video of the March 14, 2017 recording follows. View Councilmember Fangary's mention of only the Sheldon's "significant financial contribution" at 1:08:17 into the recording. (The following Granicus link may take some time to load up.)

[http://hermosabeach.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=4391](http://hermosabeach.granicus.com/MediaPlayer.php?view_id=6&clip_id=4391)

40. Unfortunately, what seems to occur in Hermosa Beach, is that if there isn't a hard and fast law written down somewhere, no matter how obvious that something wrong may be occurring, contract City Attorney Michael Jenkins and the Council seem willing to just do any damn thing they desire without considering common sense, ethics, and the people's right to know.
41. Thus what is needed evidently is a clear policy set down for City Staff and all concerned to know the rules with respect to donations of all types to the City.
42. The General Law City of Goleta, California has such a policy that could be improved upon and utilized. Perhaps Hermosa Beach already has such a policy; however it does not appear to be the case. **Attached is the City of Goleta's "Donation and Gift Policy" for reference.**
43. Hermosa Beach would best immediately set in motion to have a similar written policy such that this kind of "slippery-slope" secret donation stuff never happens again. Goleta's policy is good for reference, however I would not desire for any donation, no matter how small, to be accepted without it appearing first on a Council agenda.
44. It is quite obvious that contributions made and accepted secretly and perhaps known only by some of the City's Staff or City Council, as to who is making the contribution, and the amount of the contribution, clearly represent an implied quid-pro-quo potential manipulation situation. That is to say, a contribution made for something expected in return.
45. The public needs to be fully aware of who is making a contribution as such, and what the use desired by the contributing party of the contribution desires for its use. And this must be prior to acceptance by the elected Council and use of such contributions. As such, contributions thus must appear on a Council agenda for

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acceptance or rejection before their acceptance and use is made. That's just common sense to avoid possible nefarious abuse by all concerned.

46. As such, again, the two subject donations totaling \$162,200 as contributed in the City's prior fiscal year need to be returned to the contributors. The contributions were apparently solicited, accepted, and expended without the public's awareness. Anything less is unacceptable and an indication that Hermosa Beach City Officials after being informed that a mistake has been made, who are then still unwilling to correct such mistake, need to be removed from their ability to further be involved in governing of the City.

\*\*\* End of communication \*\*\*

Reference Attachment 1: (follows on additional 6 pages as part of this PDF document)

1: [Goleta \(A California General Law City\) "Donation and Gift Policy"](#).



## **CITY OF GOLETA DONATION AND GIFT POLICY**

### **Section 1. Purpose**

The purpose of this policy is to establish a formal process for acceptance and documentation of donations made to the City. This policy provides guidance when individuals, community groups, and businesses wish to make donations to the City. This policy also establishes the standards for City employees and City officials regarding the acceptance of gifts during the performance of City business.

### **Section 2. Types of Donations**

Donations may be offered in the form of cash, real or personal property. Designated donations means those donations that the donor specifies for a particular City department, location, or purpose. Undesignated donations means those donations that are given to the City for an unspecified use.

### **Section 3. Consistency with City Interests**

Designated donations may only be accepted when they have a purpose consistent with the City's goals and objectives and are in the best interest of Goleta. The City must always consider the public trust and comply with all applicable laws when accepting donations.

### **Section 4. Acceptance of Undesignated Donations of Cash or Tangible Items**

All donations to the City, including offers to employees related to the City, shall immediately be submitted for consideration for acceptance. Based on the value of the donation offered as outlined below, appropriate City staff shall review every donation and determine if the benefits to be derived warrant acceptance of the donation. The following points list the threshold amounts for donation acceptance.

- A. Offers of donations of cash or items valued at \$5,000 or below may be accepted by a Department Director.
- B. Offers of donations of cash or items valued more than \$5,000 and up to \$10,000 may be accepted by the City Manager.

- C. Offers of donations of cash or items valued more than \$10,000 must be accepted by the City Council. Donations valued at more than \$10,000 shall be accepted through a written agreement consistent with these guidelines and approved by the City Council.
- D. Offers of donations for gratuitous purposes (e.g. holiday gift baskets, etc.) to any employee, department or the City shall be made available to benefit all employees.

### **Section 5. Acceptance of Designated Donations of Cash or Tangible Items**

Based on the value of the donation offer as outlined in Section 3 above, appropriate City staff will review the conditions of any designated donation and determine if the benefits to be derived warrant acceptance of the donation. Criteria for the evaluation include but are not limited to:

- A. Consideration of an immediate or initial expenditure is required in order to accept the donation;
- B. The potential and extent of the City's obligation to maintain, match, or supplement the donation;

### **Section 6. Acknowledgement of Donations**

- A. A Donation Acceptance Form is required to be completed by the receiving Department Director or the City Manager's Office for all donations provided to the City (form attached).
- B. Acknowledgement of the donation should be in writing and be the responsibility of the Department Director who is the beneficiary of the donation. Undesignated donations shall be acknowledged by the City Manager. A copy of the acknowledgement agreement should be forwarded to donors.
- C. The Donor Acceptance Form including the donor names and donation amounts are public information subject to disclosure pursuant to the California Public Records Act.

### **Section 7. Declined Donations**

- A. The City of Goleta reserves the right to decline any donation if, upon review, acceptance of the donation offer is determined in the sole discretion of the City to be not in the best interests of the City.

## **Section 8. Distribution of Donation**

- A. Tangible items will be distributed to appropriate City departments for use or, at the discretion of the Department Director or City Manager, disposed of in an appropriate manner according to this policy.
- B. Donations of cash for designated donations will be deposited into the appropriate revenue account for the designated City department.
- C. Donations of cash for undesignated donations under \$5000 will be deposited into the City's General Fund donation account. Undesignated donations in the amount of \$5,000-\$10,000 will be designated to the Community Projects Grant Program. Undesignated donations in an amount over \$10,000 will be distributed at the direction of City Council.

## **Section 9. Dissemination of Information**

- A. A copy of each Donation Acceptance Form for accepted donations shall be forwarded for information to the City Council by the City Manager's Office.
- B. A copy of each Donation Acceptance Form for accepted donations shall be forwarded for information to the Finance Department and the designated department for which the donation was assigned.
- C. Each original Donation Acceptance Form shall be maintained by the City Clerk's Office.

## **Section 10. Acceptance of Gifts to Employees and/or Elected Officials of the City**

- A. Employees and or elected officials of the City shall follow the provisions listed in City of Goleta Ordinance No. 04-03, Code of Ethics and City of Goleta Resolution No. 04-56, Conflict of Interest Code as they relate to the receipt of gifts.
- B. Employees and officials of the City are required to be objective and fair in dealing with the public and persons or firms doing business with the City. Employees shall not solicit or accept gifts or gratuities for the performance of their City job responsibilities.
- C. No City official or employee shall directly or indirectly solicit, accept, or attempt to accept any money, fee, credit, gift, gratuity, object of value, or compensation of any kind which the official or employee knows, or has reason to know is being offered:
  - 1. For the purpose of improperly obtaining or rewarding favorable treatment;
  - 2. With interest to influence the official or employee in the discharge of official duties or;

3. In consideration of having exercised official powers or performed official duties.
- D. Anonymous gifts shall be delivered to the City Manager for appropriate disposition.
  - E. This policy does not prohibit a City official from accepting anything of value by way of a gift when such a gift is made to and accepted on behalf of, the City of Goleta. All such gifts to the City shall be forwarded to the City Manager for compliance with this policy whenever possible; the City Manager will ensure that all such gifts are shared by all City staff. An example of such gifts would be those received during holiday periods.
  - F. Under the Political Reform Act, public officials and employees are required to disclose certain personal financial holdings as outlined in California Government Code sections 81000-91014. The Fair Political Practices Commission requires all public officials and employees to file a 'conflict-of-interest statement,' known as Form 700. In Schedule D of Form 700, details requirements in reporting gifts of a dollar value and shall be used.

**CITY OF GOLETA**  
**DONATION ACCEPTANCE FORM**

Name of Donor: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Description of donation: \_\_\_\_\_

Donor estimate of current value: \_\_\_\_\_

Potential immediate or initial acquisition or installation cost, any on-going maintenance or replacement cost: \_\_\_\_\_

Intended use: \_\_\_\_\_

Conditions of acceptance or donor designation: \_\_\_\_\_

Remarks: \_\_\_\_\_

City Department receiving donation: \_\_\_\_\_

**APPROVED / DISAPPROVED**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Department Head Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Manager Signature

\_\_\_\_\_  
Date Submitted to Council

\_\_\_\_\_  
Date Approved by Council

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor Signature

NOTE: The City of Goleta cannot guarantee future funding for repair, maintenance, use or replacement of donated items.

cc: City Council, Finance Department, City Clerk

**CITY OF GOLETA, CALIFORNIA**

**DONATION AND GIFT POLICY ACKNOWLEDGEMENT**

I have received and read the City of Goleta Donation and Gift Policy and understand its provisions. I further understand that when I sign this acknowledgement form it will be placed in my personnel file.

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**Employee (PRINT NAME)**

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**Signature**

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**Date**