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**OFFICE OF THE CITY ATTORNEY**  
ROCKARD J. DELGADILLO  
CITY ATTORNEY

February 26, 2002

Greg Nelson, General Manager  
Department of Neighborhood Empowerment  
305 E. First Street  
Los Angeles, CA 90012

Re: *Pacific Palisades Community Council*

Dear Mr. Nelson:

Our office received a copy of the letter dated October 15, 2001, addressed to you from the Pacific Palisades Community Council ("PPCC") and you asked that we provide a response to that letter. This letter is intended to respond to the legal questions and concerns that were raised in that October 15, 2001, letter and is being sent to you and copied to the PPCC so that you may retain this written response from our office in your files.

Initially, it should be noted that detailed or specific legal responses cannot often be provided without knowing all pertinent facts. The addition or omission of any fact could lead to an entirely different conclusion or result. This letter attempts to best address the legal issues raised by PPCC within these limitations. In addition, PPCC's questions concerning policy or administration are more appropriately addressed by the Department of Neighborhood Empowerment ("DONE") and PPCC should contact your department to follow-up on these issues. With this *caveat* in mind, I will attempt to address the legal questions raised in PPCC's letter:

**Question Number 1:**

Is the prohibition upon support or opposition to ballot measures by a Neighborhood Council applicable to State ballot measures as well as City ballot measures if no funds are expended for such support or opposition? Is a Neighborhood Council precluded from writing a letter in support of or in opposition to a State or City ballot measure if the cost of the letter and the postage are paid from donations raised by the Council?

**Answer:**

A certified Neighborhood Council is prohibited from expending any City funds to support or oppose any ballot measure. A Neighborhood Council cannot print and send out brochures stating that XYZ Neighborhood Council supports or opposes a certain ballot measure. Certainly, individuals in their personal capacities who also happen to be involved in a Neighborhood Council may endorse a position on a ballot measure and spend their own funds to support or oppose it. However, this does not mean that a Neighborhood Council is precluded from advising the City Council of its position on a particular ballot measure. It may even adopt a motion taking a formal position on a measure so long as no public funds are spent to publicize its views, including sending a letter using funds (e.g., costs of stationary, postage) that are donated to the Neighborhood Council. All monies given to a Neighborhood Council are public funds, and public funds cannot be used to support a political agenda.<sup>1</sup>

**Question Number 2:**

[Assume that the Neighborhood Council is a 501(c)(3) non-profit corporation.]  
The City Attorney has opined that any monetary donations to a Neighborhood Council are public funds because Neighborhood Councils are considered part of City Government and state regulations specify that gifts to Neighborhood Councils are gifts to City government. In rendering this opinion, has the City Attorney taken into account that fact that a Neighborhood Council, as assumed above, is a separate corporate entity under state law and also the fact that the Neighborhood Councils be as independent as possible as set forth in Article II, Section 4 of the Plan may exempt donations to a Neighborhood Council from becoming public funds?

**Answer:**

It is important to realize that the entity that is being certified is a "Neighborhood Council." As such, it will become a body of a local agency and a part of the City structure.

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<sup>1</sup> See attached December 15, 2000, letter, to DONE from the City Attorney's Office that states: "... neighborhood councils will be part of City government, gifts to the councils will be gifts to the City itself."

"...."  
"Therefore, like funds appropriated by the council for the operation of the neighborhood councils, funds donated to the neighborhood councils may not be used for private purposes, including support or opposition to candidates for public office or measures on the ballot."

Greg Nelson, General Manager  
Department of Neighborhood Empowerment  
February 26, 2002  
Page 3

While we recognize that some neighborhood councils may also choose to form non-profit corporations, the City is not certifying any type of corporate organization or structure beyond the public agency and any such venture is your own private venture that is in no way associated or a part of the City. This does not mean that the City is requiring such a private venture to cease to exist in order to become part of a Neighborhood Council, only that once a Neighborhood Council is created, this will be the entity that is recognized by the City.

Although the Plan states that the Neighborhood Councils should be as independent "as possible," the regulations passed by DONE do not take precedence over State Law regarding the use of public funds. The Neighborhood Councils are to be as independent "as possible," but this independence is tempered by the requirement that the Neighborhood Councils remain subject to other laws beyond the Plan, including State laws regarding the use of public funds. Moreover, the Ordinance itself clearly specifies that the Neighborhood Councils acknowledge and agree to abide by all laws of the Federal, State and Local government.

**Question Number 3:**

Since the City Attorney has concluded that any monies donated to the Neighborhood Council are public funds and are to be considered gifts to the City, are such donations tax deductible as a charitable contribution?

**Answer:**

Yes. The City has a Federal Tax Identification number that may be referenced for any charitable contributions.

**Question Number 4:**

If the Neighborhood Council were not a 501(c)3 organization, would donations still be tax deductible under the City's tax exempt status?

**Answer:**

See response to Question Number 3, above. In addition, please be aware that the entity that is being certified by the City is a Neighborhood Council. The City is not certifying a 501(c)3 corporation. The person responsible for the organization of any such 501(c)3 corporation will bear separate and sole responsibility from the City for any such entity.

**Question Number 5:**

Must the Neighborhood Council's donated funds be placed in a City Trust Fund?

**Answer:**

The Ordinance provides in Section 7 that monies appropriated from the budget are to be placed in a DONE Trust Fund. Since the Plan contemplates that each neighborhood council have a treasurer and maintain a system of financial accountability, it appears that monies given to the neighborhood councils pursuant to the Grant Program or otherwise would be separately maintained by the neighborhood councils. However, this question should be directed to DONE for clarification. In addition, DONE will be able to best respond to the remaining questions regarding the Trust Fund (e.g., the interest rate or time for obtaining checks from the fund) after DONE has had the opportunity to further develop and establish its policies and practices with respect to the Trust Fund.

**Question Number 6:**

Your question posed several hypothetical questions and asked whether a conflict of interest would occur.

**Answer:**

It is difficult to address any specific hypothetical since conflict issues require an in-depth review of all relevant facts. Our office suggests that, Indeed, whether or not the neighborhood council is required to comply with the Political Reform Act (Government Code § 81000) depends upon whether the neighborhood council will act *solely* in an advisory capacity or whether it will engage in decision-making activities (e.g., hiring, contracting, purchasing). Generally, there would not be a conflict if the Board Member is impacted in the same way as all neighbors. Of course, a definitive answer will depend on the facts of the case. In the event of any possible conflicts, you should contact Assistant City Attorney Anthony S. Alperin at (213) 847-3141 or at [aalperi@attylacity.org](mailto:aalperi@attylacity.org).

You should be aware that the appearance-of-impropriety standard contained in Charter Section 222 would not be applicable to neighborhood councils since it only applies to any "board, board member, officer or employee" of the City. Since neighborhood councils do not fall within these categories, the "against public interest standard" would not apply. However, members of advisory bodies such as neighborhood councils are subject to Government Code Section 1090, which prohibits a financial interest in a contract and could be applicable should a neighborhood council enter into a contract or even advise a City agency or Commission whether

Greg Nelson, General Manager  
Department of Neighborhood Empowerment  
February 26, 2002  
Page 5

the City should enter into a particular contract. You may wish to visit the City Ethics Commissioners website at [www.lacity.org/ETH](http://www.lacity.org/ETH), which specifically provides conflict of interest information for neighborhood councils.

**Question Number 7:**

The Bylaws of our Neighborhood Council provide for the appointment of non-voting Advisors who are not paid. Are they subject to the Political Reform Act or any other City conflict of interest provision?

**Answer:**

Initially, there is uncertainty in the question you raised. In order to provide a response, I need to review your Bylaws to understand what is meant by the term a "non-voting Advisor." I am unclear if this is a permanent standing committee member that has been appointed by the governing board. Again, as stated in our response to Question Number 6, above, the answer to your inquiry depends on whether your neighborhood council will engage in decision-making and how and who exercises that authority. I have attached a copy of a letter from the Office of the City Attorney to DONE, dated November 30, 2000, that I hope will aid you in responding to your question.

**Question Number 8:**

If an *ad hoc* committee appointed by the Neighborhood Council's Board includes such a non-voting Advisor, is the *ad hoc* committee subject to the Brown Act? Would the committee be subject to the Brown Act if a stakeholder who is not on the Board were on the *ad hoc* committee?

**Answer:**

The general exception to the Brown Act is that the committee must be a temporary committee and the members of that committee must be solely comprised of members of the Neighborhood Councils governing board that numbers less than a quorum. I am not able to respond to your first question regarding the application of the Brown Act to a "non-voting Advisor" without reviewing your Bylaws to determine whether the "non-voting Advisor" is actually a member of the governing Board. The answer to your second question is that the Brown Act would apply to an *ad hoc* committee when a stakeholder, who is not a member of the Board, is a member of that committee. Thus, if the *ad hoc* committee consists of members other than members of the governing body it is subject to the Brown Act. However, while not free from doubt, should an individual Board member create an advisory committee that reports

Greg Nelson, General Manager  
Department of Neighborhood Empowerment  
February 26, 2002  
Page 6

separately to him or her, that committee would not be subject to the Brown Act, regardless of its configuration, so long as it is clear that the committee was not in any way formed by any joint action by the entire body or reports to the governing body in its entirety.

**Question Number 9:**

In light of 56 Cal. Atty. Gen. Ops. 14 (1973), if the Chair of a Neighborhood Council, in his or her sole discretion, appoints the members of a permanent committee to give advice to the Chair regarding a recurring problem, is that committee subject to the Brown Act? If these appointments are subject to approval by the Council, but the committee is only to give advice to the Chair, is the Committee subject to the Brown Act?

**Response:**

See answer to Question Number 8, above.

**Question Number 10:**

Will a Neighborhood Council, as described in the beginning of this letter, be permitted to appeal decisions of the Zoning Administrator, Area Planning Commission, Planning Commission and other official City decisions?

**Answer:**

Generally, no. The Neighborhood Council is a part of the City and cannot be involved in appealing decisions of the Zoning Administrator, Area Planning Commission, Planning Commission and City Council. However, this does not mean that the individual members of the Neighborhood Council lose any ability to file any appeals they may have as a matter of right in their own personal capacity.

**Question Number 11:**

In light of the fact that a Neighborhood Council, as described at the beginning of this letter, has the right to sue and be sued under State law, and is recognized by the Plan as independent, does the Council have the right to sue the City under the following circumstances [hypothetical questions omitted]:

**Answer:**

Initially, it bears repeating that the Neighborhood Council that is being certified by the City is separate and distinct from any non-profit company you may set up with similar goals as a Certified Neighborhood Council. The Certified Neighborhood Council does not have the right to sue the City. The only situation where the filing of a lawsuit might occur would be in the situation when a proposed neighborhood council does not receive certification, or a Certified Neighborhood Council is later decertified in the circumstances described in the Plan. Either of these events creates an administrative process for filing appeals within the City and, after an exhaustion of administrative remedies, the neighborhood council could file a writ of mandate with the Court that requests the City be ordered to certify or re-certify the neighborhood council.

**Question Number 12:**

If a Neighborhood Council is prohibited from suing the City, does that prohibition extend to lawsuits by individual members acting on their own or lawsuits filed by organizations represented on the Council Board?

**Answer:**

No.

**Question Number 13:**

Article IX of the Charter does not define what a Neighborhood Council is and the term "certified neighborhood council" is used only in Sec. 909. Will non-certified neighborhood councils be permitted to attend and speak at the Congress of Neighborhood Councils?

**Answer:**

Probably. The format of the Congress of Neighborhoods has not yet been developed by DONE. You may wish to ask DONE this question when it begins developing the format.

**Question Number 14:**

[Rather than repeating your question in full, the gist of your question is whether secret ballots are allowed by the Council Board in electing its officers under the Brown Act]

Greg Nelson, General Manager  
Department of Neighborhood Empowerment  
February 26, 2002  
Page 8

**Answer:**

No. The Brown Act requires public disclosure of the decisions made by the Board, which includes a public vote on the persons that the individual Board Members choose as their Officers.

**Question Number 15:**

Are there specific factors the City considers when disapproving a bylaw amendment that has been approved by a Neighborhood Council board and, if so, what are they?

**Answer:**

DONE will approve any proposed amendments to the bylaws and any such amendments must comport with the Ordinance and the Plan, or not likely to lead to any violation. The factors that are considered by DONE in its evaluation, according to the Plan, when disapproving a bylaw amendment is whether the change is "inconsistent with the principles governing a Certified Neighborhood Council's purpose or operations." (Plan, Article V Section 3(c).)

Very truly yours,

  
**DARREN R. MARTINEZ**  
Deputy City Attorney

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cc: Michael Vitkiewicz, Certification Manager  
Romerol Malveaux, Field Division Director  
Harry Sondheim, Chair, Pacific Palisades Community Council

Enclosures

Greg Nelson, General Manager  
Department of Neighborhood Empowerment  
February 26, 2002

\* Page 9

bcc: Gwen & Peter