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CITY ATTORNEY

July 5, 2001

Board of Neighborhood Commissioners
c/o Department of Neighborhood Empowerment
305 East First Street
Los Angeles, California 90012

Re: Questions Surrounding Neighborhood Councils Posed By The
Pacific Palisades Community Council

Honorable Members:

This office is in receipt of a series of questions posed by a community group, the Pacific Palisades Community Council ("PPCC"). Your Executive Secretary, Jackie Mendez, requested that we provide the written responses to these questions that were answered jointly orally by you, my office and the Department of Neighborhood Empowerment at the June 14, 2001 Commission meeting held at Palisades High School.

The questions posed by the PPCC related to "[i]ssues to be considered in connection with the Plan for Neighborhood Councils." We have reorganized and slightly rephrased some of those questions so as to make clear that the responses only related to a certified neighborhood council.

Question No. 1: As a result of the Brown Act:

Question a)

Do meetings of committees, for example Executive By-Laws and Filming Committees, have to be open to the public (difference between standing and ad hoc committees)?

Answer a)

Yes. Although not stated in your question, it is assumed that you are referring to a certified neighborhood council and that the certified neighborhood council has established subcommittees of the councils and only members of the neighborhood council serve on these subcommittees. The Brown Act provides that meetings of standing

committees (those that have on-going jurisdiction of a particular subject matter) are subject to the provisions of the Act. However, temporary, ad-hoc committee meetings are not subject to the provisions of the Brown Act, so long as the members of that committee do not constitute a majority of the governing body of the neighborhood council.

Question b)

Must there be prior public notification if an announcement is added to the agenda?

Answer b)

Not necessarily. The Brown Act provides that "at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting." In our view, having a category on a council's agenda entitled "Announcements" or "Announcements of Upcoming Events and Next Meeting Date" or whatever description is appropriate for any particular neighborhood council is sufficient to satisfy this requirement of the Brown Act. While the better practice might be to itemize the announcements that will be made to allow the public prior knowledge of the general nature of the announcements, it is our view that the Brown Act does not require that every announcement of the governing body be listed with specificity on the agenda. Moreover, any member of the public can also make an "announcement" during the public comment period without that *specific* announcement having to be placed on the agenda.

Question c)

What notice has to be included in the agenda posting regarding a committee report, i.e., is it sufficient simply to state that xyz committee will give a report?

Answer c)

Again, the Brown Act merely provides that "a general description of each item of business to be transaction or discussed at a meeting" be set forth on the agenda, and that "a brief description need not exceed 20 words." Since the purpose of the Brown Act is to provide notice to the public as to what will be discussed at a particular meeting, the description of the committee report should be geared toward that goal. In some instances, merely identifying the committee and that it will give a report will be sufficient, depending on that committee's jurisdiction; in other cases, it may be more appropriate for the committee as well as the general subject matter of its report, to be identified on the agenda. Those determinations will be judgment calls dependant upon the facts in any one situation. If, however, the report contains a recommendation for future action by the neighborhood council as a whole, then the agenda should indicate that fact, briefly summarizing the nature of the

recommendation.

Question d)

Can an ad hoc committee have members that are not part of the governing body?

Answer d)

Yes. The Brown Act places no restrictions on the ability for a legislative body's committees to include individuals that are not part of the governing body. However, that may affect the application of the Brown Act.

Question No. 2. Re: Composition of The Governing Body of A Certified Neighborhood Council:

Question a)

Does a person who lives in an adjoining neighborhood, or perhaps in an area outside the City of Los Angeles, but who shops in a particular neighborhood constitute a stakeholder in the neighborhood in which he or she shops?

Answer a)

No. Both the adopted Citywide Plan for a System of Neighborhood Councils ("Plan") and the City Charter ("Charter") define a stakeholder as everyone who "lives, works or owns property" in the neighborhood. The Plan provides further definition to include participation in all different types of community groups. See Article II, Section 1. However, mere passersby or even those who regularly shop in a particular neighborhood are not considered a "stakeholder" under the Charter or the Plan.

Question b)

If so, will the governing body of a neighborhood council need an at large member to represent shoppers, employees or other persons who may not reside in or belong to an organization in the neighborhood?

Answer b)

Not applicable. See answer to a) above.

Question c)

Does a method of selection for membership on the governing body of a

neighborhood council which provides for an organization to have a “permanent representative” on the governing body impinge on the requirement that the governing body “to the extent possible, reflect the diversity of Neighborhood Council’s Community Stakeholders?”

Answer c)

With respect to a certified neighborhood council, the Plan does not allow for a permanent officer on its governing body. Article III, Section 2 (c) (ii) 2) (b) provides that “no person may serve more than eight consecutive years in any office of a Certified Neighborhood Council’s Governing Body.” See Plan, page 5. However, nothing in the Plan prohibits a neighborhood council from reserving a permanent seat on the governing body for a certain stakeholder group, as long as “no single Stakeholder group shall comprise a majority of a Certified Neighborhood Council’s governing body, unless extenuating circumstances are warranted and approved by DONE.” Article III, Section 2(c) (2) (a) at page 5.

Question d)

Can the governing body of a neighborhood council have a representative of the Boy Scouts, whose members may be stakeholders as that term is used in the Plan, in light of the City of Los Angeles policy re the Boy Scouts?

Answer d)

Yes. The Charter provides that “every stakeholder” be allowed to “participate in the conduct of business, deliberation and decision-making.” Charter § 906. (emphasis added) The Plan similarly envisions “Inclusive Membership” and a governing body that “reflects the diversity” of stakeholders in the community. Article II, Section 1 at page 2 and Article III, Section 2 (c)(ii)(2) at page 5.

Your question does not identify any specific policy that the City has adopted towards the Boys Scouts. However for the purpose of responding to this question, we are assuming you are referring to the Council motion, adopted on November 28, 2000, which was in reference to the City’s policy against entering into contracts which do not comport with provisions regarding employment practices as set forth in Administrative Code § 10.8.2. Since having a representative of the Boy Scouts on a neighborhood council’s governing body does not create a contractual relationship with the City within the meaning of Administrative Code §10.8.2, it is our view that a representative of the Boy Scouts cannot be excluded from serving on the governing body of a neighborhood council.

Question No. 3:

Will organizations who will have a representative on a governing body of a neighborhood council have to change the method by which representatives to the governing body are selected if those organizations currently appoint (rather than elect) their representatives to certain community organizations?

Answer No. 3:

Not necessarily, depending upon how the forming neighborhood council decides how it wants to chose its officers. The Charter provides that the Regulations shall not restrict the method by which members of a neighborhood council are chosen. § 904. We have interpreted the term "members" in this context to mean members of the board or governing body of a neighborhood council. Neither the Regulations nor the Plan dictate how a neighborhood council's officers are selected. The Plan only provides that a council's bylaws must include a list of its offices and provide a "method for regularly *electing or selecting* officers who shall serve as the Governing Body." (emphasis added) See Page 5, Article III, Section 2 (c) (ii) (2).

Question No. 4.

Does the Plan's requirement that each certified neighborhood council keep "a book of accounts that complies with . . . Generally Accepted Accounting Principles," impose duties upon a Treasurer which, in addition to complying with "applicable local, state and federal laws, "exceed those currently undertaken by a Treasurer who simply lists deposits and their sources and lists payees of expenditures?

Answer No. 4:

This question refers to the language in the Plan in Article III, Section 2 (d)(i) at page 6, which provides, in pertinent part, that: "[e]ach certified neighborhood council shall: (i) prescribe a method for keeping a book of accounts that complies with applicable local, state, and federal laws, which includes any or all provisions of Generally Accepted Accounting Principles that apply to a Certified Neighborhood Council, according to the type of entity established by a Certified Neighborhood Council."

The Plan also provides that the duties of the Treasurer shall include "maintaining the Neighborhood Council's book of accounts, as prescribed by DONE, and submitting account statements to DONE . . ." Article III, Section 2 (d) (iv) at page 6. The Department will be promulgating guidelines as to what standards will apply to maintaining the book of accounts and what additional responsibilities, if any, a Treasurer of a potential neighborhood council may have in order to comply with the Generally Accepted Accounting Principles language found in the Plan.

Question No. 5.

Can an organization obtain information provided by the "Early Notification System" without being a Neighborhood Council?

Answer No. 5.

Yes. The Early Notification System (ENS) will be a public web site and available to anyone. The ENS is designed to provide a mechanism for disseminating information as soon as possible regarding issues to be discussed by the City Council, City Council Committees, boards or commissions and any other City official who is required to hold a public noticed meeting. It is also designed to "receive input" from certified neighborhood councils. Only certified neighborhood councils will be provided with an electronic mail (e-mail) address by the City. Everyone will have access to the ENS, but in addition to appearing before the City Council, City Council Committees, boards or commissions and any other City official who is required to hold a public noticed meeting or sending comments via the United States Postal Service, certified neighborhood councils will have the ability to respond to items or issues directly and almost immediately via e-mail. The Department of Neighborhood Empowerment has indicated that there are several long range goals envisioned for the ENS, which include features such as an advance querying process or a categorical subscription process. Further information regarding the potential design can be acquired from the Department.

Question No. 6.

Can a Neighborhood Council communicate directly with any other public agency which is not part of the City of Los Angeles.?

Answer No. 6.

Yes. Nothing in either the Plan, the implementing Regulations (Ordinance) or the City Charter limit a certified neighborhood council's ability to communicate with other public agencies.

Question No. 7.

For purposes of liability and indemnification, do members of the governing body of a Neighborhood Council have the same protection as any other Los Angeles City employees, and if so, what is this protection?

Answer No. 7.

Yes. As this office advised in its April 5, 2001 and April 25, 2001 letters, "[a]s advisory bodies to the City established by the City Charter, as well as by City ordinance (Ordinance No. 172,728), neighborhood councils will be subject to the same immunities and liabilities as other advisory bodies of the City so long as they are acting within the scope of their responsibilities under the Charter and ordinance and not otherwise." City Attorney letter dated April 5, 2001.

While members of governing bodies of neighborhood councils are not City officers or employees in the usual sense, for liability purposes at least, these members would be treated as if they were City employees. The member, like City officers and employees, would receive the benefit of a state statute that establishes the City's obligation to indemnify the member for any judgment against him or her so long as the conduct was within what the law terms the "scope of employment" and so long as the member cooperated in good faith in the defense of the lawsuit. That statute also calls upon the City to provide a legal defense to the member in case of suit. The legal defense of the member is also mandated, as provided by ordinance, by City Charter § 272. For further discussion regarding liability issues and neighborhood councils, please see City Attorney letter dated April 25, 2001.

Question No. 8.

Will members of a Neighborhood Council's governing body have to file a conflict of interest financial statement pursuant to a conflict of interest code?

Answer No. 8.

As this office advised in its letter dated November 30, 2000 "[w]hether members of the governing bodies of neighborhood councils will be subject to the conflict of interest requirements of the Political Reform Act will depend on whether they will be delegated the authority to make final government decisions; e.g., with regard to hiring staff, entering into contracts for goods and services or control over funds in the City budget." Currently, the neighborhood councils are advisory bodies; however, if they are given funds (for example from the City's budget under the Neighborhood Council Grant Program) and use those funds to hire staff or enter into contracts, the members of the governing body will be subject to the Political Reform Act requirements, including the filing a conflict of interest statement.

For a complete discussion about the legal issues surrounding the state and City conflict of interest laws and the City's governmental ethics ordinance, please refer to City Attorney letter dated November 30, 2000.

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Please let us know if we can be of further assistance in connection with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gwendolyn Ryder Poindexter". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

GWENDOLYN RYDER POINDEXTER
Assistant City Attorney

GRP:rp/(#66493)

cc: Rosalind Stewart, General Manager
Department of Neighborhood Empowerment