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Office of the City Clerk
GOVERNMENTAL EFFICIENCY COMMITTEE
City Hall, Room 615
Los Angeles, CA 90012
Mail Stop 615

Attention: Lauraine Braithwaite

Re: Legal Issues Regarding Neighborhood Councils

Honorable Members:

During the Governmental Committee's discussions of the Draft Plan for a citywide system for neighborhood councils, you have posed thirty (30) questions relating to neighborhood councils. Because you have asked our office to respond to these questions as soon as possible, we have grouped some of your questions together, numbered them and have responded in general terms, rather than with a detailed analysis to each question.

Questions Re: Indemnification, Liability And Insurance For Neighborhood Councils

Questions:

1) If a neighborhood council is sued, can members of the governing body of the neighborhood councils be held personally liable? 2) If not, who is liable? 3) Will the City be liable? 4) What would be the extent of liability?

Answers:

1) Members of governing bodies of neighborhood councils are not officers of the City, nor are they City employees in the usual sense. But for liability purposes at least, these members would be treated as if they were City employees. As such, it is unlikely, though possible, that a member of a governing body of a neighborhood council will be held personally liable for conduct related to the member's activities connected with the council. 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. These provisions of law are implemented by City ordinances codified in the Administrative Code and are discussed below.

Personal liability, though unlikely, can occur. And, in some situations the City is not required to provide a legal defense. Personal liability and/or the obligation to provide for one's own defense can become a reality for a member of a neighborhood council where the conduct is beyond the scope of employment, fraudulent, corrupt, or malicious or where the member wilfully fails or refuses to cooperate in the defense. A defense need not be provided in certain limited conflict of interest situations. Personal liability can attach, as well, where unlawful expenditures are made without due care. Conduct giving rise to punitive damages (such as, malicious conduct) can lead to personal liability, since the City is not obligated to pay punitive damages. (Under state law the City can elect to pay such damages if it has made certain findings.)

These comments, of course, are generalities that must be tailored to address any particular situation that may arise. Members should feel free to contact this office in regard to any such matter.

2 through 4) Official activities of neighborhood councils would in most instances be attributable to the City. The City acts through its bodies (e.g., the City Council), boards, officers, and employees. Neighborhood councils would be regarded by the law as City bodies because they are expressly authorized by the City Charter. See Charter §§ 900-914. The official activities of the neighborhood councils could create City liability where they were within the scope of the council's Charter and ordinance created duties. See City Attorney letter dated April 5, 2001. This office would defend legal challenges to conduct within the scope of these duties. See Charter §272 and City Attorney Opinion No. 96-5.

The potential for liability in any particular case would naturally depend on the facts and the laws applicable.

Questions:

5) If liability extends to the City for actions of the Neighborhood Council board, can the City protect itself through insurance or other means? **6)** Does the City have an obligation to insure Neighborhood Council governing boards? **7)** Is there a precedent for the City insuring boards similar to those contemplated for Neighborhood Councils? **8)** If so what is that obligation? **9)** If there is an obligation, does that obligation extend to Neighborhood Council members as well? **10)** What is the best and most responsible way to reduce the City's liability risk and appropriately protect participants in Neighborhood Councils?

Answers:

5 through 9) Generally speaking, the City of Los Angeles is legally uninsured and provides for payment of liabilities through a significant reserve. See Administrative Code § 11.36.¹ Therefore, if any monetary liability would attach to the City of Los Angeles for the actions of neighborhood councils, the City would pay any damages assessed against the City through the normal City processes. There is no independent obligation for the City to provide insurance for neighborhood councils.² However, the City is only obligated to pay damages arising out of conduct that falls within the definition of "official duties" as set forth in Administrative Code § 11.37.³

10) At a minimum, it will be important for the staff of DONE to be adequately trained regarding the legal issues surrounding neighborhood councils such as the Brown Act, the ADA Act and the conflict of interest and ethics rules so that the requirements of these provisions can be communicated to the neighborhood councils. Our office can assist DONE staff with any materials that it might need to provide this training. Beyond that, this question merits considered reflection and should be addressed by the City's risk management team. Accordingly, your Honorable Committee may wish to pose this question to the Office of Finance for its review and comment.

¹ Administrative Code § 11.36 et seq. sets forth the rules and procedures governing liability payments by the City and the circumstances under which the City is legally obligated to pay damages.

² However, as noted in our April 5, 2001 letter to the General Manager of the Department of Neighborhood Empowerment (DONE), independent liability could accrue depending upon the manner in which a neighborhood council sought to organize.

³ "Official duties', as used in this article shall mean and include acts done pursuant to authority conferred by law or within the scope of employment or in relation to matters committed by law to the officer or employees' control or supervision or committed to the department or office under whose authority the officer or employee is acting, whether or not there be negligence in the doing of such acts. Where there is willful misconduct or lack of good faith in the doing of any such acts the same shall not constitute the performance in good faith of the official duties of any officer or employee of The City of Los Angeles within the operation or effect of this article."

Questions Re: Conflict of Interest

Questions:

11) Will members of Neighborhood Councils be subject to the City's Conflict of Interest rules? 12) How will these rules potentially impact the actions of Neighborhood Council members, including the use of any City dollars or other resources given to the Neighborhood Councils directly? 13) What would be the result of a violation of the City's Conflict of Interest rules vis-a-vis participation on a Neighborhood Council?

Answers:

Portions of this question were answered by the City Attorney in a letter dated November 30, 2000 to the General Manager of the DONE. For a full and complete analysis we refer you to that letter, a copy of which is attached for your convenience.

11) As indicated in the letter dated November 30, 2000, members of the governing bodies of neighborhood councils will be subject to the conflict of interest requirements of the Political Reform Act "if they are 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." Regardless of whether they are given decision-making authority, with regard to contracts the rules governing conflicts of interest contained in Government Code §1090, et seq. will apply, as described in the letter dated November 30, 2000.

12) As indicated above and in our earlier letter, the conflict provisions of the Political Reform Act will be applicable to members of governing boards of neighborhood councils if those boards are given the authority to *make* government decisions in addition to the advisory function given them by the Charter. If that occurs, the members of the governing boards will be subject to the requirements of that state Act.

Also, as indicated above and in our earlier letter, the provisions of the state law governing conflicts of interest in the context of government contracts will be applicable to those boards even if they have only an advisory function. If a member of a board has a "financial interest" in a contract, as described in our earlier letter, the member will not be allowed to participate in providing advice on the contract. However, so long as the member is properly recused, the remaining members of the board may provide that advice. If the governing boards are given actual decision-making authority with respect to contracts, one member's "financial interest" in the contract will disqualify the entire board from acting on that contract. If a member has only a "remote interest" (see our earlier letter), only that member would be disqualified. There will be further limitations as to the use of monies, whether received by the City or through private donations, in that: "[a] neighborhood council may not endorse candidates for public office or spend money under its control to support or oppose

candidates for office." See City Attorney letter dated December 15, 2000, p. 1. While individual members of a governing board are allowed to "make personal endorsements for candidates for public office, to work for their election and to contribute their own personal funds to political campaigns" neighborhood councils as a body may not. *Ibid.* However, neighborhood councils may take "a public position in support of or opposition to a ballot measure." *Ibid.*

13) As discussed above and in the letter dated November 30, 2000, if the governing bodies of neighborhood councils are given decision-making authority, their members will be subject to the conflict of interest requirements of the Political Reform Act. Violations of the Act can result in misdemeanor prosecution, the imposition of civil penalties by the courts and administrative penalties imposed by the Fair Political Practices Commission. A violation of Government Code § 1090 can result in a felony prosecution. Also, contracts entered into in violation of §1090 are void. Government Code § 1092.

Questions Re: Ethics Rules

Questions:

14) Are Neighborhood Councils subject to the City of Los Angeles Governmental Ethics Ordinance? **15)** How does this Ordinance potentially impact actions of Neighborhood Councils?

Answers:

14) As this office noted in its letter to the General Manager of DONE on November 30, 2000, "[m]embers of neighborhood councils will be subject to the City's Governmental Ethics Ordinance only if neighborhood councils will exercise decision-making functions in addition to giving advice." *Id.*, at p. 9. Thus, if neighborhood councils engage in activities such as hiring staff, entering into contracts for goods and services or if they have control over funds in the City budget, members of the governing body which engages in these decision-making activities would be subject to the City's Governmental Ethics Ordinance.

15) As noted in our previous correspondence, "[t]he provisions which govern the conduct of 'city officials' that would be applicable to members of neighborhood councils are LAMC §§ 49.5.5 (misuse of City position or resources), 49.5.10 (restrictions on gifts and travel reimbursements), 49.5.11 (lobbying by former officials) and 49.5.12 (future employment). *Id.*, at 10, fn. 6.

Question Re: Fair Political Practices Commission

Question:

16) What is the applicability of the Fair Political Practices Commission Ordinance to Neighborhood Councils?

Answer:

16) By the term Fair Political Practices Commission "Ordinance," we assume you mean the Regulations that are codified at 2 Cal. Code of Regulations, § 18109 et seq. These Regulations are essentially interpretations of the Political Reform Act. Accordingly, these Regulations, which define with specificity what types of financial interests may affect a public official, among other details, are applicable to neighborhood councils if they are delegated decision-making authority. See also Answer 13) above.

Questions Re: Early Notification System

Questions:

17) What constitutes "adequate notice to Neighborhood Councils?" 18) Is an e-mail transmittal sufficient to meet this requirement? 19) What kind of notice is required if an e-mail notice is not practicable (Neighborhood Council doesn't have a computer?)

Answers:

17 through 19) Charter § 907 provides for an Early Warning System. It states that: "The Regulations shall establish procedures for receiving input from neighborhood councils prior to decisions by the City Council, City Council Committees and boards and commissions. The procedures shall include, but need not be limited to, notice to neighborhood councils as soon as practical, and a reasonable opportunity to provide input before decisions are made. Notices to be provided include matters to be considered by the City Council Committees, and City boards or commissions." This provision speaks to what will be in the Regulations. In developing these Regulations, the City Council is free to develop whatever procedures it finds will meet the spirit and intent of this Charter provision.

Charter § 907 does not use the phrase "adequate notice." However, as set forth above, the Charter provides that notice should be given "as soon as practical" and that allows a "reasonable opportunity to provide input before decisions are made." Charter § 907. Neither the Charter nor the ordinance establishing the DONE (Administrative Code § 22.800 et. seq.) establish definitive standards as to what this means. The Regulations can provide for notice by e-mail, depending upon the e-mail notice program designed or described in the Regulations. To date, the Revised draft Plan being reviewed by this Committee provides that

neighborhood councils shall be provided access to a computer. Article VII, § 1. Under these circumstances, we think notice by e-mail may be in compliance with the Charter provisions relating to early notification. To consider e-mail as a means to provide the notice under Charter § 907, if you have not already done so, we recommend that your Committee seek input from those with experience and with familiarity with the City's current system to determine if it is feasible to provide early notice by e-mail as opposed to notice given in writing. At present, the City typically gives notice in writing, by publication, by posting or some combination thereof. Any and all of these ways can be explored as a means of providing notice.

Questions:

20) Once a Neighborhood Council receives "adequate notice" of an issue pending before the City Council, Committee board or commission, is it under any affirmative obligation to relay that notice to its members in a time-sensitive manner? **21)** How quickly must a Neighborhood Council respond to the appropriate City entity, once "adequate notice" is given, to have "input" regarding a pending action?

Answers:

20) There are no provisions in the Charter that address the obligation of a neighborhood council to timely relay information to its members. However, to be certified or recognized by the City, a proposed neighborhood council must show the system by which it will communicate with stakeholders on a regular basis. Charter § 905. This is a matter that could be addressed by the neighborhood councils in their by-laws.

21) The Charter does not address the speed by which a neighborhood council must respond to the appropriate City entity. Much may depend upon the particular City entity to which input is to be given. Again, this is a matter that the neighborhood councils may address as part of their respective bylaws.

Question:

22) Are there any circumstances under which the City would not have to provide notice to Neighborhood Councils?

Answer:

22) Since Charter § 907 speaks to notice to neighborhood councils prior to decisions being made by the City Council, City Council Committees, and City boards and commissions, we assume when you refer to the term "City" in this question, you are referring to these entities. Again, the Charter does not address that question. Rather, it provides that the Regulations are to establish procedures to effect notice as early as possible. How

specific the Regulations should be in this regard and whether the Regulations should provide exceptions from the Early Warning System, is up to the City Council when it reviews and adopts a Plan and implementing Regulations.⁴ As a general proposition, notice which complies with the Ralph M. Brown Act requirements should be the bare minimum notice provided. Even such requirements provide for matters to be considered on relatively short notice, e.g., special meetings with 24 hours notice and motions or matters where the need to act arose after the posting of the agenda ("Rule 23" motions). We do not see the notice requirements as precluding action in such instances.

Questions:

23) What is the interpretation of "as soon as practical"? **24)** What is a "reasonable opportunity" to provide input before decisions are made? **25)** What manner must that information be conveyed in?

Answers:

23 through 25) Charter § 907 is in general terms and neither the Charter nor Administrative Code § 22.800 et seq. define these terms. However the terms you have identified may be interpreted in light of Charter § 900. Therein, the purpose of the system for neighborhood councils is to promote active participation among the City's citizens. Thus, these terms suggest that neighborhood councils be notified in a manner that allows them to participate in the City processes. Again, how these terms are applied may depend upon the particular City entity and circumstances involved.

The DONE had extensive hearings about the Plan and how Charter § 907 can be implemented. The Draft Plan presented to you by DONE and its Commission presents one solution which we think is legally sufficient. In reviewing and revising the Plan and its Regulations, your Committee can consider whether the standards should be more specific than currently proposed. The provisions of the Plan could also take the approach that each City Department would decide when notice should be given in light of the Charter's goals to provide input before decisions are made. Any of the methods discussed in our Answer to questions 17) through 19) may be sufficient to provide input. The Charter does not dictate any one methodology by which information and input be conveyed.

⁴ However, separate and apart from the Early Warning System, the Ralph Brown Act provides that notice of agendas be posted at least 72 hours in advance for meetings of a legislative body. The only exceptions to this requirement are for special meetings (only 24 hours notice) or an emergency meeting (no notice but under narrowly defined circumstances).

Question:

26) What kind of liability can the City incur if notice is not provided [to a neighborhood council] within a “reasonable opportunity?”

Answer:

26) No economic liability. The Charter does not provide for any penalty for the failure to provide notice. Further, the Administrative Code specifically provides that “a failure of a neighborhood council to receive notice shall not invalidate any action of the City Council, City Council Committees, City boards or commissions or any other City official.” § 22.809 (f).

Questions:

27) Can a Neighborhood Council delay consideration of an item before the City Council, City Council Committee, and boards and commissions if “adequate notice” to provide input is not given? **28)** On what grounds and criteria? **29)** What would be the process to cause a delay? **30)** Right now, any person or group can “cause a delay” of consideration of an item by simply getting a majority of voting members to support a motion to delay or postpone. In this case should there be criteria and a time line (put in Ordinance form) to clarify the Charter language and its implementation to prevent mass confusion?

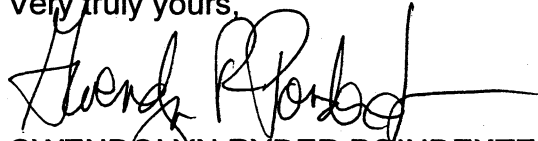
Answer:

27) No. Nothing in the Charter provides for the ability of a neighborhood council to delay actions by the City Council, City Council Committee or City boards or commissions for the failure to provide the notice contemplated by Charter § 907. **28-29)** Not applicable. See answer to 27 above. **30)** Although it is possible for a person or group to delay consideration of an item by getting a majority of voting members to support a motion to delay or postpone, some items before a City body are time-sensitive and need to be acted upon by a time certain. For others, the City entity may exercise its discretion to either continue an item on its own motion or grant a request by an interested member of the public. However, no one group or person can “cause a delay” of any item before a City body against its own exercise of discretion. Accordingly, it is our view that procedural rules already provide any needed avenues and the Regulations need not address this issue, nor is there any need to clarify the Charter language in this regard.

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We hope this letter addresses the concerns that you have raised regarding these matters. Please let us know if we can be of further assistance to you in connection with this matter or if you would like a more detailed response to any one of your questions.

Very truly yours,



GWENDOLYN RYDER POINDEXTER
Assistant City Attorney

GRP:rp

Attachment

cc: Richard J. Riordan, Mayor
Rosalind Stewart, General Manager
of the Department of Neighborhood Empowerment
Each Member of the Board of Neighborhood Empowerment
Each Member of the City Council

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