



WRITER'S DIRECT DIAL: (213) 978-2236
FACSIMILE: (213) 978-2850

OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

December 19, 2003

VIA E-MAIL

Members of the Board
Greater Toluca Lake Neighborhood Council
c/o: Matthew Fitzgerald, Project Coordinator
Department of Neighborhood Empowerment

*Re. Notice regarding Indemnification
Activities within the course and scope of Board Member Duties*

The purpose of this letter is to explain the scope and limitations of when the City would likely indemnify, or protect an individual from liability for damages, in the event a lawsuit is filed. As this Office has opined the City will indemnify a board member for any judgment against that person as long as thier conduct was within the course and scope of their duties as a neighborhood council board member. However, indemnity does not mean that protection is provided for *any* type of conduct that may be engaged in by a board member, particularly where that conduct arises to a violent criminal nature, or consists of intentional or malicious tortious conduct.

Under the Los Angeles City Charter, adopted by the voters on June 8, 1999, some of the duties of neighborhood councils are that the neighborhood councils have an advisory role on issues of concern to the neighborhood (*Charter, Art. IX, § 900*), they may present their budget priorities to the Mayor (*Charter, Art. IX, § 909*), and they monitor the delivery of City services in their respective areas and meet periodically with officials from City departments (*Charter, Art. IX, § 910*). Each of the neighborhood councils were certified under bylaws that recognize these Charter duties. (*Charter, Art. IX, § 906(a)*.)

The City Charter also required the Department of Neighborhood Empowerment to establish a Plan for a Citywide system of Neighborhood Councils (the "Plan") and required that this Plan be implemented by City regulations. (*Charter, Art. IX, § 905*.) The Plan and the accompanying regulations also establish goals and roles for the neighborhood councils. The Plan was approved May 30, 2001, and Ordinance number 174006 implemented the Plan.

Thus, with the City Charter, the Ordinance, and the Plan, a framework is created for the operation of neighborhood councils. In addition, the bylaws for the neighborhood council will add further parameters, in that they identify the neighborhood council's mission, or establish other limits on

the jurisdiction of the neighborhood council. In short, the organizational structure under which the neighborhood council operates is not one where people may freely engage in any type of activity of their choosing. The neighborhood council is a forum for addressing certain issues and issues outside those parameters or falling outside the jurisdiction of the neighborhood councils should not be entertained by the neighborhood councils.

In order to help assist you with identifying issues that may be outside of the jurisdiction of the neighborhood council, the following is one suggestion: With respect to each agenda item, each action, each activity, or each discussion item before a neighborhood council, the neighborhood council should be able to clearly identify its authority for taking the contemplated action by being able to identify specific language in its bylaws, the Plan, the Ordinance, *and* the Charter that permit the contemplated action. Without the ability to clearly point to definitive and authorizing language, the neighborhood council should pause before proceeding with its anticipated course of conduct. The inability to clearly articulate the authority for the neighborhood councils actions may mean that the contemplated course of action is outside the course and scope of a board member's duties.

Since the neighborhood council acts through its elected board, it would be prudent for the board to remain aware of the neighborhood council's jurisdiction and, in the event of any question, immediately contact their Project Coordinator for guidance. Certainly, it would seem wise for indemnification purposes to assure that, at all times, one's actions fall within the course and scope of that person's duties.

In a letter distributed earlier by this Office, dated April 25, 2001, the Office of the City Attorney explained that indemnification may not be provided when the basis for the lawsuit or criminal prosecution stems from the impermissible activities of a person acting in their personal capacity:

"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 willfully fails or refuses to cooperate in the defense. 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." (See http://www.lacity.org/ETH/PDF/incouncil_advice042501.pdf)

In summary, holding a seat on the board of a neighborhood council does not mean that all activities that you take will fall within the purview, or scope of actions that will be indemnified by the City. Despite being elected to a board member seat, or even if some event occurs during a neighborhood council meeting, if the board member's actions are deemed to be beyond the scope

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of that board member's duties, then the City Attorney may conclude that board member is acting in a personal capacity.

While the City Attorney will have to evaluate each set of facts on a case-by-case basis for a determination, please be aware that activities such as assault and battery, slander, or defamation, are some examples where the City Attorney may decline to defend or indemnify against should a money judgment be entered against a person.

Often there are disagreements or difficulty in communication that lead to strained relations among board members. In these situations, the board members should consider participating in a dialogue facilitated by the Human Relations Commission, or participating in the Alternative Dispute Resolution program with the Office of the City Attorney as one possible remedy for improving communications before involving the neighborhood council.

Very Truly Yours,



Darren R. Martinez
Deputy City Attorney

DRM:mg

cc: Greg Nelson, General Manager *(via e-mail)*
Department of Neighborhood Empowerment

Rita Moreno, Senior Project Coordinator *(via e-mail)*
Department of Neighborhood Empowerment