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January 12, 2007

Honorable Members of the
Education and Neighborhoods Committee
200 N. Spring Street, Room 360
Los Angeles, CA 90012

Attention: Patrice Lattimore

Re: Los Angeles Neighborhood Council Congress Advice Letter


Honorable Members:

Pursuant to the request of the Chair of the Education and Neighborhoods Committee of the City Council, transmitted herewith is a copy of the advice letter this office sent to the Department of Neighborhood Empowerment pertaining to legal questions regarding the Los Angeles Neighborhoods Council Congress ("LANCC").

A member of this office will be available when you discuss this matter to answer any question you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By: 
GWENDOLYN R. POINDEXTER
Assistant City Attorney

GRP:pm
Attachment



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November 29, 2006

Lisa W. Sarno
Interim General Manager
Department of Neighborhood Empowerment
334-B East Second Street
Los Angeles, California 90012

Re: The Los Angeles Neighborhood Councils Congress

Dear Ms. Sarno:

This Office has recently received requests for advice from your Department and various neighborhood council board members on a variety of issues regarding the Los Angeles Neighborhood Councils Congress (LANCC), including whether the LANCC is subject to the Brown Act, whether it is a city entity, whether neighborhood councils may participate in its activities, and whether neighborhood council board members would assume personal liability if they choose to participate in the LANCC. We also received inquiries as to whether the LANCC is authorized to convene and conduct the Charter-mandated Congress of Neighborhood meetings. To respond to these questions, we analyzed the City's legislative framework relating to neighborhood councils as well as how the LANCC was formed in the context of the citywide system of neighborhood councils by looking at its proposed charter and organizing minutes.

SUMMARY OF ADVICE

Because the LANCC was not formed by any official action of the City of Los Angeles, it is not a City entity. Although neighborhood councils have not been authorized to join or create separate organizations, neighborhood council members may participate with other groups or organizations, including the LANCC so as long as that participation relates to their City Charter role and purpose of the citywide system of neighborhood councils. Whether individual neighborhood council board members who participate in the LANCC will receive indemnification and defense from the City for possible liability will depend upon the particular facts of each case and whether the person was acting within the scope and authority of his or duties as a neighborhood



council board member. The LANCC is not authorized by any official City action or regulation to convene or conduct the biannual Congress of Neighborhood meetings.

BACKGROUND

Article IX of the City Charter created the Department of Neighborhood Empowerment ("DONE") and the citywide system of neighborhood councils to promote citizen participation. Charter § 900. The Charter defines the purpose of neighborhood councils as having an "advisory role on issues of concern to the neighborhood." The Charter created a system whereby a neighborhood council can address issues related to its own individual community and neighborhood. The Charter called for an Early Warning System (later established by Regulations as the City's Early Notification System that can be found in the Los Angeles Administrative Code ["Administrative Code" or "LAAC"] at § 22.810.1) so that neighborhood councils can give input prior to decisions by the City Council, City Council committees and boards and commissions. § 907. That input includes allowing neighborhood councils to submit an "annual list of priorities" to the Mayor. § 908. The Charter also authorizes neighborhood councils to monitor city services and to conduct public hearings on behalf of the City Council should that power be delegated to them. §§ 910, 908. The Charter also lists various duties of the DONE which is authorized to "implement and oversee the ordinances and regulations creating the system of neighborhood councils . . ." Expressly included in the Charter is DONE's responsibility to "arrange Congress of Neighborhood meetings if requested to do so by recognized neighborhood councils." § 901(c).¹ The Plan For A Citywide System Of Neighborhood Councils ("Plan") and the implementing Regulations also set forth the goals and rules governing the system of neighborhood councils. Plan, Art. I.

We understand that the concept of the LANCC began in January of 2005 when the University of Southern California ("USC") and the Collaborative Learning Project (CLP) organized an "exploratory session" to discuss the future role of the City's Congress of Neighborhoods.² The USC-CLP meetings ultimately became a "self-directed" working group called the Independent Congress Working Group.³

Over the next several months, members of the Independent Congress Working Group, many of whom were also board members and/or stakeholders of various neighborhood councils, fashioned a document called Proposal to Create a Charter for a Citywide Congress of Neighborhood Councils. ("Proposed LANCC Charter"). The

¹ Both the Regulations and the Plan For A Citywide System Of Neighborhood Councils refer to what has come to be known simply as the "Congress of Neighborhoods." The Plan provides that the DONE must "help coordinate, arrange and convene the biannual Congress of Neighborhood Councils meetings."

² Independent Congress Working Group meeting notes, Feb. 26, 2005, at 1; <http://www.lanccongress.org/notes/WG-notes-05-02.pdf>.

³ *Ibid.*

drafters of the Proposed LANCC Charter asserted that both the City Charter and the Administrative Code authorized them to create a "Congress of Neighborhood Councils" since the City Charter refers to "Congress of Neighborhood meetings."⁴

The Congress of Neighborhoods, consistent with the City Charter and the Administrative Code is a biannual event. The meetings have been convened by DONE as a citywide gathering of all the certified neighborhood councils to exchange ideas and obtain information useful to the neighborhood councils.

Although DONE has organized the Congress of Neighborhoods as an event since the Charter was adopted, the LANCC proposes to function as the Charter-mandated Congress and is designed to operate as an entity.⁵ The Proposed LANCC Charter calls for the LANCC to be governed by its own officers and board of directors.⁶ Neighborhood councils that ratify the Proposed LANCC Charter are supposed to comprise the organization's membership. The LANCC's purpose, among other things, is to "provide opportunities" for neighborhood councils to communicate with each other on issues of common interest, and establish a "formal structure" for neighborhood councils to speak with a "collective voice on City issues." The LANCC apparently also plans to engage in "lobbying activities."⁷

In this context, this Office has been asked to respond to a series of questions pertaining to the LANCC. Our responses are provided below.

QUESTION NO. 1:

Is the LANCC an entity of the City of Los Angeles?

ANSWER:

No. Because the LANCC was not formed by any official action of the City, it is a private organization.

DISCUSSION:

The Charter is the City's constitution. *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650, 660. As such, the City's organizational structure and the distribution of power and authority emanate from the Charter. Only the Mayor and the City Council, unless otherwise provided by the Charter or ordinance has the

⁴ Proposed LANCC Charter, at 1; <http://www.lanccongress.org/documents/LANCC-charter.pdf>.

⁵ See, LANCC Minutes, Apr. 1, 2006, approv'd May 6, 2006, at 3; <http://www.lanccongress.org/documents/Minutes-06-04.pdf>.

⁶ Proposed LANCC Charter at 3; See, LANCC Standing Rules, rules 2, 3; <http://www.lanccongress.org/documents/standing-rules-2.pdf>.

⁷ Proposed LANCC Charter at 2; See LANCC Minutes, Apr. 1, 2006, approv'd May 6, 2006, at 2; <http://www.lanccongress.org/documents/Minutes-06-04.pdf>.

authority to create a City entity. Indeed, it is clear from the LANCC's characteristics and manner of formation that the City was not involved in its creation.

The LANCC planned to, and currently has, its own Board of Directors, including officers such as a Chair, Vice-Chairs, Treasurer, and Secretary.⁸ Unlike the system of neighborhood councils, the City has no direct control over the existence or operation of the LANCC in the selection of these offices, or its operations. The LANCC is seeking its own revenues from foundations and other private sources.⁹ Again, unlike neighborhood councils which are required to submit their books of account and submit account statements to DONE between one and three times per year (LAAC § 22.810.1 (b) (2) (C) (iii) (3)), the City has no fiscal oversight over the LANCC. In fact, the LANCC appears to acknowledge its private status.¹⁰ Accordingly, because the City was not involved in the LANCC's creation, it is not a City entity.

QUESTION NO. 2:

Does the City Charter, Administrative Code or the Plan authorize neighborhood councils acting in their official capacity as a city advisory body to ratify the proposed LANCC Charter, or join or create private organizations such as the LANCC?

ANSWER:

No. None of these laws authorize neighborhood councils acting in their official capacity as a city advisory body to join or create private organizations.

DISCUSSION:

The Charter, Administrative Code and the Plan do not currently provide a basis to allow neighborhood councils to expand their advisory role by ratifying the LANCC charter, or joining or creating the LANCC or any other organization.¹¹

⁸ Proposed LANCC Charter at 3. Its Proposed Charter also made reference to an Office of the Clerk, but, its current board does not appear to include this officer.

⁹ Proposed LANCC Charter at 7.

¹⁰ Indeed, at the LANCC Senate meeting on April 1, 2006, LANCC's treasurer representative said that "a major issue is whether LANCC should incorporate as a 501 (c)(3) or 501 (c)(4) or to incorporate as two separate entities . . ." Minutes, LANCC Senate meeting, Apr. 1, 2006, approv'd May 6, 2006 at 2; <http://www.lanccongress.org/documents/Minutes-0604.pdf>.

¹¹ The City of Los Angeles has joined several organizations, and has allowed its employees to participate in those on the City's behalf, including but not limited to, the South Bay Cities Council of Governments, the Westside Cities Council of Governments, the National League of Cities and the League of California Cities. However, specific authorization for city participation was given officially in each instance. For example, the South Bay Cities Council of Governments and the Westside Cities Council of Governments are joint power authorities created pursuant to Government Code section 6500 et seq. The City is a member of both of these entities by City Council action and the concurrence of the Mayor. See, e.g.,

The Charter assigns one principal role to neighborhood councils: to act as an advisory body to the City's decision makers so that they may weigh in on public policy making. Consistent with that role, the Charter specifically sets forth additional key functions of the neighborhood councils: to monitor City services (§ 910), to weigh in on the City's budget (§ 909), and to conduct public hearings for the City Council, when so delegated to them by the City Council (§ 908).

Neither the Administrative Code nor the Plan authorizes neighborhood councils to ratify the Proposed LANCC Charter or join or create private groups such as the LANCC. Rather, both provisions anticipate that neighborhood councils would work with existing City departments and other neighborhood councils to achieve their goals. See, LAAC § 22.800 *et seq*; Plan, Art. I.

For example, the Administrative Code charges DONE with the task to coordinate and involve the "relevant City staff in integrated problem-solving with the neighborhood councils." LAAC §22.800. This sentiment is echoed in the Plan that articulates the goals and objectives of the neighborhood council system to include promoting and facilitating communication, interaction and opportunities for collaboration among the certified neighborhood councils pertaining to various issues. The Plan also speaks of fostering a sense of community for all people to express their ideas and opinions about their neighborhoods and the City. Plan, Art. I §§ 2,6.

In addition to overseeing neighborhood councils, DONE is responsible for encouraging the development of new neighborhood councils, assisting neighborhood councils in exercising their advisory role, directly encouraging other city agencies to work with neighborhood councils, providing operational support for neighborhood councils, and bringing neighborhood councils together either as a Congress or other citywide meetings. Plan, Art. VII, LAAC § 22.801, 22.810(a) (2) (3) (6).

The function of neighborhood councils is to provide input to the City before decisions are made on matters of concern to the neighborhood. To facilitate this advisory role, neighborhood councils are granted access to both information and the ability to meet with public officials subject to their availability and submit formal statements ("community impact statements") that set forth their positions on matters. Neighborhood councils also serve as a direct conduit to communicate City information to their stakeholders.

A review of the relevant provisions applicable to the system of neighborhood councils discloses that no express powers to join or create new organizations have

Motion, Nov. 1, 2005, Council File Nos. 05-1464-S1 and CF No 02-02083. Similarly, the City's participation in both the National League of Cities and the League of California Cities are line item authorizations in the City's budget that is subject to City Council action and the concurrence of the Mayor. See, City of Los Angeles, Details of Department Programs, Supplement to the 2005-06 Proposed Budget, April 2005, at 552. In contrast to the City's participation in these joint power authorities and budget-authorized organizations, which all required City Council action and the concurrence of the Mayor, neighborhood council member participation in the LANCC, or any other organization, has not been officially sanctioned.

