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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.

been granted to neighborhood councils. The Attorney General's Opinion at 77 Ops.Atty.Gen. 70 (1994) examined similar facts in examining the powers of a state commission to create a new organization. At issue was whether the statutorily created Commission on the Status of Women (Commission) was authorized to establish a non-profit corporation to raise funds for the Commission's activities. Even though the Commission's enabling statute, Government Code § 8244, subdivision (b), authorized it "to do or perform any acts which may make it necessary, desirable or proper to carry out the purposes of this chapter,"¹² the Attorney General concluded that the Commission was without authority to form a non-profit corporation to raise money for its mandated functions. *Id.* at 75. The Attorney General reached this result even though under the Commission's enabling statute it could receive gifts from private sources. *Ibid.* The Attorney General reasoned that despite the broad language of "to do or perform any acts which may make it necessary, desirable or proper," this statutory authority did not "specifically authorize [the Commission] to create a separate legal entity, a non-profit organization. *Id.* at 74.

Although agencies may have implied powers, these powers must be "necessary or reasonably appropriate to the accomplishment of their express powers." *County of San Joaquin v. Stockton Swim Club* (1974) 42 Cal. App. 3d 968, 972. The City expressly recognizes only certified neighborhood councils to act as official advisory bodies to the City's decision makers on "issues of concern to the neighborhood" within the meaning of Charter §§ 900 and 907.

QUESTION NO. 3:

Is the City of Los Angeles obligated to defend or indemnify the LANCC? Is the City of Los Angeles obligated to defend or indemnify neighborhood council board members who participate in the LANCC?

ANSWER:

Because the organization is not a city entity, the City is not obligated to defend or indemnify the LANCC. 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.

DISCUSSION:

The City Attorney is the legal advisor to "the City and to all City boards, departments, officers and entities" and is obligated to defend the municipal corporation and its officers and employees. . . Charter § 270. However, the LANCC is not a "board,

¹² There is no similar broad language in the neighborhood council's enabling laws.

department" or entity of the City; rather, it is a private organization that is not authorized by any public enactment or controlled by the City.

The LANNC has its own organizational structure, plans to obtain a separate income source and is a voluntary organization. The City has no control over the existence or operation of the LANCC – indeed, it plans to *independently* seek its own revenues from foundations and other private sources. In addition, the LANCC will have its own officers, its own elections, its own bylaws, its own employees or volunteers or both, its own income source and budget as well as its own responsibilities, which are not dictated or controlled in any manner by the City. Therefore, as a private organization, the City has no obligation to defend or indemnify the LANCC for any liability arising from its activities.

Government ("Gov't") Code § 995 states that a public entity must defend an action brought against an employee or former employee in his official or individual capacity, or both, "on account of an act or omission in the scope of his employment as an employee of the public entity." The statute further provides: "[a] public entity may refuse to provide for the defense of a civil action brought against an employee or former employee of a public entity if the entity determines . . . [¶] The act or omission was not within the scope of his or her employment." Gov't Code § 995 (a)(1).

We have received inquiries as to whether neighborhood council members would be indemnified from liability if they participate in the activities of the LANCC.¹³ Where a defendant engages in an act or omission that is outside the "scope of his or her employment" an employer may not be liable for those actions. *Zamudio v. State of California* (1998) 62 Cal.App.4th 673. In *Zamudio*, the court evaluated the facts to determine whether a state employee was acting within the scope of his public employment when he was sued for tortious misconduct for acts as a representative of a public employee labor union. There, the court found that because the union and the state employer were separate and distinct legal entities and because the employer had no control over the union, the state could not be held liable for the employee's actions.

Should a lawsuit be filed against a neighborhood council board member who was participating in the LANCC, this Office would have to evaluate the facts and surrounding circumstances to ascertain whether the activity giving rise to the claim was within that board member's scope of authority.

¹³ The question of whether neighborhood council members would be defended and immunized from liability for certain activities was discussed in a prior City Attorney advice letter. City Attorney letter, April 28, 2001. There, this office concluded that neighborhood council board members are not City employees. However, for "liability purposes at least, those members would be *treated* as if there were City employees." (Emphasis added). As such, indemnification of their activities would be provided as long as the board members acted within their scope of authority.

QUESTION NO. 4:

Is the LANCC authorized to hold the Charter-mandated Congress of Neighborhoods?

ANSWER:

No. The City's Charter, Regulations and Plan envisioned that the Congress of Neighborhoods would be a gathering of certified neighborhood councils, arranged by the DONE.

DISCUSSION:

As noted earlier, the Charter specifies DONE's "duties and responsibilities" *vis-à-vis* the citywide system of neighborhood councils. Among these enumerated duties are to "arrange Congress of Neighborhood meetings if requested to do so by recognized neighborhood councils." Charter § 901(c). The legislative intent of an ordinance is to be given due deference and the City Council's administrative interpretation of the Charter is entitled to great weight. *Cuadra v. Millan* (1998) 17 Cal. 4th 855, 870; *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal. 4th 1, 6. Several provisions of the Administrative Code task DONE with this responsibility, as do provisions of the Plan.¹⁴ Plan, Art. VII (5). The Regulations and the Plan itself were approved by the City Council, evidencing Council's intent that the Congress of Neighborhoods is intended to be a meeting of neighborhood councils, to be arranged by the DONE.

The Proposed LANCC Charter states that the LANCC "General Assembly will meet as the City Charter-mandated Congress." At 3. However, since DONE is the entity authorized by the Charter to "arrange" for a Congress of Neighborhoods, the LANCC is not authorized by any public enactment to act as, or convene, the Charter-mandated Congress of Neighborhoods.

CONCLUSION

Because the LANCC was not formed by any official action of the City of Los Angeles, it is not a City entity and the City may not defend or indemnify it from possible liability. Although neighborhood councils have not been authorized to join or create separate organizations, neighborhood council members may participate with other

¹⁴ LAAC §22. 801(e) provides that DONE "shall" "help neighborhood councils to meet together on a citywide basis and facilitate these meetings if and when requested to do so by recognized neighborhood councils." LAAC §22. 801(n) provides that DONE "shall" "facilitate citywide meetings to be held, on at least a semi-annual basis, of representatives of all neighborhood councils." LAAC § 22.810.1 provides that DONE is to "[h]elp coordinate, arrange and convene the biannual Congress of Neighborhood Councils meetings."

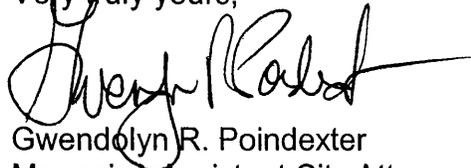
groups or organizations, including the LANCC, so as long as that participation relates to their City Charter role and purpose of the citywide system of neighborhood councils. Whether individual neighborhood council board members who participate in the LANCC will receive indemnification and defense from 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. Finally, the LANCC is not authorized to convene the biannual Congress of Neighborhood Council meetings.

This analysis should not be inferred to prevent neighborhood councils from forming their own *internal* committees¹⁵ or to hold joint meetings with other neighborhood councils to further effectuate the goals as set forth in the Charter, Plan and Regulations.¹⁶ However, the formation by neighborhood councils of wholly new and separate permanent entities, alliances or caucuses among the neighborhood councils was never envisioned nor authorized under the existing structure; thus, those that would be or have been formed are not, and should not be treated as, an official city entity.

Finally, as noted earlier, inquiries were originally made as to whether the LANCC is subject to the Brown Act. Because this organization is not a City entity, this Office is unable to render advice or evaluate what laws would or would not apply to it.

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

Very truly yours,



Gwendolyn R. Poindexter
Managing Assistant City Attorney
Neighborhood Council Advice Division

GO/GRP:pb

cc: Board of Neighborhood Commissioners

m/LANCC(3)

¹⁵ Of course, neighborhood councils are not precluded from forming their own committees (ad hoc or permanent committees). This is commonly done within the City's commission structure. And, of course, the City Council also uses the committee structure as an effective means to vet an issue before coming before the full body and often holds joint committee meetings of its body.

¹⁶ Indeed, one of the goals of the Plan is to facilitate "communication, interaction, and opportunities for collaboration among all Certified Neighborhood Councils." Plan, Art. 1, § 2.