



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

OPINION NO. 2002:5
APR 03 2002

OPINION RE:

ELECTION SYSTEMS OF CERTIFIED NEIGHBORHOOD COUNCILS

Mr. Greg Nelson, General Manager
Department of Neighborhood Empowerment
305 East First Street
Los Angeles, CA 90012

Dear Mr. Nelson:

To be certified, a neighborhood council must submit bylaws that comport with the requirements of both the Plan for a Citywide System of Neighborhood Councils ("Plan") and the Charter. One of those requirements is to include "... a list of the offices of its governing body and its method for regularly electing or selecting its officers who shall serve as the governing body ..." Plan, Article III, § 2 (c) (2).

In the process of reviewing proposed bylaws, your staff has observed that many community groups are designing systems of election which limit voting on matters, including voting for their board representatives, to only certain categories of stakeholders. Other community groups are designing systems that divide their council into geographic regions and allow only stakeholders in the region to vote for their "regional representatives" but not to vote for the other "regional representatives." Still others, in a good faith effort to seek diversity, create boards which provide for certain representative interests (e.g., residents, business interests, educational interests) but allow only voting by interest (e.g., only residents may vote for the resident representative, etc.).

Based upon these varied election systems, you have asked our office for our written opinion to define the legal parameters of these types of elective processes. In response to your request, we address the following questions:



QUESTIONS:

1. Are all stakeholders assured the same voting rights?
2. May a neighborhood council divide its council into geographic regions and allow only those persons who have stakeholder status in that geographic region to vote for the governing board member for that region?
3. May a neighborhood council elect governing board members by "community interests" and *only* allow the voters of that interest group to vote for candidates for those designated governing board positions?

We understand that the Plan and Charter also provide for a method of *selection* to create a governing body but our comments in this opinion only pertain to systems which utilize an *election* process to create the governing boards for neighborhood councils. Our conclusions are as follows.

Summary of Advice

In light of the Charter's purpose of designing a neighborhood council system that promotes inclusiveness, the election of the governing board should be as democratic and inclusive as possible. Thus, a system of election, including a system that provides for geographic regions or districts within the neighborhood council boundaries, must provide all stakeholders in the neighborhood council with the opportunity to elect one or more members of the governing body.

Election systems that allow only residents to vote for residents, community stakeholders to vote for only their representative community stakeholders, while not inherently violative of the Plan or Charter, should be carefully scrutinized by the Department since such a system is prone to inadvertent exclusion of stakeholders that do not squarely fit within a named category. Ultimately, the election system must ensure that all stakeholders have an opportunity to vote for a board member who would represent their interest, or provide for an "at-large" interest.

Conclusions and Discussion

QUESTION NO. 1:

Are all stakeholders assured the same voting rights?

ANSWER:

Yes.

DISCUSSION:

The City Charter states that the purpose of the system of neighborhood councils is to "promote more citizen participation in government and make government more responsive to local needs. . ." Charter § 900.

At § 906 (a) (2), the Charter defines a stakeholder as one who "lives, works or owns property in the area." Elsewhere, the Charter stresses that meetings should be open, and that neighborhood councils should provide assurances that every stakeholder be able to "participate in the conduct of business, deliberation and decision-making." Charter § 906 (a) (6).

Using the Charter as the framework, the Plan identifies the overarching goals of the system. Articles I and II of the Plan set forth the goals, objectives and desired characteristics of the neighborhood council system. One objective of the system is to "foster a sense of community for all people to express ideas and opinions about their neighborhood and their government." Article I, § 6. In addition, certified neighborhood councils are to be "diverse, inclusive and open to all Community Stakeholders," must "adopt fair and open procedures for the conduct of their business," and must "encourage all Community Stakeholders to participate in all of their activities. . ." Article I, §§ 1, 2 and 3.

The Plan envisions and specifically requires a governing body comprising "Community Stakeholders of a Certified Neighborhood Council who are empowered to make decisions on behalf of that Certified Neighborhood Council." Plan, Article III, § 2(c)(2). Thus, selecting members of the governing body is an important first step in achieving the grassroots empowerment envisioned under the Charter, and the method for electing board members must be fair and inclusive of all stakeholders of the area.

Legislative History

While the Charter, Plan, and the ordinance that implements the Plan (Ordinance No. 174006), identify goals of the neighborhood council system, none directly address how the neighborhood council board members should be elected. However, the legislative intent

is instructive.¹ According to collateral documents and public testimony, the paramount purpose of a system of neighborhood councils was to design a system by which the grassroots community would become organized, participate in their community and therefore become empowered to have an official role in making recommendations to their decision-makers.

The legislative history suggests that the form of governance of neighborhood councils would be representative, *i.e.*, have a governing body or officers of a board. Thus, having an open and fair election or selection process is critical to the effective operation of the neighborhood council system, since the neighborhood council essentially acts through its elected (or selected) representatives. While City Council files (see CF Nos. 99-0200, 99-0200-S1-S4) and other City documents do not reveal a great deal of discussion regarding the specifics of how neighborhood councils should elect or select their officers or a governing body, the legislative history indicates that the system was intended to be participatory (*"The neighborhood councils should be participatory in that all in the community (i.e., citizens, non-citizens, business, civil groups, etc.) would have the opportunity to participate."*)².

Other documents suggest that this "participatory" concept was intended to apply to the election of board members. During a City Council discussion about the Charter, questions were raised by members of the Council about the provisions relating to neighborhood councils. In response to the Council's question, "[h]ow are neighborhood council members selected," the City Administrative Officer and the Chief Legislative Analyst responded in a joint memorandum as follows:

"Neighborhood Council systems are established by ordinance or by regulation. It is the intent of the Charter that all of the stakeholders in a neighborhood (*e.g.*, business, residents, religious organizations, community groups, etc.) can participate on the council and decide on the method of selection of the executive board officers of the council. Methods of self selection of their officers could include a town hall meeting or mail ballot, as determined by each community council. *All stakeholders who participate in*

¹ Courts have recognized that "the legislative history of a statute, as well as the wider historical circumstances of its enactment, may be considered in ascertaining legislative intent." *Watts v. Crawford* (1995) 10 Cal. 4th 743, 753.

² See, Report from George Keiffer and Erwin Chemerinsky re: Suggestions for Unified Charter Proposal, at page 3.

*the community council will be eligible to vote for and to serve on the executive board. Sec. 905 (a) (1).*³ Emphasis added.

Accordingly, in our view, the legislative history lends strong support to our position that Charter-created stakeholders, *i.e.*, those who live, work and own property, must be afforded the opportunity to participate fully in their neighborhood council, including the ability to serve as and vote for members of the governing body.

QUESTION NO. 2:

May a neighborhood council divide its council into geographic regions and allow only those persons who have stakeholder status in that geographic region to vote for the governing board member for that region?

ANSWER:

Yes.

DISCUSSION:

Charter § 904 provides that the "[r]egulations to implement the system of neighborhood councils may not restrict the method by which the members of the neighborhood councils are chosen, *if the process otherwise satisfies the requirements of this Article.*" (Emphasis added.) The City's Ordinance comports with this requirement.

³ See, Inter-Departmental Correspondence dated February 25, 1999, CF No. 99-0200-S1. At the time this memo was written, Section 905 (a) (1) read as follows: "Bylaws. Each certified neighborhood council seeking official certification or recognition from the City shall submit an organization plan and by-laws to the Office of Neighborhood Empowerment showing, at a minimum (1) the method by which their members are chosen. . ." Prior to being placed on the ballot, this language was changed, which is now embodied in Charter § 906 (a) and reads: "(1) the method by which their *officers* are chosen. . ." (Emphasis added.) During the process of creating a Unified Charter with respect to neighborhood councils, the use of terms such as "membership" "members" and "officers" were often used interchangeably. However, the final versions of the Charter attempted to clarify and differentiate between "members" and "officers." See Draft Unified Charter, CF 99-000-S2.

The Ordinance merely provides that a neighborhood council identify "a list of the offices of its governing body and its method for regularly electing or selecting its officers who shall serve as the governing body."⁴

As a general rule, a city charter "operates not as a grant of power, but as an instrument of limitation."⁵ We find nothing in the Charter that would *limit* the ability of a neighborhood council to create a system, not unlike the district elections for elected City officials, to utilize a geographic district method to elect members to the governing body to serve as regional representatives. Thus, we believe that an election system whereby only stakeholders from certain geographic regions are eligible to run and vote for that regional board position is consistent with the Charter and the Plan. However, in light of the overriding intent that the system of neighborhood councils be inclusive and participatory, *all* stakeholders who live, work, or own property within the geographic region must be allowed to vote for their representative for that region.

QUESTION NO. 3:

May a neighborhood council elect governing board members by "community interests" and *only* allow the voters of that interest group to vote for candidates for those designated governing board positions?

ANSWER:

Yes, provided that the method allows stakeholders within a neighborhood council to vote for at least one governing board member.

DISCUSSION:

Again, as in the geographic region system of elections, neither the Charter nor the Plan prevent neighborhood councils from designating certain seats on the board for certain stakeholders and establishing eligibility requirements to run for that seat (e.g., only residents can run for the "residential" seat, etc.).

⁴ Thereafter, certain limitations were created guaranteeing diversity on the board, establishing "term limits" and requiring that each neighborhood council provide for an officer named the Treasurer.

⁵ "[T]he charter operates not as a grant of power, but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess; and the enumeration of powers does not constitute an exclusion or limitation." *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 170.

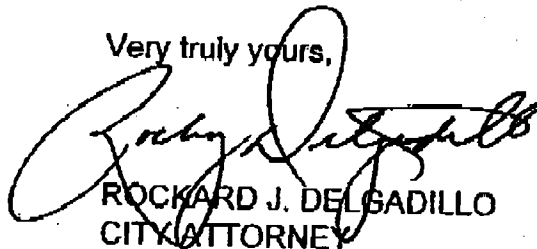
However, election systems that establish seats for certain stakeholder groups have the potential to inadvertently exclude some community stakeholder groups. Because of this potential, it is recommended that "at-large" positions on the board be reserved to accommodate those stakeholders who otherwise may not be able to vote for a governing board member. Additionally, the Department should carefully review interest-based election systems to ensure the inclusion of all stakeholders within the neighborhood council in the election process.

CONCLUSION

Neither the Charter nor the Plan prevent neighborhood councils from designing election systems to elect their governing body in the manner as described in this Opinion, as long as the election systems provide all stakeholders in a neighborhood council with the opportunity to elect at least one or more members of their governing body.

Please let me know if my office can be of further assistance.

Very truly yours,



ROCKARD J. DELGADILLO
CITY ATTORNEY

RJD/GRP:pj

(76201)

cc: James K. Hahn, Mayor
Members, Board of Neighborhood Commissioners
Members, Los Angeles City Council
Mr. Michael Gagan, Coordinator
Downtown Los Angeles Neighborhood Council [proposed]