



OFFICE OF THE CITY ATTORNEY
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OPINION NO. 2002:7
JUN 14 2002

OPINION RE:

**THE ABILITY OF NEIGHBORHOOD COUNCILS TO FURTHER
DEFINE THE CHARTER TERMS OF
“LIVES,” “WORKS” OR “OWNS PROPERTY” TO IDENTIFY ITS STAKEHOLDERS**

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

Dear Mr. Nelson:

Attorneys in my office are currently assisting the Department of Neighborhood Empowerment (“Department”) by reviewing the bylaws submitted by neighborhood councils prior to their referral to the Board of Neighborhood Commissioners for action on certification applications. In the course of this review and in discussions with your staff, a question has arisen as to whether neighborhood councils may define the terms in the Charter regarding who is a stakeholder (*i.e.*, everyone who “lives, works or owns property” in the area). Charter § 906 (a) (2). For example, one group proposes to define a “worker” as someone who works or is physically present in the area for 30 hours or more a week. Consequently, only “workers” who fit this definition would be eligible to vote on issues relating to their neighborhood council, to elect their officers, or run for office.

Because your Department has encountered this question as it relates to a particular pending application, and because we anticipate this question recurring in a variety of contexts, we are providing you with this Opinion so that your Department will have in hand the necessary information to address this question in the future. We have framed this question as follows:

QUESTION:

May a neighborhood council define the Charter terms of “lives,” “works” or “owns property” in order to identify its stakeholders?

ANSWER:

No.

DISCUSSION:

The Charter defines a stakeholder as “everyone who lives, works or owns property in the area.” Charter § 906 (a) (2). Under the Charter, neighborhood council membership is open to these “stakeholders” and a neighborhood council seeking certification must demonstrate to the City, among other things, that it has a system in place through which the neighborhood council will communicate with its stakeholders and “permit, to the extent feasible, every stakeholder to participate in the conduct of business, deliberation and decision-making.” Charter § 906 (a) (4), (6).

The Plan for a Citywide System of Neighborhood Councils (“Plan”) which implements the Charter-created system echoes these requirements and expands upon the Charter’s vision. The Plan provides that community stakeholder status may also be identified by participation in a variety of organizations and institutions. Plan, Article II. The Plan also requires that neighborhood councils “encourage all Community Stakeholders to participate in all of their activities,” affirmatively state in their bylaws that neighborhood council membership “is open to all Community Stakeholders” and “establish procedures for communicating with all Neighborhood Council Community Stakeholders.” Plan, Articles II, § 2, III, § 2. Thus, defining a group’s community stakeholders is important because this definition will determine the rights and responsibilities of both the stakeholder and the neighborhood council.

It is a “cardinal principle” of law that “the charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law.” *Domar Electric Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 169. Further, as we previously advised you, “a city charter ‘operates not as a grant of power, but as an instrument of limitation.’” Opinion No. 2002:5 at p. 6. Rules of legislative intent are also applied to a charter in the same manner as a statute. *Domar, supra*, at 171. The *Domar* court reiterates this principle as follows:

“We look first to the language of the Charter, giving effect to its plain meaning. [citations omitted] Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history.” *Id.* at 172.

Where the words of the Charter are not entirely clear, however, it is the function of the City Attorney to interpret the Charter, and that of the Council to clarify the words, to effect the meaning of the Charter. In this case, the legislative history suggests that the Charter provisions dealing with a system for neighborhood councils were specifically designed to allow the greatest degree of participation and to provide that, consistent with that principle, the Department provide additional details by way of the Plan and an ordinance ("Ordinance") to implement the Plan. See City Council File Nos. 99-0200, 99-0200 S1-S2. This process is also made clear in the Charter itself. Charter § 904 provides that the Department is to develop the Plan for a citywide system of neighborhood councils. The Plan "and all necessary Regulations" are to be presented to the legislative body for consideration. Charter § 905. Pursuant to this authority, the Plan adopted by the City Council contains language that has *already* refined the definition of stakeholder that appears in the Charter.¹ Any effort to further define or refine the terms set forth in the Charter must be reasonably consistent with those terms, their use in the Charter and the interest manifested by the context in which they are found.

The Charter also specifically provides that the Council may adopt further amendments to either the Plan or the Ordinance and gives the Board of Neighborhood Commissioners ("Commission") policy-making functions. See Charter § § 902, 914. While the Charter delegates some functions to the neighborhood councils, under certain limited circumstances, performing legislative functions is not one of them.² Allowing neighborhood councils to further refine these terms would not only breed inconsistency within the system of neighborhood councils, it might also affect an unlawful delegation of authority since it is the role of the legislative body to further clarify and refine legislation. *Carson Mobilehome Park Owners' Assn v. City of Carson* (1983) 35 Cal. 3d 184, 190.

There may very well be legitimate reasons to establish further guidelines to address the concerns raised by certain neighborhood groups who have attempted to provide further

¹ Article II of the Plan specifically defines a stakeholders as follows: "A Community Stakeholder is defined as any individual who lives, works, or owns property in a Neighborhood Council area. In addition, Community Stakeholder status may be identified by participation in, among other things, educational institutions, religious institutions, community organizations or other non-profit organizations, block clubs, neighborhood association, homeowners associations, apartment associations, condominium associations, resident associations, school/parent groups, faith based groups and organizations, senior groups and organizations, youth groups and organizations, park advisory boards, boys and girls clubs, cultural groups, environmental groups, codewatch, neighborhood watch, police advisory board groups, and/or redevelopment action boards."

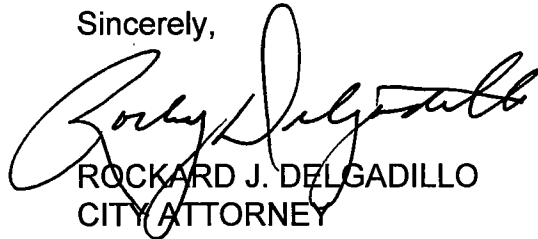
² Charter § 908 provides that, "[s]ubject to applicable law, the City Council may delegate its authority to neighborhood councils to hold public hearings prior to the City Council making a decision on a matter of local concern."

definition to these broad stakeholder definitions. However, as noted above, any further refinements to the language of the Charter should be accomplished by amending the Plan and the Ordinance, or by the Commission establishing rules and policies that can be applied to all neighborhood councils.

To provide further guidance to neighborhood councils, we strongly encourage the Department and/or the Commission to either make recommendations to amend the Plan (and Ordinance) or adopt guidelines and policies to establish reasonable parameters to determine how these terms should be used and applied to identify who is a stakeholder. However, until that occurs, refinements to these terms put forward by neighborhood councils cannot be allowed.

Please feel free to contact Assistant City Attorney Gwendolyn Poindexter at (213) 485-5432 if you have any further questions regarding this matter.

Sincerely,



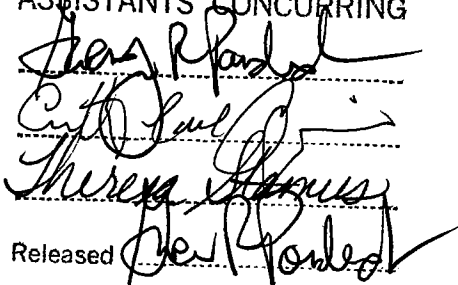
ROCKARD J. DELGADILLO
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cc: James K. Hahn, Mayor
Members, Board of Neighborhood Commissioners
Members, Los Angeles City Council

ASSISTANTS CONCURRING



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