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CITY ATTORNEY

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January 26, 2004

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

Re: Voting Rights/Participation of Stakeholders in Neighborhood Council
Elections

Dear Mr. Nelson:

This office is in receipt of your e-mail inquiry in which you have posed the following question: 1) Under existing laws, can Neighborhood Councils require stakeholders to be U.S. citizens?

Since this inquiry, we have also received inquiries from Neighborhood Councils asking whether undocumented (illegal) aliens, minors, and convicted felons have the right to vote and run for office in Neighborhood Council elections. Thus, we have added another question to address the issues relating to undocumented aliens, minors, and convicted felons, as follows:

2) May Neighborhood Councils prohibit undocumented (illegal) aliens, minors, and convicted felons from voting or running for a board seat in Neighborhood Council elections?

Our conclusions are as follows:

Summary of Advice

Article IX of the City Charter governs the citywide system of Neighborhood Councils. Stakeholders are defined as everyone who "lives, works and owns property." Thus, Neighborhood Councils may not require stakeholders to be United States citizens nor restrict convicted felons or undocumented (illegal) aliens from participating in their Neighborhood Council either by running for a board seat or voting for board members. However, because minors are statutorily incompetent to engage in certain activities, such as to enter into contracts (Civil Code § 1556), and because of the



degree of maturity and responsibility required to either run for a board seat or vote for a board member, Neighborhood Councils may restrict eligibility to run for a board seat or to vote in Neighborhood Council elections to adults (18 years and older) if they choose.

Conclusions and Discussion

QUESTION 1:

Under existing laws, can Neighborhood Councils require stakeholders to be U.S. [United States] citizens?

ANSWER:

No.

DISCUSSION:

Although Neighborhood Councils are a component of City government, Neighborhood Council elections are *not* subject to City Charter § 400 et seq, the City Election Code,¹ or the State Elections Code as some stakeholders have come to believe. City Charter, Article IV specifies the type of municipal elections that the City's rules are applicable to - the primary nominating, general municipal, and special elections and concern only the elected offices of Mayor, Controller, City Attorney and City Council. The City Election Code provides procedural details for the running of these elections. The State Elections Code generally covers municipal, state and federal elections for public office, but does not govern the election of the City's officers because Los Angeles is a Charter city.² Accordingly, under the current structure and operation of the system of Neighborhood Councils, elections of Neighborhood Council board members are not governed by the provisions of City Charter, Article IV, the City Election Code, or the State Elections Code.³

¹ The City Election Code applies to the City's general elections of City officers as well as the holding of elections for other election jurisdictions such as the Board of Education and the Los Angeles Community College District and also for referenda and initiative elections.

² The State Elections Code provides that a "[m]unicipal election" means elections in general law cities and *where applicable* in chartered cities." Emphasis added, § 330.

³ Nor are governing board members of a Neighborhood Council considered "elective officers" under the related campaign restrictions. The Political Reform Act, Government Code 87000 et seq., defines the term "elective office" to mean "any state, regional, county, municipal, district or judicial office which is filled at an election." Gov. Code § 82023. The Act defines "election" to mean "any primary,

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Since City Charter, Article IV, is not applicable to Neighborhood Council elections, the eligibility requirements to run for an elected City office or to vote in any municipal election that otherwise prohibit non-U.S. citizens and persons convicted of felonies 5 years prior to seeking City office, are likewise *not* applicable to Neighborhood Council elections.⁴

Accordingly, to determine the rights of a stakeholder we must turn to the City Charter provisions regarding the citywide system of Neighborhood Councils. Under City Charter, Article IX, stakeholders are defined as everyone who “lives, works and owns property in the [neighborhood council] area.” § 906 (a) (2). Documents in the City Council files related to the Unified Charter (Council Files 99-0200, 99-0200 S1-S4) indicate that Unified Charter provisions relating to Neighborhood Councils were drafted with the intent that *all* in a community were to be allowed to participate.

In a report from the Presidents of both the Elected and Appointed Commissions, Erwin Chemerinsky and George Kieffer, respectfully, proposed that: “[t]he 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.”⁵ Similar concepts were echoed in a joint memo by the CAO and CLA to the City Council in response to questions posed by members of the Council regarding the Unified Charter. There, the CAO and CLA concluded that “all of the stakeholders in a neighborhood (e.g. business, residents, religious organizations, community groups, etc.) can participate on the council . . . and [a]ll stakeholders who participate in the community council will be eligible to vote for and to serve on the executive board.”⁶

Recently, some stakeholders have argued that the use of the term “citizen” in the Purpose clause of City Charter § 900⁷ was meant to apply to only “legal citizens” within

general, special or recall election held in this state.” Gov. Code § 82022. Consequently, elected governing board members of a Neighborhood Council are not “elective officers” for Political Reform Act purposes.

⁴ See, Charter §§ 407, 408. Charter § 501 which requires Charter-created commissioners to be registered voters of the City is also inapplicable to neighborhood council board members since they are not “commissioners.”

⁵ See, Attachment A, a copy of the December 2, 1998, report from George Kieffer and Erwin Chemerinsky.

⁶ See, Attachment B, a copy of the February 25, 1999, Inter-Departmental Correspondence from the CAO and CLA.

⁷ City Charter § 900 provides: “To promote more citizen participation in government and make government more responsive to local needs, a citywide system of neighborhood councils and a

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the meaning of federal law. However, reading *all* of the provisions of Article IX together, in consideration of the legislative intent, the use of the term "citizen" was not meant to be restricted to legal, naturalized persons.⁸ Rather, we believe the legislative intent shows that the term was meant to be applied in the broader sense connoting "a member of a state," or a "civilian as distinguished from a servant of the state" or simply an "inhabitant of a city or town." See, Merriam-Websters Collegiate Dictionary, 11th Edition.

Similarly, the Plan for a Citywide System of Neighborhood Councils ("Plan") and Ordinance Number 174006 ("Ordinance"), both of which implement the Charter provisions of Article IX, do not limit participation and stakeholder status to United States citizens. The preamble to the Ordinance indicates that the goal of the system is to promote "*public participation*" and to create an environment in which "*all people*" can organize and propose their own neighborhood councils by which "*all people*" may express ideas and opinions about their neighborhood and their government. See also, Plan, Article I, §§ 1, 5, 6. (Emphasis added.) The words of the Charter, Ordinance and Plan being clear, Neighborhood Councils should be as inclusive as possible. There being no words of limitation otherwise in the Charter, *Domar Electric Inc. v. City of Los Angeles* (1994) 9 Cal 4th 161, Neighborhood Councils may not require stakeholders to be United States citizens.

QUESTION 2:

May Neighborhood Councils prohibit undocumented (illegal) aliens, minors, and convicted felons from voting or from running for a board seat in Neighborhood Council elections?

ANSWER:

No, Neighborhood Councils may not prohibit undocumented aliens or convicted felons from participating in Neighborhood Council elections by voting or by running for a Neighborhood Council board seat. However, Neighborhood Councils may prohibit minors from voting or from running for a board seat, if they choose.

Department of Neighborhood Empowerment is created."

⁸ The Purpose clause also provides that "[n]eighborhood councils shall include representatives of the diverse interests in communities." Another section of the Charter stresses that the members of the Neighborhood Councils should "reflect the diverse interests within their area." § 906 (a)(3).

DISCUSSION:

Participation in a Neighborhood Council includes the ability to “serve as and vote for members of the governing body.”⁹ Article IX of the City Charter does not distinguish citizens from non-citizens when it defines a Neighborhood Council “stakeholder” nor does it distinguish a resident based upon his or her legal or illegal status.¹⁰

Article IX of the Charter also does not carve out exceptions for convicted felons. Although we recognize that state law restricts the ability of some felons to exercise their voting rights, see, Elections Code § 2201, as we noted above these provisions do not apply to Neighborhood Council elections. Thus, if a stakeholder in a Neighborhood Council happens to be a convicted felon, that stakeholder nonetheless is eligible to serve on, and has the right to vote for members of, the executive board. However, our conclusion with respect to the ability of minors to vote for Neighborhood Council board members and run for a Neighborhood Council board seat is different, for the following reasons.

Under the City Charter, Neighborhood Councils act in an advisory capacity “on issues of concern to the neighborhood.” Charter § 900. They may be delegated the authority to hold public hearings on behalf of the City Council. Charter § 908. They are subject to the Brown Act and are subject to the City’s conflict of interest rules. 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 grassroots empowerment envisioned under the Charter”¹¹ Since so much of the activity of Neighborhood Councils occurs through the actions and recommendations of their governing body, it is important that the voters of these board members, and the board members themselves, have the degree of maturity and responsibility to exercise

⁹ See, Attachment B, *supra*, fn. 6.

¹⁰ Indeed, the Fourteenth Amendment of the United States Constitution provides that persons within the jurisdiction of a state may not be denied the equal protection of the laws. Further, the United States Supreme Court has expressly held that the protections of the Fourteenth Amendment apply to illegal aliens. *Plyler v. Doe Guardian* (1982) 457 U.S. 202, 72 L. Ed 2d 786.

¹¹ City Attorney Opinion No. 2002:5 at 3.

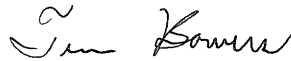
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this right to vote and to exercise the responsibilities that these positions carry.¹²

For these reasons, Neighborhood Councils may, if they choose, without violating the Charter, Plan or Ordinance, restrict stakeholder voting rights and the ability to run for a Neighborhood Council board seat to those stakeholders who are 18 years or older.¹³

Thank you for bringing these matters to our attention. If we can be of further assistance to you in connection with this matter please contact Gwendolyn R. Poindexter of the Neighborhood Council Advice Division at (213) 978-2236.

Sincerely,



TERREE BOWERS
Chief Deputy City Attorney

(94183)

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

¹² State law and courts have presumed that persons 18 years and older are mature enough to vote and restrict voting to adults, 18 years and over, for municipal, state and national elections. Elections Code § 321; *Oregon v Mitchell* (1970) 400 U.S. 122, 91 S. Ct. 260. Neighborhood Councils could choose a different age limit or not establish any age limits at all, if they choose.

¹³ Neighborhood Councils may not, however, attempt to *exclude* minors from stakeholder membership, since the Citywide system of Neighborhood Councils envisions youth participation on some level.