



OFFICE OF THE CITY ATTORNEY

ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO.

R07-0254

JUL 11 2007

REPORT RE:

**THE FEASIBILITY OF AMENDING THE LOS ANGELES MUNICIPAL CODE TO
ALLOW NEIGHBORHOOD COUNCILS TO APPEAL
VARIOUS LAND USE ENTITLEMENTS**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

You have asked this office to clarify whether the City's Los Angeles Municipal Code (Municipal Code) can be amended to allow neighborhood councils to appeal a variety of land use decisions. In response to your request, we frame your question as follows:

QUESTION

Can the City's Municipal Code be amended to allow neighborhood councils to appeal the following entitlements: tentative tract maps, parcel maps, specific plan exceptions, conditional use permits and variances?

ANSWER

Although not free from doubt or immune from legal challenge, we conclude that the Municipal Code can be amended to allow neighborhood councils to administratively appeal certain land use decisions.

SUMMARY OF ADVICE

Granting neighborhood councils standing to administratively appeal certain land use decisions is compatible with the Charter-designated role of neighborhood councils.



This standing can be conferred upon neighborhood councils through an amendment to the Municipal Code. *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547. However, because neighborhood councils are agencies of the City, neighborhood councils would not have standing to sue the City to challenge a land use decision, since that would be tantamount to the City suing itself. *Braude v. City of Los Angeles* (1990) 226 Cal. App. 3d 83; City Attorney Opinion No. 80-41, October 8, 1981.

BACKGROUND

Current law allows any aggrieved or interested person to file an appeal of a land use decision. With the exception of tentative tract maps, the City's land use regulatory process allows for "an applicant or any other person aggrieved" by the initial decision to file an appeal. See, Municipal Code §§ 12.24 (conditional use permits), 12.27 H (variances), 11.5.7 F 7 (specific plan exceptions), 17.54 A (parcel maps). Tentative tract maps specifically allow for the "subdivider, the Mayor, any member of the City Council, the Advisory Agency, or any other person adversely affected by the proposed subdivision" to file an appeal. Municipal Code § 17.06 A 4.

Accordingly, this office has previously advised that this right of appeal extends to any individual neighborhood council board member and that any neighborhood council board can take a position on behalf of the entire neighborhood council on the appeal and communicate its position in a variety of ways including, submitting a "community impact statement" if that matter is before the City Council, presenting a written communication to the applicable Area and/or City Planning Commission, and/or sending a representative to present public comment on behalf of the neighborhood council on the matter before the City's decision makers.¹

Despite the availability of these mechanisms to neighborhood councils and board members in the land use process, neighborhood councils are seeking standing to pursue administrative appeals as a body; standing that, with limited exceptions, has not been similarly granted to any other City agency except when the City agency itself is seeking the land use approval.

¹ Specifically, in a letter to the General Manager of the Department of Neighborhood Empowerment (DONE) in response to an inquiry by the Brentwood Community Council as to the ways in which a neighborhood council can participate in an appeal which has been filed by another individual or organization, this office advised: "While the following list of activities is not exhaustive, the participation by a Neighborhood Council in the City's administrative process might include: (1) The Neighborhood Council could pass a resolution/take an official position regarding the subject matter of the administrative proceeding and that position could be to completely or partially support, oppose, or remain neutral with respect to an administrative matter; (2) The Neighborhood Council could advocate or express its official position to City Staff, the City Departments, the City Council or the Mayor; or (3) The Neighborhood Council could appear at any of the City's administrative hearings and express its official position to the City's hearing officers, Board of Commissioners, Committee hearings, or City Council hearings. The role of the Neighborhood Councils, as advisors, in the administrative proceedings is to offer and express their advice and advocate their community concerns. The above-described activities allow Neighborhood Councils to achieve their purposes." See, Letter dated November 5, 2002, to Greg Nelson, (then) General Manager of DONE.

DISCUSSION

1 The City can prescribe its own internal administrative processes.

The City of Los Angeles is a municipal corporation, operating through its departments, boards, officers and offices. As such, the City's departments, boards and commissions are generally viewed as constituent parts of an indivisible corporation, and " 'departments which do not exist as corporate bodies but are merely administrative arms of a City cannot sue or be sued.' " City Attorney Opinion No. 80-41, citing 3 McQuillin, Municipal Corporations, § 12.40. However, courts give considerable deference as to how a city establishes its own *internal* processes, including its administrative appeal process. Some cities, for example, allow their own boards, departments or officers to administratively appeal land use decisions to another of their bodies acting in an administrative appellate capacity if that body or board is "affected by the decision." *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547; 8A McQuillin, Municipal Corporations, § 25.258.

In the *Cohan* case, a developer successfully challenged the authority of the city council of the City of Thousand Oaks to appeal, essentially to itself, a decision from the planning commission's approval of a subdivision. The city's ordinance specifically allowed: "an appeal [to be] taken by the applicant, any person aggrieved, or by any officer, department, board, or commission of the City affected by the decision." The ordinance, however, did not list the city council as an entity allowed to file an appeal from the decision. Accordingly, the court upheld the developer's challenge specifically on the basis that the city council was not listed in its city's land use ordinance as being authorized to file an appeal. In making this ruling, however, the court cautioned:

"Our holding should not be read as invalidating all appeals taken by a city council or other governing body to itself from a decision of a subordinate agency. We *do* emphasize, however, that if such a procedure is contemplated, it should be authorized by the ordinances or rules which govern appeals to such entity, and some direction should be given in such ordinances or rules concerning specification of grounds and appropriate burdens of proof." (Emphasis in text). *Cohan* at 559.

Thus, the court implicitly acknowledged the validity of an administrative appeal process that allows, at least, a governing body of a city to appeal a decision to its administrative appellate body. Applying the dicta of *Cohan*, and having found no case law directly on point, we believe that the City's Municipal Code can be amended to allow neighborhood councils to appeal land use decisions and that granting this authority would not conflict with the City Charter.

2. The role of administrative appellant is compatible with the Charter-established role of neighborhood councils.

The general rule of statutory construction requires that "when 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." *Domar v. City of Los Angeles* (1994) 9 Cal 4th 161, 172. Article IX of the City Charter provides that neighborhood councils are advisory bodies which are charged with having an "advisory role on issues of concern to the neighborhood." A system for receiving input by the neighborhood councils prior to decisions being made by the City's decision makers was created, as required by Charter § 907. The Charter also specifically provides that neighborhood councils shall monitor City services (§ 910), weigh in on budget priorities for the City (§ 909), and may hold public hearings if this authority is delegated to them by the City Council (§ 908).²

Although the Charter expressly provides that neighborhood councils are to have an advisory role in City decision-making, it does not specifically describe *how* the neighborhood councils are to perform that role, and is otherwise silent regarding any administrative appellate role that they might play. However, while a city may not operate in conflict with its Charter, it is a cardinal rule that "[c]harter provisions are construed in favor of the exercise of the power over municipal affairs and 'against the existence of any limitation or restriction thereon which is not expressly stated in the charter. . . .' [citations omitted]." *Domar, supra* at 171. Thus, so long as the neighborhood councils engage in activities that are not in conflict with their authorized and express powers, that activity is permissible. *County of San Joaquin v. Stockton Swim Club* (1974) 42 Cal. App. 3d 968.

We believe that giving neighborhood councils the ability to appeal land use decisions is within the ambit of the neighborhood councils' Charter-given advisory role.³ As appellants, neighborhood councils possess no decision-making authority on the substantive issue, but merely secure an additional opportunity for a City decision-maker to consider a neighborhood council's position, recommendation and/or advice as to the land use matter at issue. Although an amendment to the City Charter that expressly authorizes neighborhood councils to administratively appeal land use decisions might avoid any dispute regarding this authority, we believe the grant of this authority is nonetheless compatible with the existing Charter.

For the foregoing reasons, we believe that these provisions can be amended to add neighborhood councils to the list of those who are authorized to file an appeal.

² The hearing at which a neighborhood council would ordinarily pass a resolution to appeal a decision to Council could be treated as the hearing authorized by Charter § 908.

³ Black's law dictionary defines the word "advisory" to mean "counseling, suggesting, or advising, but not imperative or conclusive." Black's Law Dictionary, 6th Edition, 1990.

In the event the Council wishes to grant neighborhood councils standing to appeal land use decisions, the Council may wish to provide direction to this office regarding whether a neighborhood council should be allowed to appeal entitlements such as tentative tract and parcel maps, specific plan exceptions, conditional use permits and variances concerning: property located anywhere in the City, property located in the area served by the Area Planning Commission within which the neighborhood council is located, and/or property located within a neighborhood council's geographic boundaries.

Finally, in the past, the Council exempted neighborhood councils from the requirements of adopting a conflict of interest code and the neighborhood council board members from the filing of Form 700. As required under state law, these exemptions must be reviewed every two years. The two year review for neighborhood councils is now due. The Council may wish to consider whether neighborhood councils should continue to be exempted from the requirements of adopting a conflict of interest code and the filing of Form 700 should neighborhood councils be given standing to administratively appeal certain land use decisions.

CONCLUSION

The City's Municipal Code can be amended to allow neighborhood councils to appeal entitlements such as tentative tract and parcel maps, specific plan exceptions, conditional use permits and variances. However, a neighborhood council would not have standing to sue the City in the event it disagreed with the final decision on the land use entitlement.

If you have any questions about this matter, please contact Assistant City Attorney Gwendolyn Poindexter at (213) 978-8199. Either she or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By 
DAVID MICHAELSON
Chief Assistant City Attorney

GRP:DM:pb

cc: Department of Neighborhood Empowerment
General Manager, Carol Baker Tharp

Board of Neighborhood Commissioners

July 13, 2007

For immediate release Contact: Jill Banks Barad (818) 990-4002

City Attorney says "Yes" to Neighborhood Council Appeal Rights

The Los Angeles City Attorney's Office has determined that **"The Municipal Code can be amended to allow neighborhood councils to administratively appeal certain land use decisions."** The decision goes on to say, "Granting neighborhood councils standing to administratively appeal certain land use decisions **is compatible with the Charter-designated role of neighborhood councils.**"

The issue arose when the Sherman Oaks Neighborhood Council discovered that other City entities as well as "any interested party" were allowed to appeal land use decisions. The City Charter provision creating neighborhood councils did not explicitly give neighborhood councils that right and the Sherman Oaks Neighborhood Council was denied the right to appeal a particular tract map decision.

The Sherman Oaks Neighborhood Council wrote in March to Councilmembers Jack Weiss and Wendy Greuel requesting them to introduce to the City Council a motion to amend the LA Municipal Code to allow neighborhood councils the right to appeal certain land use decisions. Councilmembers Weiss and Greuel introduced the Motion on April 25, 2007 (seconded by Bill Rosendahl), and asked the City Attorney to clarify the feasibility of such a request.

The Appeal Rights Motion was then brought before the Valley Alliance of Neighborhood Councils (VANC) where it was unanimously supported. As a result of VANC's efforts, 23 neighborhood councils have voted to support the Motion, with many other councils putting the item on their agendas. "This is an issue of fairness. We are seeking the same appeal rights as virtually every other stakeholder in the City. The right to appeal will empower neighborhood councils and enable them to better represent their respective communities," stated Jill Banks Barad, Founder and Chair of the Valley Alliance of Neighborhood Councils and President of the Sherman Oaks Neighborhood Council.

Barad announced the City Attorney's decision at last night's Valley Alliance meeting. The announcement was followed by cheers and applause from the assembled neighborhood council members from throughout the Valley. David Hiller, Publisher of the LA Times, the guest speaker for the evening, told the group, "well done!"

Councilman Weiss said he is very pleased with the City Attorney's response and called the decision "a positive step for neighborhood councils.

The Council Motion will now be scheduled in the City Council's Education and Neighborhoods Committee.

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