



OFFICE OF THE CITY ATTORNEY

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Neighborhood Council Review Commission
c/o Office of the City Clerk
Room 395, City Hall
200 N. Spring Street
Los Angeles, California 90012

Honorable Members:

In connection with your review of the Neighborhood Council System pursuant to Charter § 912, your Executive Director, Raphael Sonenshein, has requested that we provide advice addressing the policy making role of the Board of Neighborhood Commissioners ("BONC") and where its authority intersects with that of the City Council and Department of Neighborhood Empowerment ("DONE"). Our advice follows.

Summary of Advice

BONC has broad and binding policy making authority with respect to the system of neighborhood councils; however, its authority is ultimately subordinate to the City Council's legislative authority under Charter § 914, and is additionally subject to City Council's review and remand procedures pursuant to City Charter § 245.

With respect to department operations, BONC is vested with decision making authority in specified areas: it has the duty to approve department contracts and leases, promulgate rules and regulations governing neighborhood councils, certify and de-certify neighborhood councils and approve boundary adjustments and certain by-law amendments. BONC is limited to an advisory role on the balance of DONE operations.

Discussion

1. Overview of the role of commissions and BONC

The City's Charter creates the institutions of city government and allocates responsibility among them. Neighborhood councils were introduced into Los Angeles City government upon the adoption of a new City Charter in 1999 "to



promote citizen participation and make government more responsive to local needs.”¹ Article IX of the Charter generally describes the roles of BONC, DONE and the City Council in implementing a neighborhood council system. BONC’s role is defined at Section § 902, which provides, “the board shall be responsible for policy setting and policy oversight, including the approval of contracts and leases and the promulgation of rules and regulations, but shall not be responsible for day-to-day management.” However, in understanding the role of BONC in relation to DONE and City Council, it is helpful to review the design of the City’s commission system.

While the new Charter in many respects re-defined the roles of city officials and entities, it continued to embrace citizen commissions as a central feature of city government. At Charter § 500 *et seq.*, the Charter sets forth the powers and duties of city commissions, which vary depending upon the commission type: managing, advisory, regulatory or quasi-judicial.

The distinguishing characteristic of a managing commission is that it serves as the head of a city department, and, as such, may issue binding instructions to the general manager. Accordingly, while the general manager is responsible for day-to-day operations, such as supervising employees and expending funds consistent with the budget, a managing commission may issue instructions to the general manager concerning the carrying out of these duties. Managing commissions are additionally responsible for approving contracts, real estate transactions and recommending an annual budget to the Mayor.² Managing commissions of several departments (Airports, Harbor, Water and Power, Police, Ethics, Police and Fire Pensions, Los Angeles City Employees’ Retirement System) also have a role in the appointment, evaluation, and removal of the general manager.³

Some City commissions, such as the Civil Service Commission, Area Planning and City Planning Commissions, and the Building and Safety Commission, have primarily regulatory and/or quasi-judicial authority. These commissions can do such things as adopt regulations directly affecting the public, grant permits, licenses or entitlements, and adjudicate enforcement actions. Regulatory commissions may also establish fees and rates either on their own authority or with the concurrence of the Council and Mayor.

Still, many other commissions have the duty to advise City officials on a particular subject matter, or monitor and make recommendations concerning the

¹ Charter § 900.

² Charter §§ 506, 509; City Attorney Opinion No. 2006:1 (May 9, 2006), Page 3; City Attorney Opinion No. 99-3, Page 4-6 (September 20, 1999).

³ See Charter §§508(a), 604(a), 575(a), 701(a), 1108(b).

overall activities of a particular department. Examples of commissions with advisory duties include the Environmental Affairs Commission and the Board of Zoo Commissioners.

A number of city commissions have features of more than one type of commission. For instance, the Board of Public Works and Board of Ethics Commissioners are examples of managing commissions that also perform regulatory or quasi-judicial functions, such as sitting as a review body for enforcement actions taken by department staff or promulgating rules and regulations affecting City employees or the public.⁴

In the case of BONC, the Charter's framers created a definitively hybrid commission. So much so, that its features do not combine to cast it as predominately one type of commission versus another. Like a managing commission, BONC has the authority to approve contracts and leases as well as to set binding policy with respect to the system of neighborhood councils.⁵ However, BONC lacks the hallmark and distinguishing feature of a managing commission: the authority to direct the general manager in the carrying out of department affairs. Accordingly, with respect to departmental operations, BONC may only play an advisory role.

2. Policy Making Role of BONC in relation to City Council

As noted above, BONC's policy making role is established in the Charter, which states that BONC, among other things, "shall be responsible for policy setting and policy oversight."⁶ However, the Charter also provides that the City Council is the legislative branch of the City and, except where the Charter specifically provides otherwise, the Council has "the full power to pass ordinances upon any subject of municipal concern."⁷ While the Charter in some instances specifically reserves certain policy setting or management authority to certain commissions or other entities, and thereby restricts Council's ability to legislate in the same area⁸, it does not do so in the case of BONC. Rather, pursuant to Charter § 905, the City Council was given the initial duty to adopt a

⁴ See Charter §§ 581(g), 706(c).

⁵ Charter § 902(b).

⁶ Charter § 902(b).

⁷ Charter § 240.

⁸ See for instance, Charter § 506 (a), which states, "The head of each department shall have power to supervise, control, regulate and manage the department," and Charter § 506 (b), which states, "The head of each department shall have the power to make and enforce all rules and regulations necessary for the exercise of powers conferred upon the department by the Charter."

Plan and to enact Regulations by ordinance,⁹ and, pursuant to Charter § 914, the Charter reserved an ongoing policy making role for the City Council. Charter § 914 states,

"The Council may adopt ordinances concerning neighborhood councils consistent with requirements for the Plan set forth in Section 904 at any time, which ordinances shall supersede any inconsistent Regulations that have become effective pursuant to Section 905."

Accordingly, upon harmonizing the pertinent Charter sections identified above, BONC has binding policy making authority over the neighborhood council system so long as the City Council has not engaged in policy making in the same subject area.

The City Council's recent action adopting standardized Neighborhood Council Election Procedures ("Election Procedures") illustrates the parameters of BONC's and the City Council's respective policy making authority. The Plan, adopted by City Council pursuant to Charter § 905 was silent regarding neighborhood council election procedures. In effect, this allowed neighborhood councils to adopt their own procedures, or pursuant to Charter § 902(b), allowed BONC, if it so desired, to establish election procedures for neighborhood councils to follow.¹⁰ Recognizing a practical need to standardize procedures among all neighborhood councils, the City Council, acting pursuant to its Charter authority,¹¹ adopted the Election Procedures. If BONC had previously established election procedures, Council's action would have superseded those procedures. In the case of the recently Council-adopted Election Procedures, the City Council delegated to BONC the ability to amend them.¹² If not for this delegation, BONC would lack the authority to do so.

3. Role of BONC in relation to DONE operations

City departments are either headed by a chief administrative officer, known as a "general manager," or by a commission, in which case the commission is known as a "managing commission." In the case of DONE, Charter § 902(b) expressly states that BONC "shall not be responsible for day-to-day management" of DONE. Instead, the Charter assigns this responsibility to

⁹ The Plan for a System of Neighborhood Councils was adopted in May of 2001.

¹⁰ Subject to Council's review authority under Charter Section 245.

¹¹ Charter §§ 240, 905, and 914.

¹² See, Neighborhood Council Election Procedures, Section XXIX, approved, January 25, 2005; See Plan, Article V; Los Angeles Administrative Code (LAAC) §22.810.1(e)(1).

the general manager.¹³ Charter § 510 sets forth the duties of a general manager who heads a department. DONE is also assigned a number of other duties and responsibilities pursuant to the Charter, Plan and Regulations.¹⁴

Most notably, the Charter provides that such general managers shall “have full charge and control of all work of the department,” “be responsible for the proper administration of its affairs, and “issue instructions to employees in the line of their duties.”¹⁵ As part of the general manager’s authority, s/he may issue policies or rules and regulations or instructions to staff as necessary to perform these responsibilities.¹⁶ In the course of DONE’s performance of these duties, BONC may not issue binding instructions to the General Manager regarding his or her performance of these responsibilities unless the Charter, Plan or other operative statute has expressly reserved to BONC the ability to do so. However, BONC may, if it wishes, make recommendations to the general manager on any aspect of DONE operations.¹⁷

¹³ Charter § 903(b),(c)

¹⁴ Pursuant to Charter § 904, the Plan, and Regulations, the General Manager is responsible for administering the neighborhood council certification and de-certification process, assisting neighborhood councils with elections, boundary adjustment petition reviews, bylaw adjustments, resolution of neighborhood council complaints, training, education and outreach, and administering the Neighborhood Council Funding Program, the Financial Accountability and Technical Assistance Policy, and the early notification system. A general list of duties that are DONE’s responsibility are also described in Article VII of the Plan. See *also*, LAAC §22.801, which echoes many of these duties.

¹⁵ Charter § 510 states in full: “Each chief administrative officer who is the head of the department shall: (a) have full charge and control of all work of the department; (b) be responsible for the proper administration of its affairs; (c) appoint, discharge, suspend or transfer all employees of the department, subject to the civil service provisions of the Charter; (d) issue instructions to employees in the line of their duties, all subject to the civil service provisions of the Charter; (e) as authorized by ordinance, assign employees of the department as are required for the carrying out of the powers and duties of the board of commissioners, if any; (f) provide technical assistance and information as requested in writing by the board of commissioners, if any; (g) prior to the beginning of each fiscal year submit an annual budget covering the anticipated revenues and expenditures of the department, including, pursuant to the instruction of the board of commissioners, if any, the money required for the proper conduct of the board’s affairs; (h) expend the funds of the department in accordance with the provisions of the budget appropriations made after adoption of the budget, including those appropriated for the board of commissioners, if any; (i) file with the board and the Mayor a written report on the work of the department on a regular basis and as requested by the Mayor or board; and (j) exercise any further powers as may be conferred upon him or her.”

¹⁶ Charter §§506, 510.

¹⁷ While the Charter does not expressly vest BONC with this advisory function, it does not prohibit it either. See *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, at 170 “[t]he charter operates not as a grant of power, but as an instrument of limitation and restriction on the

Notwithstanding its advisory role in the day-to-day activities of DONE, BONC nonetheless has been vested with decision-making authority within DONE's arena. For instance, BONC is responsible for promulgating rules and regulations governing the system of neighborhood councils, certifying¹⁸ and de-certifying neighborhood councils, approving boundary adjustment petitions, bylaw adjustments (if DONE determines that the proposed changes are inconsistent with the principles governing a neighborhood council's purpose or operations), and instituting changes to the Election Procedures.¹⁹ Both the Plan and Regulations specifically authorize BONC to adopt criteria and procedures (policies) for allocating any grant funds appropriated by the City Council and Mayor among neighborhood councils.²⁰ The Charter also requires that BONC approve DONE contracts and leases.²¹

By way of example, BONC has adopted policies that allow it to resolve a variety of issues in the context of the certification process, dealing with overlapping and disputed boundaries, and competing certification applications. BONC also adopted a policy that gave DONE the authority to remedy problems with delays in elections and lack of quorums by neighborhood councils. Accordingly, unlike most advisory commissions, BONC has been vested with decision-making authority in important areas of DONE operations.

Conclusion

BONC has binding policy making authority with respect to the citywide system of neighborhood councils; however, BONC policies may be modified or superseded by legislation Council may enact. Additionally, while BONC lacks authority to direct the general manager on the day-to-day management activities of DONE, it is, nonetheless, responsible for approving contracts and leases and promulgating rules and regulations, as well as approving the certification and de-certification of neighborhood councils, boundary adjustments and certain bylaw

exercise of power over all municipal affairs which the city is assumed to possess; the enumeration of powers does not constitute an exclusion or limitation."

¹⁸ Within the certification context, BONC has to evaluate a variety of factors to determine whether to certify a neighborhood council: a) whether its boundaries make sense; b) whether adequate outreach has been performed; c) whether its bylaws satisfy the elements in the Plan; d) whether it will comply with the rules of ethics that apply to them and; e) whether the application includes the necessary contacts to enable DONE to work with the neighborhood council as it moves forward to elect its board members.

¹⁹ Charter § 902(b), Plan, Articles III, IV, VI.

²⁰ Plan, Article IX, LAAC § 22.810.1 (g)(2).


²¹ Charter § 902(b).

amendments. Beyond this decision-making authority, BONC may only act in an advisory capacity to DONE.

We hope this advice has helped clarify BONC's role. However, when presented with a particular set of facts, it is always necessary to review the applicable legal framework against those set of facts to determine the respective authority of BONC and other city entities and offices. Our office remains available to provide advice on a case-by-case basis as to the authority and responsibility of the BONC, DONE or City Council with respect to the citywide system of neighborhood councils.

Sincerely,

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