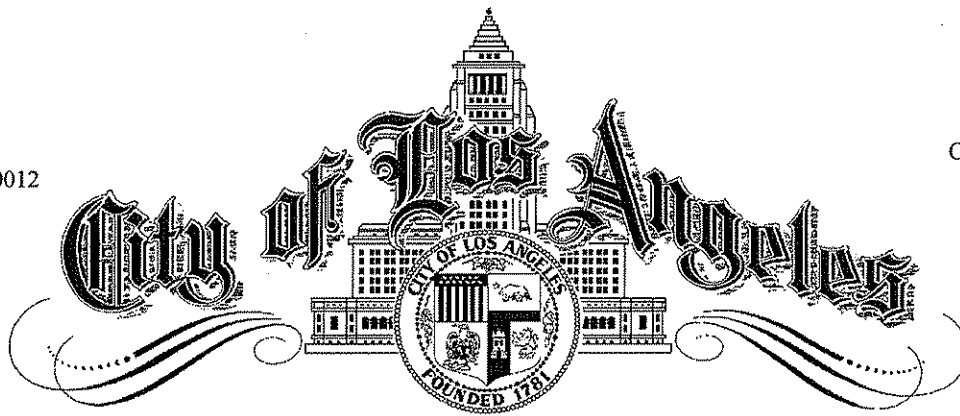


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May 13, 2013

Commissioner Paul Park, President
Commissioner Leonard Shaffer, Vice President
Commissioners Douglas Epperhart, Daniel Gatica, Linda Lucks, Karen Mack
Board of Neighborhood Commissioners
Department of Neighborhood Empowerment
20th Floor, City Hall
200 North Spring Street
Los Angeles, CA 90012

Re: May 20, 2013 Board Meeting / Factual Basis Stakeholders

Dear Honorable Commissioners:

Our Office is gratified that your Commission intends to act on May 20, 2013 on the subject of "factual basis stakeholders," because this imprecise phrase has been the source of dozens of complaints. We have reviewed the following Motion that resulted from 60 days of insightful stakeholder comment. We thank you for your prompt action on the Motion, with the following comments and recommendations:

I. Proposed Motion.

Resolved, the Board of Neighborhood Commissioners recommends that sections of the City's Administrative Code which touch upon neighborhood council stakeholders be amended as follows:

- (1) remove the requirement that neighborhood councils provide governing board positions for factual basis stakeholders;
- (2) allow each neighborhood council to determine the number, if any, of governing board seats that will be allocated to factual basis stakeholders;
- (3) remove the current definition of factual basis stakeholder; and
- (4) allow each neighborhood council to adopt its own definition of factual basis stakeholder.

II. Legal Issue.

Significant, unresolved confusion has arisen over the stakeholder category that has come to be known as “factual basis stakeholders.” We can identify two sources for the uncertainty: (1) the absence of this concept from the language of the City Charter; and (2) the lack of a clear definition for this concept as it entered the lexicon through the Plan for a Citywide System of Neighborhood Councils (Plan).

The eligibility of stakeholders begins with the City Charter. Under Section 906(a)(2) of the Charter, stakeholders are defined as “everyone who lives, works or owns property in the area (stakeholders).” Article II, Section 1 of the Plan expanded the stakeholder definition enacted by the electorate to also include “any individual who declares a stake in the neighborhood and affirms the factual basis for it.” (See Admin. Code § 22.811(a)(2).) The Plan definition was adopted by City Council on February 20, 2008, pursuant to a recommendation from the Neighborhood Council Review Commission (NCRC). (NCRC Recommendation #42: http://done.lacity.org/ncrc/c_img/finalReport1-18.pdf.)

At no time, either during or following the Plan’s expansion to include those individuals who declare and affirm a factual basis for their stake in the neighborhood, were clear rules, guidelines, or definitions provided for the term “factual basis stakeholder.” This has led to neighborhood council confusion and to the application of differing standards and views when determining the eligibility of “factual basis stakeholders.”

III. Legal Analysis.

This letter does not address the expansion of the Charter’s stakeholder definition that specifies “everyone who lives, works or owns property.” Rather, this analysis begins with the words of the Charter, the Plan’s recognition that other types of relationships with a community might constitute a “stake” warranting inclusion as a stakeholder, and with the pending Motion.

A. Authority to Remove “Factual Basis” Seat Board Requirement. Charter Section 906(a)(2) mandates only that stakeholders must include individuals who live, work or own property within a neighborhood council’s boundaries. The Charter, therefore, does not impede the Motion’s proposal to remove a requirement that neighborhood councils provide governing board positions for factual basis stakeholders.

By contrast, the Plan requires the inclusion of stakeholders who affirm their “factual basis” stake. However, the Plan does not go further. It does not require that governing board positions be set aside for these individuals. This silence is consistent with Charter

Section 904(f), which prohibits DONE from establishing regulations that “restrict the method by which the members of a neighborhood council are chosen, if the process otherwise satisfies the requirements of this Article.” This silence is also consistent with Article V, Section 2 of the Plan which provides: “Neighborhood Councils shall be empowered to allocate the Governing Body seats, determine voting rights, including the allocation of different voting roles to different categories of Community Stakeholders and establish other voting procedures, consistent with the Charter, this Plan and the Regulations that implement this Plan, and any procedures issued by the City Clerk.”

Accordingly, the Plan does not impede the Motion’s proposal to remove a requirement that neighborhood councils provide governing board positions for factual basis stakeholders.

B. Authority to Allow Each NC to Determine Its Factual Basis Seats. Similarly, we see no legal constraint that would prevent the Board and the Department from allowing each neighborhood council to determine the number of board seats, if any, to allocate to factual basis stakeholders. As with the proposal to remove the governing board seat requirement for factual basis stakeholders, this view is supported by the Charter Section 904(f)’s prohibition on the Department’s establishment of regulations that restrict the method by which the members of a neighborhood council are chosen. It is also supported by Article V, Section 2 of the Plan, as excerpted above, which delegates the power to allocate governing body seats to the NCs.

C. No Authority to Remove Factual Basis Stakeholder from Plan. The Plan contains a passage creating factual basis stakeholders. However, this passage does not constitute a “definition.” The Plan states only that this category includes “any individual who declares a stake in the neighborhood and affirms the factual basis for it.” This statement is not supplemented by any language providing further guidance on what it means to have a “stake in the neighborhood.” Nor is guidance provided regarding what types of “factual basis” would be sufficient to qualify.

The elimination of the reference to factual basis stakeholders from the Plan would require a City Council ordinance amending the Plan. The goals of the proposed Motion, which are to allow each NC to be self-determining regarding factual basis governing seats and to define “factual basis stakeholder,” can be achieved without removing the passage from the Plan. Therefore, we do not recommend removing the reference to factual basis stakeholders from the Plan.

D. Authority to Allow Each NC to Adopt Its Own Factual Basis Definition So Long As That Definition Does Not Impermissibly Dilute Charter Stakeholders. As discussed above, the inclusion of “factual basis stakeholders” is not mandated by the

Charter. These stakeholders are created by and must be included pursuant to the Plan, which does not define this stakeholder category nor require that governing board seats be allocated to this category. Further, the Plan contains no requirement that each NC adopt the same definition for this category. Accordingly, each NC may enact its own definition for "factual basis stakeholders." However, each NC definition must honor the broad legal principle that constrains this phrase.

The term "stake," as used in the Plan, derives from the term "stakeholder" in the Charter. The law requires us to interpret this word according to its plain meaning. (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal. 3d 650, 658.) The Charter defines the term "stakeholder" by identifying those persons whose affiliation with the neighborhood is sufficiently substantial to make them eligible to participate in voting and leadership of their neighborhood councils. The examples used in the Charter to express the types of stakes that qualify for stakeholder status -- living, working, or owning property -- demonstrate a significant ongoing relationship with the community. The interpretation of "persons with a stake" under the Plan and Administrative Code must similarly reflect a significant ongoing relationship with the community. Any definition cannot be so disparate from the stakeholders identified in the Charter as to dilute the voices or votes of the stakeholders that the Charter expressly empowered.

Living in, working in or owning property in a neighborhood demonstrates a substantial and ongoing commitment to the neighborhood, which takes time and effort to establish. By contrast, a fleeting encounter with a community, such as entering into a single transaction in the area, can be achieved by any transient visitor. If persons whose relationship can be established with a single receipt are allowed unfettered rights to vote and participate in neighborhood councils, persons with single receipts could overwhelm and dilute the voices and votes of the Charter-identified stakeholders. (*Reynolds v. Simms* (1964) 377 U.S. 533, 555.) To ensure that such a dilution does not occur, both Charter-identified stakeholders and any "factual basis stakeholders" added by an NC should meet the same standard of a substantial and ongoing commitment to the neighborhood.

Every NC definition of "factual basis stakeholder" should require a sufficient ongoing relationship with his or her neighborhood so that the voices and votes of Charter-identified stakeholders are not improperly diluted. The definition could be open-ended, allowing for a case-by-case determination, by including those who can document a substantial and ongoing commitment to the neighborhood. Alternatively, the definition could achieve a similar outcome by identifying the substantial and ongoing relationships required to qualify. By way of three examples, membership in a religious organization located in the community, the attendance of a child at a local school, or regular

participation in a neighborhood nonprofit, could reflect such significant commitments. Other similarly substantial relationships might also qualify.

In summary, a neighborhood council may choose whether to allow "factual basis stakeholders" to hold a leadership position on its governing board. Each neighborhood council may also adopt its own "factual basis stakeholder" definition. Every definition of "factual basis stakeholder" must require a substantial and ongoing relationship with the neighborhood. In this way, "factual basis stakeholders" will not unlawfully dilute the participation of Charter-identified stakeholders. Instead, those who live, work, or own property, as well as those who declare a factual stake in the neighborhood, will all demonstrate the same significant commitment to their local community.

Please let us know if you have any further questions.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By



WILLIAM W. CARTER
Chief Deputy City Attorney

cc: Council Member Bernard Parks, Chair, Education and Neighborhoods
Committee
Council Member Jan Perry, Vice Chair, Education and Neighborhoods
Committee
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Grayce Liu, General Manager, DONE