

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

CASEY GWINN
CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

March 3, 2003

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LEGAL QUESTIONS CONCERNING THE CITY HEIGHTS REDEVELOPMENT
PROJECT AREA COMMITTEE

INTRODUCTION

During Public Comment at the January 4, 2003, meeting of the City Council, Michael Sprague, a member of the City Heights Redevelopment Project Area Committee [PAC], complained about a number of issues related to the PAC. Specifically, he complained that the PAC was illegally elected, because crossover voting was allowed.¹ He further alleged that because of the crossover voting, no vote taken during the last two years was legal or binding on the City Council. Finally, he expressed his concern that because there was crossover voting, the current PAC members were not indemnified for actions taken by the PAC. Councilmember Toni Atkins asked the City Attorney to review these complaints and respond to the City Council.

DISCUSSION

The California Redevelopment Law [CRL] (California Health and Safety Code sections 33000-34160) governs redevelopment in California. CRL section 33385 regulates the formation, membership, role and staffing of PACs. Pursuant to this section, the City Council is charged to "call upon the residents and existing community organizations . . . to form a project area committee," in order to provide a voice to low and moderate income persons within the project area. CRL §§ 33385(a), 33385(a)(1). The City Council is required, by resolution, to adopt procedures for the formation of the PAC. CRL § 33385(b). These procedures must include, among other things, provisions related to notice, public meetings, categories of membership, and elections. They also must prohibit crossover voting between categories. CRL § 33385(d)(1). Finally, the procedures must provide that any challenge to an election, or to the procedures themselves, must be filed within fifteen days of an election. CRL § 33385(d)(2).

¹ Crossover Voting - Voting between categories of PAC positions, such as a business owner voting in a residential category or vice versa.

On September 14, 1999, by San Diego Resolution R-292185, the City Council approved the *Procedure for Formation of a Project Area Committee for the City Heights Redevelopment Project* [Procedures]. These Procedures prohibited crossover voting. On March 12, 2001, the PAC drafted amendments to the Procedures, including removing the prohibition against crossover voting. Following the recommendation of the PAC, the City Council by San Diego Resolution R-294800 on May 1, 2001 adopted the amended Procedures. Since that time, there have been two PAC elections held pursuant to the revised Procedures. Both elections were ratified by the City Council, with no objections to either of those elections filed.

There is no published case which addresses the legality of a PAC elected with crossover voting allowed. In fact, the only case which addresses the issue of whether a PAC was legally constituted looked at the make up of the PAC - whether it was "representative" within the meaning of CRL section 33385(d)(1). In *Morgan v. Community Redevelopment Agency of the City of Los Angeles*, 231 Cal. App. 3d. 243 (1991), the court considered a challenge to the City of Los Angeles's adoption of a redevelopment project area by citizens who contended, among other things, that the PAC did not "meet the statutory requirements of self-formation and representativeness." *Id.* at 249. In that case, the court deferred to the City Council approval of the PAC election, emphasizing that, (1) a procedure existed for nominations of candidates, (2) the methods used for the formation of the PAC were consistent with CRL section 33385, (3) the methods used to form the PAC were independently reasonable, and (4) the PAC was not unduly dominated by any group or agency. *Id.* at 251.

Similar to the facts in *Morgan*, the City Heights PAC was self formed and representative. The PAC, consistent with the requirements of CRL section 33385(c), consists of 4 elected representatives who are residential owner-occupants, 3 residential tenants, 4 business owners, and 4 existing community organizations. Similar to the PAC in *Morgan*, the City Heights PAC also has 7 members appointed by community organizations. The PAC was independently elected, and is representative of the Project Area, as required by the CRL. In addition to the PAC having been independently elected, and representative, no challenge was ever filed with regard to either election, nor was any challenge ever filed as to the Procedures.

In response to the specific concerns raised by Mr. Sprague, he is correct that the CRL requires that the Procedures prohibit crossover voting. Because the Procedures currently do not contain this prohibition, they should be corrected on an expedited basis. In fact, the corrected Procedures are scheduled to be before the City Council for approval in March, with a new election to be held after their adoption.

As for Mr. Sprague's concerns that the actions of the PAC may not be "legally binding on the City Council," it is the opinion of the City Attorney's Office that because the PAC is legally constituted, with no challenge filed as to its formation or to the Procedures, the actions of the PAC are valid. The PAC is an independent body charged with advising the Redevelopment Agency, not the City Council. Further, after the adoption of a project area, the PAC's actions are advisory only. CRL § 33386. As such, the actions of any PAC are not legally *binding* on either the City Council or the Redevelopment Agency. Finally, it is our opinion that because it was the

THE HONORABLE
MAYOR AND CITY COUNCIL
March 3, 2003
Page 3

City Council that adopted the current Procedures, a PAC member – otherwise acting within the legal scope of responsibility as a PAC member – would not lose his or her indemnification merely because those Procedures did not prohibit crossover voting.

CONCLUSION

PAC formation procedures are required to preclude crossover voting. The *Procedure for Formation of a Project Area Committee for the City Heights Redevelopment Project* does not contain this required prohibition. While the Procedures should be expeditiously corrected, this inconsistency neither invalidates the actions of the PAC, nor jeopardizes the members' indemnity for actions taken within the scope of their office.

Respectfully submitted,

CASEY GWINN
City Attorney

DKH:smf
RC-2003-9