

MEMORANDUM OF LAW

DATE: January 5, 1994

TO: Councilmember Valerie Stallings

FROM: City Attorney

SUBJECT: Linda Vista Community Pride Committee

You requested that our office answer the following questions concerning the establishment of the Linda Vista Community Pride Committee:

1. Is it within the scope and definition of a community planning group to sponsor such a program?
2. If this program is within the planning groups' purview, can the City logo appear on forms produced by the Community Pride Committee?
3. Can the planning group post office box serve as the drop off for completed "Community Improvement Citizen's Reports?"

FACTS

It is our understanding that the Linda Vista Community Pride Committee (hereinafter referred to as the "Pride Committee") was established by residents in the Linda Vista area to identify neighborhood code violations and to promote community beautification. This volunteer group is composed of members of the Linda Vista Community Planning Group as well as other members of the community. However, the Neighborhood Code Compliance Department has stated that the Pride Committee was not established by the Linda Vista Community Planning Group.

After receiving some code enforcement training from City personnel, each member of the Pride Committee signed a Volunteer Services Agreement (attached as Exhibit "A"). The Agreement provides that only members of recognized community planning groups are provided with "legal representation" by the City. (Paragraph 10 of the Agreement.)

It is our understanding that approximately 120 volunteers are currently involved in similar volunteer projects throughout the City. The volunteers are trained and supervised to a limited extent by the Neighborhood Code Compliance Department.

ANALYSIS

1. Is it within the scope and definition of

a community planning group to sponsor such a program?

It is not clear whether a volunteer code enforcement program would fall within the purview of a City-recognized community planning group. Our office has opined in the past that community planning groups are composed of private citizens who organize themselves and seek recognition as community planning groups from the City Council pursuant to Council Policy 600-24. (Memorandum from Chief Deputy City Attorney Fred Conrad to Councilmember Judy McCarty, dated March 1, 1988.) The primary purpose for the establishment of community planning groups is to advise the City Council and Planning Commission on the preparation and implementation of amendments to the general or community plans. (Article II, section 1 of Council Policy 600-24.) It provides in part:

The primary purpose of the community planning committee shall be to advise the City Council, Planning Commission and other governmental agencies as may be appropriate in the initial preparation, adoption of, implementation of or amendment to the General or Community Plan as it pertains to the area or areas of concern to said committee.F

The community planning groups are also directed to review individual development projects for conformance with the Community Plan and or the General Plan. (Article II, Sec Council Policy 600-24)

(Emphasis added)

An argument could be made that the "implementation" of the general and community plans includes the enforcement of zoning ordinances. Moreover, the Planning Department has recommended in the past that community planning groups be used to facilitate the establishment of volunteer code enforcement programs because such groups are the main avenue through which citizens communicate to the City about a variety of land-use issues. (Memorandum to Councilmember Filner, dated May 23, 1989, page 10, attached as Exhibit "B.")

However, Council Policy 600-24 does not specifically provide that community planning groups were intended to perform code enforcement functions. In addition, it is unlikely that the majority of the bylaws adopted by the community planning groups would describe "code enforcement" as one of their responsibilities. For example, the Bylaws for the Linda Vista Community Planning Group do not describe "code enforcement" as

one of its functions nor does it provide for the creation of subcommittees to perform such activities. (The Linda Vista Community Planning Group's Bylaws are attached as Exhibit "C.")

If the City decides to utilize community planning groups to establish volunteer code enforcement programs, Council Policy 600-24 or the bylaws for each of the community planning groups should be revised to reflect this additional responsibility. In addition, until Council Policy 600-24 has been amended, any such amendment to the community groups' bylaws must be approved by the City Council. This should be done for the community planning groups' protection, as well as to clarify any ambiguity, since community planning groups are provided with legal representation and indemnification against claims for damages only when acting within the scope of Council Policies 600-9 and 600-24. (Report from City Attorney John Witt to the Committee on Rules, Legislation & Intergovernmental Relations, March 14, 1993. Attached as Exhibit "D.") Moreover, please note that in order for City-recognized community planning group members who currently participate in volunteer code enforcement programs to receive the "legal representation" promised to them in the Agreement, attached as Exhibit "A," they must be acting within the scope of authority set forth in Council Policy 600-24.

2. If this program is within the planning groups' purview, can the City logo appear on forms produced by Community Pride Committee?

The Neighborhood Code Compliance Department has indicated that other volunteer code enforcement groups do not use the City logo on their forms or correspondence. For a number of reasons, we believe this policy should be continued and the Pride Committee should not be allowed to use the City's logo on its forms. The Pride Committee was not established or recognized by the City to act on its behalf and the City provides very little supervision to this group. If the Pride Committee was to use the City's logo on its forms it would only cause confusion to the public as to the source of the correspondence and increase the potential for the City to be held liable for the Pride Committee's actions. Second, the Planning Department has stated in the past that "City" stationary should not be used in order to prevent the distribution of "legal looking notices" that could cause contention within the community. (See page 10 of the Memorandum to Councilmember Filner, Exhibit "B.")

3. Can the planning group post office box serve as the drop off for the completed "Community Improvement Citizen's Reports?"

We understand the financial constraints under which the

Pride Committee must operate. The Pride Committee is certainly free to ask the Linda Vista Community Planning Group for permission to use its post office box. However, the Pride Committee cannot use this post office box without first obtaining the appropriate permission.

#### CONCLUSION

There are a number of legal issues that concern the establishment of volunteer programs. Whenever volunteers are used to carry out City programs there is a potential that the City may be held liable to the volunteers for any damages or injuries incurred in the course of their activities and to third persons for negligent acts committed by such volunteers.

It is our understanding that Mayor Golding is interested in developing a City-wide volunteer program and has asked our office to comment on the legal ramifications that may arise surrounding the establishment of such a program. We will apprise you of our conclusions.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

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Attachments 4

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