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ORDINANCE NUMBER O- 19842 (NEW SERIES)

DATE OF FINAL PASSAGE APR 22 2009

AN ORDINANCE PROVIDING FOR DEFENSE AND  
INDEMNIFICATION OF COMMUNITY PLANNING GROUPS.

WHEREAS, the successful implementation of the Progress Guide and General Plan of the City of San Diego requires the thoughtful and deliberate development and implementation of community plans; and

WHEREAS, the development of community plans requires the cooperation and participation of citizens who have the personal knowledge of the needs and aspirations of their respective communities; and

WHEREAS, the City Council has adopted Council Policy 600-5 entitled "Community Plans" which provides, in part, that citizens' groups be established for the purpose of providing a formal organizational structure for coordination and communication with City planning staff; that said citizens' organizations shall contain as broad a base of local representation as is feasible and practical; and that groups be aware of their duties and responsibilities in the planning process and express a willingness to accept such responsibilities; and

WHEREAS, the City Council has adopted Council Policy 600-9 entitled "Community Planners Committee" which provides, in part, that, in an advisory capacity, the Community Planners Committee [CPC] shall participate in reviewing and recommending to appropriate bodies actions deemed necessary and desirable for the timely and continued effectuation of goals, objectives and proposals contained in the General Plan and that it shall serve in an advisory capacity to the community planning groups with a primary goal of achieving maximum

coordination of planning matters on a comprehensive or citywide basis, and promotion of solutions of matters of mutual concern shared among the communities of San Diego; and

WHEREAS, the City Council has adopted Council Policy 600-24 entitled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups," which provides a procedure under which citizens who are interested in participating in the planning process in an advisory capacity may form organizations and request recognition, in their advisory capacity, by the City Council as community planning groups; and

WHEREAS, community planning groups devote countless hours of their time and substantial private resources in assisting the City of San Diego in the development and implementation of community plans and the Progress Guide and General Plan; and

WHEREAS, the voluntary efforts of community planning groups are of inestimable value to the citizens of the City of San Diego; and

WHEREAS, recent developments have caused community planning groups and the CPC to become concerned about possible exposure to litigation arising from participation in the planning process; and

WHEREAS, the community planning groups and the CPC have determined that there is a need to update and revise Ordinance Number 0-17086, adopted on April 25, 1988, in order to provide greater clarity on the scope of the City's indemnification and defense of community planning groups; and

WHEREAS, the concerns about personal exposure to litigation continue to jeopardize the vitality of the planning process and, unless eliminated, may cause the collapse of the process that provides essential citizen participation; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of defense and immunity of any community planning group, or the elected or appointed members or

former members thereof, acting in conformance with Council Policy 600-24, would constitute expenditure of public funds which serves the highest public interest and purpose; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. Except as hereinafter provided, The City of San Diego shall provide for the defense and indemnity of the following: the CPC established by Council Policy 600-9, and any community planning group established pursuant to Council Policy 600-24, both entities hereafter referred to as "group"; and the duly elected or appointed members, or former members, hereafter also referred to as "people" or person, thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is, or was, a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24;
- B. The person attended a Community Orientation Workshop [COW] conducted by The City of San Diego, prior to participating in the activity which gave rise to the claim or action against the group, member, or former member; or, if a COW was not yet available, prior to the person's participation at his or her first group meeting, the person read the Community Orientation Workshop Handbook and certified on the record at that meeting that the person completed such review, and then attended the first COW available to that person either electronically or in person;
- C. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;
- D. The alleged act or omission was within the reasonable scope of duties of a group as described in Council Policies 600-5, 600-6, 600-9 and 600-24, and was not in

violation of any of those Council Policies, or any provision of the bylaws adopted by the group and approved and/or adopted by the appropriately-designated City officials or City entities;

- E. The member, former member, or group made a request in writing to the City Attorney for defense and indemnification no later than ten (10) working days from being served or notified of such legal papers;
- F. The member, former member, or group performed his, her or its duties in good faith with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances;
- G. The member, former member or group reasonably cooperates with the City Attorney in the defense of the claim or action; and
- H. The member, former member or group's actions or failures to act were not due to actual fraud, corruption, actual malice or bad faith.

Section 2. In the event the City Attorney determines that a member, former member or group is not entitled to, or should not receive a defense and indemnification under this ordinance, the City Attorney shall promptly advise the City Council and the member, former member or group. The City Attorney shall not withdraw from such defense, and the City shall not deny such indemnification, under this section without the approval of the City Council. Nothing contained herein relieves the City of San Diego from its obligations under Section 1 to provide a defense and indemnification under the conditions specified. The City of San Diego may provide a defense to a member, former member, or group under a reservation of rights.

Section 3. The provisions of this ordinance apply only to members or former members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24.

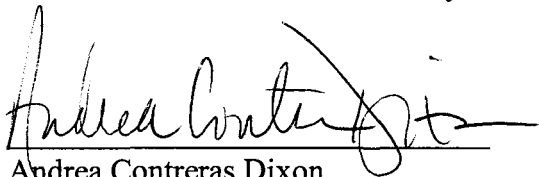
Section 4. Defense and indemnification shall not be provided by The City of San Diego in any administrative or judicial proceeding initiated by a group or its members against The City of San Diego, its agencies or representatives or any other party or organization nor shall representation and indemnification be provided to a group or its members against damages to any person or organization which are alleged to have resulted from the initiation of any administrative or judicial proceeding by a group, its members.

Section 5. In no event shall defense or indemnification be provided against a claim or judgment for punitive damages.

Section 6. This ordinance does not constitute an admission or a waiver of the position of The City of San Diego that groups and the members thereof are not officers, employees or servants of The City of San Diego.

Section 7. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

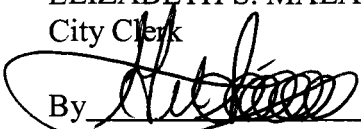
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Andrea Contreras Dixon  
Deputy City Attorney

ACD:pev:mm  
03/26/09 Rev. Copy  
01/28/09  
Or.Dept: City Attorney  
O-2009-96 Version A  
MMS #7405

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 14 2009.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 4-22-09  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor