



**EXECUTIVE SUMMARY SHEET**

City of San Diego

DATE ISSUED:	REPORT NO.:
ATTENTION:	COUNCIL PRESIDENT AND CITY COUNCIL
ORIGINATING DEPARTMENT:	CITY ATTORNEY
SUBJECT:	INDEMNIFICATION ORDINANCE FOR COMMUNITY PLANNING GROUPS
COUNCIL DISTRICT(S):	ALL
CONTACT/PHONE NUMBER:	ALEX SACHS 619/533-5875

REQUESTED ACTION: Council approve one of two (2) versions of an updated ordinance providing for legal representation to and indemnification of community planning groups.

STAFF RECOMMENDATION: Introduce the Ordinance.

EXECUTIVE SUMMARY: Since March 2007, the City Attorney's office has worked with the Community Planners Committee (CPC) on a comprehensive update of the ordinance providing defense and indemnity for community planning groups (CPGs).

The present indemnification ordinance, Ordinance No. O-17086, was adopted by the Council on April 28, 1999. The present ordinance provides for defense and indemnification of community planning committees against claims for damages.

After the La Jolla Community Planning Association (LJCPA) was sued in May 2006, many CPGs and CPG leaders, serving as members of the CPC, became concerned that, in their view, Ordinance No. O-17086 did not provide sufficient protections to community members volunteering to serve on CPGs. In response to these concerns, the City Attorney agreed to assign a Deputy City Attorney to work with a subcommittee of the CPC in order to draft a new indemnification ordinance.

After a number of subcommittee meetings and several presentations at CPC, the CPC voted to have two versions of the ordinance forwarded to the City Council for consideration.

Both versions, Version A and Version B, are before the Council in clean as well as strikeout-underline format. The City Attorney recommends the Council adopt Version A. The CPC subcommittee felt strongly that Version B should be presented to Council, as well.

Both versions of the newly-drafted indemnification ordinance substantially tighten up the wording of the recitals in the ordinance, consolidating text and references to Council Policies 600-5, 600-9 and 600-24. The new ordinance clarifies that legal services and representation shall be provided by the City Attorney's office and that such representation

should be provided against "any and all claims." Ordinance No. O-17086 more narrowly provides for indemnification against "damages resulting from a judgment."

The implementation sections of the ordinance are broadened to acknowledge that indemnification can be provided even in the event that newly-elected members have not yet had the opportunity to attend a Community Orientation Workshop (COW). In addition, these sections provide for indemnification of non-members of CPGs who serve on subcommittees, as long as the duly-appointed non-members have satisfied training requirements as enumerated within the Council Policy 600-24 Administrative Guidelines.

A new implementation Section 3 provides for the City to defend CPGs against any civil action or proceeding brought against the group, so long as the alleged act or omission is within the scope of a member's or group's official duties. This section also provides for the City to be excused, after a thorough investigation, from this obligation under certain circumstances.

The CPC subcommittee's recommendation, as presented in Version B of the ordinance, provides for an alternative implementation Section 3 that would require the City defend and indemnify CPGs "through and until final adjudication" in a court, tribunal or administrative body. Such an obligation would exist, regardless of whether a claim includes allegations of "actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith." Version B would provide protection to the City's interests through a written "reservation of rights" for reimbursement of defense costs in the event that a group's or CPG member's actions are found, after final adjudication, to have merited the City's defense and/or indemnification.

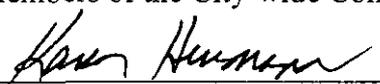
Finally, both Versions A and B make clear that, should the City Attorney determine that a member or group is not entitled to or should not receive a defense, the City Attorney's Office is to promptly advise the City Council and the member or group.

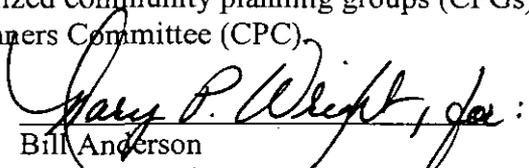
FISCAL CONSIDERATIONS: N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Meetings with an ad hoc subcommittee of the Community Planners Committee as well as presentations at several meetings of the full Community Planners Committee.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): Duly-elected and/or appointed members of the 43 recognized community planning groups (CPGs) and members of the City-wide Community Planners Committee (CPC).

  
 \_\_\_\_\_  
 Karen Heumann, Assistant City Attorney  
 Originating Department

  
 \_\_\_\_\_  
 Bill Anderson  
 Deputy Chief/Chief Operating Officer

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING COMMITTEES 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 dedicated 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 citizen's groups be established for the purpose of providing a formal organizational structure for coordination and communication with City Planning staff; that said citizen's 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 of community planning groups;  
and

WHEREAS, the concerns about personal exposure to litigation have continued 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, Section 40 of the Charter of the City of San Diego provides that the City Attorney shall perform such other duties of a legal nature as the City Council may by ordinance require; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of legal services and representation by the City Attorney and the indemnification against any and all claims, against any community planning group, or the elected or appointed member thereof, so long as they are properly engaged in activities specified under Council Policy 600-24, would constitute an 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 Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (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 thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24, and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the City of San Diego; and
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;
- C. The alleged act or omission was within the reasonable scope of duties of a committee 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;
- D. The member or group has made a request in writing to the City Attorney for defense and indemnification no later than within ten (10) working days of having been served or notified of such legal papers; and
- E. The member or group has performed its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Section 2. Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided .

they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines.

Section 3. Upon the request of a member, former member, or group, the City of San Diego shall provide for the defense of any civil action or proceeding brought against the member or group on account of an alleged act or omission within the scope of the member or group's official duties as described in Council Policies 600-5, 600-6, 600-9 and 600-24. This duty shall apply unless it is determined, after a thorough investigation by the City of the facts surrounding the allegations, transaction or incident, that:

- A. The act or omission by the member or group was not undertaken within the scope of the official duties of recognized groups or their members; or
- B. The member or group intentionally acted or failed to act because of actual fraud, corruption, direct economic interest (as defined in the City's Administrative Guidelines) in the matter before it, or actual malice; or
- C. The defense of the action or proceeding by the City would create a conflict of interest between the City and the member or group; or
- D. The request for defense is determined, after a thorough investigation, to be a request for the defense of a criminal action or proceeding, including a criminal proceeding for the removal of a member or members.

Section 4. In the event that the Office of the City Attorney determines that a member or a group is not entitled to or should not receive a defense and indemnification under this ordinance, the Office shall promptly advise the City Council and the member or group.

Section 5. Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct.

Section 6. Representation 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 or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process.

Section 7. The provisions of this ordinance apply only to members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-2424, or duly-appointed members of subcommittees of recognized groups, provided they satisfy the requirements of this ordinance and the Council Policy 600-24 Administrative Guidelines.

Section 8. In no event shall representation or indemnification be provided against a judgment for punitive damages.

Section 9. 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 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 11. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Alex W. Sachs  
Alex W. Sachs  
Deputy City Attorney

AWS:mm  
03/13/08 Version A  
03/15/07  
06/04/07 Corr.Copy  
07/10/07 Corr.Copy 2  
09/19/07 Corr.Copy 3  
12/27/07 Corr. Copy 4  
01/03/08 Corr. Copy 5  
01/25/08 Corr. Copy 6  
03/07/08 Corr. Copy 7  
03/18/08 Corr. Copy 8  
09/16/08 Corr. Copy 9  
Or.Dept: City Attorney  
O-2007-113  
O-2009-22  
MMS#4532

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

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

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

\_\_\_\_\_  
JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~STRIKEOUT~~  
NEW LANGUAGE: UNDERLINE

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING COMMITTEES GROUPS. ~~AGAINST CLAIMS FOR DAMAGES.~~

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 dedicated 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,

- ~~1. That in urbanized areas the citizens' group has established, to a reasonable degree, a formal organization structure which is capable of providing proper coordination and communications with City staff forces. In nonurbanized areas the Planning Commission will serve as the citizens' group unless and until a citizens' group is recognized by the City Council; and for whatever period the Commission performs this function, it shall do so with the invited participation of the chairmen of existing~~

~~citizens' groups representing areas contiguous to that which is the subject of a proposed development plan.~~

~~2. That said citizens' organization contains as broad a base of local representation as is feasible and practical, and it is expected that community real property owners will be active in the leadership and the formation of any such programs.~~

~~3. That said citizens' organization has an awareness of its duties and responsibilities in participating in the planning process and acknowledges a willingness to accept these responsibilities.~~

~~4. That said citizens' organization shall, in collaboration with City staff, select appropriate study area boundaries and present a tentative outline of objectives and its work program.~~

~~5. That during an early stage of the work program the citizen planning group shall, in consultation with property owners and City staff, establish and submit reasonable time schedules for the various phases of the program to the Planning Commission.~~

that citizen's groups be established for the purpose of providing a formal organizational structure for coordination and communication with City Planning staff; that said citizen's 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,

~~1. This citizens' organization shall be composed of the chairman, or officially designated representative, or alternate of each of the community planning~~

~~committees as recognized under Council Policy 600-5, and shall be known as the "Community Planners Committee."~~

- ~~2. In its advisory capacity, this citizens' organization 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.~~
- ~~3. This citizens' organization shall be responsible for participating in an advisory capacity in the comprehensive review of the General Plan as prescribed in Council Policy 600-7.~~
- ~~4. In the discharge of its responsibility in the five year comprehensive review of the General Plan, this citizens' organization shall function as a nucleus committee to which augmentation may be necessary and desirable to insure maximum utilization of local citizen resources. Selection of such augmentation shall be the responsibility of the Mayor and City Council and shall be only of such duration as is necessary to complete the preparation of General Plan revisions for recommendation to the Planning Commission and City Council for adoption.~~
- ~~5. This citizens' organization shall undertake such other studies or make such recommendations on citywide issues related to the General Plan as may be requested by the City Council, Planning Commission and Planning Department, City Manager or other official City agency.~~
- ~~6. This citizens' organization shall serve in an advisory capacity to the community planning committees officially recognized under Council Policy 600-5 primarily to achieve the desired objective of insuring maximum coordination on a~~

~~comprehensive or citywide basis and promotion of solutions of matters of mutual concern shared among the communities of San Diego.~~

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 ~~committees~~ groups; and

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

WHEREAS, recent developments have caused community planning ~~committees~~ 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 of community planning groups; and

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

WHEREAS, Section 40 of the Charter of the City of San Diego provides, ~~inter alia,~~ that the City Attorney shall perform such other duties of a legal nature as the City Council may by ordinance require; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of legal services and representation by the City Attorney and the indemnification against any and all claims, damages resulting from a judgment against any community planning committee group, or the elected or appointed member thereof, serving and acting in such capacity so long as they are engaged in activities properly engaged in activities specified under Council Policy 600-24, would constitute an 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 ~~e~~Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (CPC) established by Council Policy 600-9, and any community planning ~~committee~~ group established pursuant to Council Policy 600-24, both entities hereafter ~~collectively~~-referred to as "Committee group," and the duly elected or appointed members thereof against any claim or

action against such ~~committee group, or member, or former member~~, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a ~~committee group~~ recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24~~;~~, and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the ~~Planning Department of the City of San Diego prior to participating in the activity which gave rise to the claim or action against the committee group or member;~~ and
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the ~~committee group~~ or subcommittee thereof;
- C. The alleged act or omission was within the reasonable scope of duties of a committee 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 committee group and approved and/or adopted by the appropriately-designated City officials or City entities, by the Planning Department and City Attorney, or by the City Council;
- D. The member or ~~committee group~~ has made a request in writing to the City Attorney for defense and indemnification no later than ~~within five (5)~~ ten (10) working days of having been served or notified of such legal papers; and

E. The member or ~~committee~~ group has performed his, ~~her~~ or its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Section 2. Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines.

Section 3. Upon the request of a member, former member, or group, the City of San Diego shall provide for the defense of any civil action or proceeding brought against the member or group on account of an alleged act or omission within the scope of the member or group's official duties as described in Council Policies 600-5, 600-6, 600-9 and 600-24. This duty shall apply unless it is determined, after a thorough investigation by the City of the facts surrounding the allegations, transaction or incident, that:

- A. The act or omission by the member or group was not undertaken within the scope of the official duties of recognized groups or their members;  
or
- B. The member or group intentionally acted or failed to act because of actual fraud, corruption, direct economic interest (as defined in the City's Administrative Guidelines) in the matter before it, or actual malice; or

- C. The defense of the action or proceeding by the City would create a conflict of interest between the City and the member or group; or
- D. The request for defense is determined, after a thorough investigation, to be a request for the defense of a criminal action or proceeding, including a criminal proceeding for the removal of a member or members.

Section 34. In the event that the Office of the City Attorney determines that a member or a committee group is not entitled to or should not receive a defense and indemnification under this ordinance, the City Attorney Office shall promptly advise the City Council and the member or committee group.

Section 5. Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct.

Section 56. Representation and indemnification shall not be provided by ~~the~~ City of San Diego in any administrative or judicial proceeding initiated by a ~~committee~~ 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 ~~committee~~ 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 ~~committee~~ group or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process.

Section 47. The provisions of this ordinance apply only to members of ~~committees~~ groups established and recognized by the City Council pursuant to Council Policy 600-9 and

Council Policy 600-24, or duly-appointed members of subcommittees of recognized groups,  
provided they satisfy the requirements of this ordinance and the Council Policy 600-24

Administrative Guidelines.

Section 68. In no event shall representation or indemnification be provided against a  
~~claim~~ or judgment for punitive damages.

Section 79. This ordinance does not constitute an admission or a waiver of the position  
of the City of San Diego that ~~committees~~ groups ~~are not official advisory boards of the City of San~~  
~~Diego~~ and the members thereof are not officers, employees or servants of the City of San Diego.

Section 810. This ordinance shall take effect and be in force on the thirtieth day from and  
after its passage.

AWS:mm  
03/15/07  
06/04/07 Corr.Copy  
07/10/07 Corr.Copy 2  
09/19/07 Corr.Copy 3  
12/27/07 Corr. Copy 4  
01/03/08 Corr. Copy 5  
01/25/08 Corr. Copy 6  
03/07/08 Corr. Copy 7  
03/18/08 Corr. Copy 8  
09/16/08 Corr. Copy 9  
Or.Dept: City Attorney  
O-2007-113  
O-2009-22  
MMS#4532

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~STRIKEOUT~~**  
**NEW LANGUAGE: UNDERLINE**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING COMMITTEES GROUPS. ~~AGAINST CLAIMS FOR DAMAGES.~~

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 dedicated 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,

1. ~~That in urbanized areas the citizens' group has established, to a reasonable degree, a formal organization structure which is capable of providing proper coordination and communications with City staff forces. In nonurbanized areas the Planning Commission will serve as the citizens' group unless and until a~~

~~citizens' group is recognized by the City Council; and for whatever period the Commission performs this function, it shall do so with the invited participation of the chairmen of existing citizens' groups representing areas contiguous to that which is the subject of a proposed development plan.~~

~~2. That said citizens' organization contains as broad a base of local representation as is feasible and practical, and it is expected that community real property owners will be active in the leadership and the formation of any such programs.~~

~~3. That said citizens' organization has an awareness of its duties and responsibilities in participating in the planning process and acknowledges a willingness to accept these responsibilities.~~

~~4. That said citizens' organization shall, in collaboration with City staff, select appropriate study area boundaries and present a tentative outline of objectives and its work program.~~

~~5. That during an early stage of the work program the citizen planning group shall, in consultation with property owners and City staff, establish and submit reasonable time schedules for the various phases of the program to the Planning Commission.~~

that citizen's groups be established for the purpose of providing a formal organizational structure for coordination and communication with City Planning staff; that said citizen's 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,

- ~~1. This citizens' organization shall be composed of the chairman, or officially designated representative, or alternate of each of the community planning committees as recognized under Council Policy 600-5, and shall be known as the "Community Planners Committee."~~
- ~~2. In its advisory capacity, this citizens' organization 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.~~
- ~~3. This citizens' organization shall be responsible for participating in an advisory capacity in the comprehensive review of the General Plan as prescribed in Council Policy 600-7.~~
- ~~4. In the discharge of its responsibility in the five-year comprehensive review of the General Plan, this citizens' organization shall function as a nucleus committee to which augmentation may be necessary and desirable to insure maximum utilization of local citizen resources. Selection of such augmentation shall be the responsibility of the Mayor and City Council and shall be only of such duration as is necessary to complete the preparation of General Plan revisions for recommendation to the Planning Commission and City Council for adoption.~~
- ~~5. This citizens' organization shall undertake such other studies or make such recommendations on citywide issues related to the General Plan as may be~~

~~requested by the City Council, Planning Commission and Planning Department, City Manager or other official City agency.~~

6. ~~This citizens' organization shall serve in an advisory capacity to the community planning committees officially recognized under Council Policy 600-5 primarily to achieve the desired objective of insuring maximum coordination on a comprehensive or citywide basis and promotion of solutions of matters of mutual concern shared among the communities of San Diego.~~

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 committees groups; and

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

WHEREAS, recent developments have caused community planning ~~committees~~ 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 of community planning groups; and

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

WHEREAS, Section 40 of the Charter of the City of San Diego provides, ~~inter alia,~~ that the City Attorney shall perform such other duties of a legal nature as the City Council may by ordinance require; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of legal services and representation by the City Attorney and the indemnification against any and all claims; damages resulting from a judgment against any community planning ~~committee group,~~ or the elected or appointed member thereof, ~~servicing and acting in such capacity so long as they are engaged in activities~~ properly engaged in activities specified under Council Policy 600-24, would constitute ~~an~~ 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 ~~e~~Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (CPC) established by Council Policy 600-9, and any community planning ~~committee~~ group established pursuant to Council Policy 600-24, both entities hereafter collectively-referred to as "Committee group," and the duly elected or appointed members thereof against any claim or action against such ~~committee group, or member, or former~~ member, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a ~~committee~~ group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24; and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the Planning Department of the City of San Diego ~~prior to participating in the activity which gave rise to the claim or action against the committee group or member; and~~
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the ~~committee~~ group or subcommittee thereof;
- C. The alleged act or omission was within the reasonable scope of duties of a committee 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 ~~committee~~ group and approved and/or adopted by the appropriately-designated City officials or City entities. ~~by the Planning Department and City Attorney, or by the City Council;~~

- D. The member or ~~committee~~ group has made a request in writing to the City Attorney for defense and indemnification no later than ~~within five~~ ~~(5)~~ ten (10) working days of having been served or notified of such legal papers; and
- E. The member or ~~committee~~ group has performed his, ~~her~~ or its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Section 2. Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines.

Section 3. Upon the request of a member, former member, or group, the City of San Diego shall defend and indemnify each and every member and/or group through and until final adjudication in the court, tribunal, or administrative body of proper jurisdiction for any and all claims, actions, litigation and/or lawsuits arising from the member's or group's official

capacity and duties, regardless of whether the claim, action, litigation and/or lawsuit may plead and/or allege claims including, but not limited to, actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith.

- A. In the event that actual fraud, corruption, direct economic interest, actual malice, and/or bad faith is/are alleged in any pleading and/or document in the claim, action, litigation, and/or lawsuit, the City Council may in writing reserve a right of reimbursement from the member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for actual fraud, corruption, direct economic interest, actual malice, and/or bad faith has been made.
- B. In the event that a claim, action, litigation, and/or lawsuit arises from the member's or group's intentional violation of group bylaws or policies and either Council Policy 600-24, the Council Policy's Administrative Guidelines, or other City rules regarding planning groups, the City Council may in writing reserve a right of reimbursement from said member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for the intentional violation has been made.

C. In the event that a member and/or group demonstrates a pattern and practice of refusal to cooperate with the City Attorney in the defense of the claim, action, litigation, and/or lawsuit, the City Attorney may, with written approval from the City Council, withdraw from defending and/or indemnifying the member and/or group.

Section 34. In the event that the Office of the City Attorney determines that a member or a committee group is not entitled to or should not receive a defense and indemnification under this ordinance, the City Attorney Office shall promptly advise the City Council and the member or committee group.

Section 5. Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct.

Section 56. Representation and indemnification shall not be provided by ~~the~~ City of San Diego in any administrative or judicial proceeding initiated by a committee 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 committee 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 committee group or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process.

Section 47. The provisions of this ordinance apply only to members of ~~committees~~ groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24, or duly-appointed members of subcommittees of recognized groups, provided they satisfy the requirements of this ordinance and the Council Policy 600-24

Administrative Guidelines.

Section 68. In no event shall representation or indemnification be provided against a ~~claim or~~ judgment for punitive damages.

Section 79. This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that ~~committees~~ groups ~~are not official advisory boards of the City of San Diego~~ and the members thereof are not officers, employees or servants of the City of San Diego.

Section 810. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

AWS:mm  
03/07/08 Version "B"  
03/15/07  
06/04/07 Corr.Copy  
07/10/07 Corr.Copy 2  
09/19/07 Corr.Copy 3  
12/27/07 Corr. Copy 4  
01/03/08 Corr. Copy 5  
01/25/08 Corr. Copy 6  
03/07/08 Corr. Copy 7  
03/18/08 Corr. Copy 8  
09/16/08 Corr. Copy 9  
Or.Dept: City Attorney  
O-2007-113  
O-2009-22  
MMS#4532

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE PROVIDING FOR LEGAL  
REPRESENTATION TO AND DEFENSE AND  
INDEMNIFICATION OF COMMUNITY PLANNING  
COMMITTEES 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 dedicated 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 citizen's groups be established for the purpose of providing a formal organizational structure for coordination and communication with City Planning staff; that said citizen's 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 of community planning groups; and

WHEREAS, the concerns about personal exposure to litigation have continued 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, Section 40 of the Charter of the City of San Diego provides that the City Attorney shall perform such other duties of a legal nature as the City Council may by ordinance require; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of legal services and representation by the City Attorney and the indemnification against any and all claims, against any community planning group, or the elected or appointed member thereof, so long as they are properly engaged in activities specified under Council Policy 600-24, would constitute an 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 Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (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 thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24; and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the City of San Diego; and

- B. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;
- C. The alleged act or omission was within the reasonable scope of duties of a committee 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;
- D. The member or group has made a request in writing to the City Attorney for defense and indemnification no later than ten (10) working days of having been served or notified of such legal papers.; and
- E. The member or group has performed or its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Section 2. Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines.

Section 3. Upon the request of a member, former member, or group, the City of San Diego shall defend and indemnify each and every member and/or group through and until final adjudication in the court, tribunal, or administrative body of proper jurisdiction for any and all claims, actions, litigation and/or lawsuits arising from the member's or group's official capacity

and duties, regardless of whether the claim, action, litigation and/or lawsuit may plead and/or allege claims including, but not limited to, actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith.

- A. In the event that actual fraud, corruption, direct economic interest, actual malice, and/or bad faith is/are alleged in any pleading and/or document in the claim, action, litigation, and/or lawsuit, the City Council may in writing reserve a right of reimbursement from the member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for actual fraud, corruption, direct economic interest, actual malice, and/or bad faith has been made.
- B. In the event that a claim, action, litigation, and/or lawsuit arises from the member's or group's intentional violation of group bylaws or policies and either Council Policy 600-24, the Council Policy's Administrative Guidelines, or other City rules regarding planning groups, the City Council may in writing reserve a right of reimbursement from said member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for the intentional violation has been made.
- C. In the event that a member and/or group demonstrates a pattern and practice of refusal to cooperate with the City Attorney in the defense of the claim, action, litigation, and/or lawsuit, the City Attorney may, with

written approval from the City Council, withdraw from defending and/or indemnifying the member and/or group.

Section 4. In the event that the Office of the City Attorney determines that a member or a group is not entitled to or should not receive a defense and indemnification under this ordinance, the Office shall promptly advise the City Council and the member or group.

Section 5. Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct.

Section 6. Representation 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 or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process.

Section 7. The provisions of this ordinance apply only to members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24, or duly-appointed members of subcommittees of recognized groups, provided they satisfy the requirements of this ordinance and the Council Policy 600-24 Administrative Guidelines.

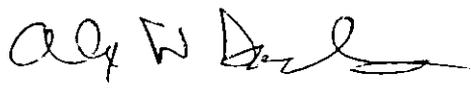
Section 8. In no event shall representation or indemnification be provided against a judgment for punitive damages.

Section 9. This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that that groups and the members thereof are not officers, employees or servants of the City of San Diego.

Section 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 11. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Alex W. Sachs  
Deputy City Attorney

AWS:mm  
03/17/08  
03/15/07  
06/04/07 Corr.Copy  
07/10/07 Corr.Copy 2  
09/19/07 Corr.Copy 3  
12/27/07 Corr. Copy 4  
01/03/08 Corr. Copy 5  
01/25/08 Corr. Copy 6  
03/07/08 Corr. Copy 7  
03/18/08 Corr. Copy 8  
09/16/08 Corr. Copy 9  
Or.Dept: City Attorney  
O-2007-113  
O-2009-22  
MMS#4532

000040

(O-2009-22)  
Corr. Copy 9  
Version "B"

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

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

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

\_\_\_\_\_  
JERRY SANDERS, Mayor

January 8, 2008

Leo Wilson  
Chair, Community Planners Committee  
536 Maple Street, No. 202  
San Diego, CA 92103

Re: Indemnification Ordinance for Community Planning Groups  
CPC Indemnification Subcommittee

Dear Chair Wilson:

Please accept this letter as part of my continuing effort to assist the Community Planners Committee ("CPC") in drafting language for the Proposed Ordinance known as and entitled AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING GROUPS.

This letter contains the updated language for the CPC's proposed version of 'Section 3' and the updated language for the City Attorney's proposed version of 'Section 3.'

City Attorney version of 'Section 3'

"Section 3. Upon the request of a member or group, the City of San Diego shall provide for the defense of any civil action or proceeding brought against the member or group on account of an alleged act or omission within the scope of the member or group's official duties as described in Council Policies 600-5, 600-6, 600-9 and 600-24. This duty shall apply unless it is determined, after a thorough investigation by the City of the facts surrounding the allegations, transaction or incident, that:

- A. The act or omission by the member or group was not undertaken within the scope of the official duties of recognized groups or their members; or
- B. The member or group acted or failed to act because of actual fraud, corruption, direct economic interest in the matter before it, or actual malice; or
- C. The defense of the action or proceeding by the City would create a conflict of interest between the City and the member or group; or
- D. The request for defense is determined, after a thorough investigation, to be a request for the defense of a criminal action or proceeding, including a criminal proceeding for the removal of a member or members."

CPC version of 'Section 3'

"Section 3. The City of San Diego shall defend and indemnify each and every member and/or group through and until final adjudication in the court, tribunal, or administrative body of proper jurisdiction for any and all claims, actions, litigation and/or lawsuits arising from the member's or group's official capacity and duties, regardless of whether the claim, action, litigation, and/or lawsuit may plead and/or allege claims including but not limited to actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith.

A. In the event that actual fraud, corruption, direct economic interest, actual malice, and/or bad faith is/are alleged in any pleading and/or document in the claim, action, litigation, and/or lawsuit, the City Council may in writing reserve a right of reimbursement from the member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for actual fraud, corruption, direct economic interest, actual malice, and/or bad faith has been made.

B. In the event that a claim, action, litigation, and/or lawsuit arises from the member's or group's intentional violation of group bylaws or policies and either Council Policy 600-24, the Council Policy's Administrative Guidelines, or other City rules regarding planning groups, the City Council may in writing reserve a right of reimbursement from said member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for the intentional violation has been made.

C. In the event that a member and/or group demonstrates a pattern and practice of refusal to cooperate with the City Attorney in the defense of the claim, action, litigation, and/or lawsuit, the City Attorney may, with written approval from the City Council, withdraw from defending and/or indemnifying the member and/or group."

Very truly yours,



John P. Fiske  
Indemnification Subcommittee Chair, CPC

000043

Dear Planning Chairs/ CPC Representatives:

The vital issue of indemnification of the City of San Diego's community planning committees will be considered at a special City Council meeting next Monday (Nov 24) at 6:00 p.m. The evening meeting will be in Balboa Park.

At its January 29, 2008 meeting, the CPC voted 26-1 to support the draft indemnification ordinance recommended by its indemnification subcommittee. Attached is a letter from the subcommittee chair, John Fiske, which explains the basis of the CPC motion.

It is critical for the integrity of the community planning process that members of community planning groups be provided a guarantee that the City will defend and indemnify them through the course of any lawsuit filed against them. This is provided for in CPC proposed indemnification ordinance.

The City Attorney alternate proposal would give discretionary authority to the City Attorney's Office to refuse to provide representation, should its initial investigation result in one of several findings being made -- which could include such nebulous determinations as "corruption" and "bad faith". The CPC rightly found the City Attorney's proposal unacceptable.

It critical that the City Council adopt the indemnification ordinance proposal recommended by the CPC. Please attend the Monday evening City Council meeting; and encourage your planning committee members to also do so. If you cannot attend, be sure to contact your City Council Member about this important issue.

Leo Wilson  
Chair  
Community Planners Committee

**ITEM 200 – INDEMNIFICATION ORDINANCE FOR COMMUNITY PLANNING GROUPS**

- Update to Indemnification **Ordinance O-17086**, adopted by the City Council on **April 28, 1999**.
- Updated ordinance results from Community Planning Groups' concerns about defense and indemnification that arose out of the litigation filed against the **La Jolla Community Planning Association (LJCPA)** in May 2006.
- City Attorney's Office has worked with the **Community Planners Committee (CPC)** and a subcommittee of the CPC on the update since approximately **March 2007**.
- City Attorney's Office agreed to submit two versions of the draft ordinance after we could not achieve consensus with CPC regarding the CPC subcommittee's desire to have the City defend and indemnify Community Planning Groups "**through and until final adjudication in a court, tribunal or administrative body.**"
- **Version "A"** before the Council represents the City Attorney's recommendation. **Version "B"** represents the CPC subcommittee's proposal, which would protect the City's interests through a written "reservation of rights" for reimbursement of defense costs in the event that a group or CPG member's actions are found to have not merited the City's defense and/or indemnification.

**COMPARISON BETWEEN VERSION "A" AND VERSION "B"  
OF INDEMNIFICATION ORDINANCE**

<b>Ordinance Sections</b>	<b>Version "A"</b>	<b>Version "B"</b>
<b>Title</b>	Adds word "defense" and removes phrase "against claims for damages"	Same
<b>Recitals</b>	Tightened and clarified	Same
<b>Section 2</b>	Provides for indemnification for non-members of CPGs who are duly-appointed to serve on sub-committees.	Same
<b>Section 3</b>	City's duty to defend and indemnify, unless " <b>after a thorough investigation by the City</b> " the group or individual's actions are found outside scope of ordinance's defense and indemnity provisions.	City "shall defend and indemnify... <b>through and until final adjudication</b> ...for any and all claims, actions, litigation and/or lawsuits..."
<b>Section 3 A-D</b>	<p>Provides the City <b>shall provide</b> indemnification, <b>unless</b> the allegations involve:</p> <p>A) <i>act or omissions outside the scope of the official duties of the CPG,</i></p> <p>B) intentional action or failure to act because of "actual fraud, corruption, direct economic interest...or actual malice"</p> <p>C) <i>defense of the action would create a conflict of interest between the City and the member or group, or</i></p> <p>D) the request is determined, after investigation, to be a request for defense of a criminal action or proceeding</p>	<p>Provides for City to <b>reserve rights to seek reimbursement</b> should:</p> <p>A) "actual fraud, corruption, direct economic interest, actual malice and/or bad faith" be found after a jury or bench trial,</p> <p>B) a finding by a jury or through bench trial verdict that a member or group intentionally violated Council Policy or the groups bylaws or policies, or</p> <p>C) a group has demonstrated a pattern and practice of refusal to cooperate with the City Attorney and the City Council provides written approval that the City Attorney may withdraw from defending/indemnifying</p>