

## MEMORANDUM OF LAW

**DATE:** January 8, 1998

**TO:** Scott E. Tillson, Chief of Staff for Councilmember Harry Mathis

**FROM:** City Attorney

**SUBJECT:** Defense and Indemnity of Community Planning Groups for Activities beyond Providing Land Use Recommendations to the City

### Question Presented

In a memorandum directed to our Office dated December 5, 1997, you explain that in the past the Torrey Pines Community Planning Group [Planning Group] has taken action to endorse the efforts of another group called M.A.R.C.H. [Move Against Relocating Choppers Here] and also independently taken a formal position opposing the relocation of Marine helicopters to Miramar. You further explain in your memorandum that you recently learned about the Planning Group having been accepted as a formal "member" of M.A.R.C.H. You have asked our Office to comment on whether such a membership position by the Planning Group on M.A.R.C.H. is in compliance with City Council Policy 600-24?

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### Short Answer

The Planning Group's participation on M.A.R.C.H. is outside the scope of City Council Policy 600-24. While the Planning Group is free to act outside the scope of City Council Policy 600-24, when doing so the Group and its members will not be indemnified from legal liability by the City.

## Analysis

City Council Policy 600-24 defines the purpose of community planning committees at article II, section 1:

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.

While participating in M.A.R.C.H., the Planning Group would be advocating to influence the siting of facilities and the use of property wholly within the jurisdiction of the federal government. The Supremacy Clause and the Property Clause of the United States Constitution preempt the City from regulating the matters which M.A.R.C.H. is concerned about. See Mayo v. United States, 319 U.S. 441, 445 (1943) (State may not regulate Federal activities). Therefore, because the Planning Group would not be advising The City of San Diego regarding implementation of the community or general plan, the Planning Group would be acting outside the scope of City Council Policy 600-24.

Because community planning groups are private organizations not under the control of the City, they are free to pursue objectives and activities which go beyond serving the City pursuant to City Council Policy 600-24. However, acting outside of the scope of the City Council does raise another legal issue which the Group should be made aware of.

About ten years ago a serious concern was raised by various members of community planning groups regarding potential exposure to personal liability in connection with community planning group activities. At the time, the City Attorney advised he had no legal basis under the City Charter to defend or indemnify members of community planning groups, unless direction to do so was provided by the City Council through adoption of an ordinance. In 1988, the City Council adopted such an ordinance extending legal protection to community planning group members under certain limited circumstances. See attached copies of City Attorney Report to the Rules Committee, Ops. City Att'y 1048 (1988); and City of San Diego Ordinance No. O-17086, adopted on April 25, 1988.

The ordinance indemnifying community planning group members has a number of limitations. For example, to trigger protection the alleged act or omission must occur or be authorized during a lawful meeting of the community planning group committee. The alleged act or omission must also fall within the reasonable scope of duties of a committee as described in Council Policies 600-5, 600-9 and 600-24. And, importantly, pursuant to Section 5:

Representation and indemnification shall not be provided by The City of San Diego in any administrative or judicial proceeding initiated by a committee 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 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 or its members.

Ordinance No. O-17086 at 7.

Therefore, because the Planning Group's association with M.A.R.C.H. is outside the scope of City Council Policy 600-24, Ordinance No. O-17086 would not apply. The Planning Group and its individual members would be proceeding at their own risk and would not be indemnified by the City for activities associated with M.A.R.C.H.

### **Conclusion**

The Planning Group's participation on M.A.R.C.H. is outside the scope of City Council Policy 600-24 because in that capacity the Planning Group would not be serving to advise The City of San Diego in the normal course of implementing the City's general and community plan. Because the Planning Group is a private organization not under the control of the City, as a group they are free to pursue objectives and activities which go beyond serving the City pursuant to City Council Policy 600-24. However, in connection with activities associated with M.A.R.C.H., the Planning Group members would be proceeding at their own risk and would not enjoy indemnification protection provided by the City pursuant to Ordinance No. O-17086.

CASEY GWINN, City Attorney

By

Richard A. Duvernay  
Deputy City Attorney

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Attachments

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