

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: April 8, 2013

TO: Kelly Broughton, Director, Development Services Department
Cecilia Gallardo, Deputy Director, Development Services Department

FROM: City Attorney

SUBJECT: Community Planning Group Voting Procedures

INTRODUCTION

Recently, the Rancho Bernardo Community Planning Board took a vote to remove one of its members. Since the vote was taken, there have been questions regarding the voting requirements to remove a board member. This memorandum is intended to provide general direction to your department on voting requirements for all community planning groups based on the direction provided in Council Policy 600-24, Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups (Council Policy).¹ Some community planning groups may have bylaws that include deviations from the Council Policy, in which case, the voting procedures of the City-approved bylaws would prevail.

QUESTIONS PRESENTED

1. What are the voting requirements to remove a community planning group member?
2. What are the voting requirements for actions that require a majority or two-thirds vote “of the elected membership of a community planning group,” “of the elected members of the group,” “of the entire elected membership,” “of the planning group,” or other similar terms as set forth in the Council Policy?

¹ This memorandum addresses votes taken by community planning groups; it does not address elections to the community planning group.

3. What is the effect of votes previously taken that do not comply with the Council Policy's voting requirements?

SHORT ANSWERS

1. A two-thirds vote of the entire community planning group is required to remove a community planning group member.

2. Actions that require a majority or two-thirds vote "of the elected membership of a community planning group," "of the elected members of the group," "of the entire elected membership," or "of the planning group," or other similar terms require a majority or two-thirds vote of the entire community planning group.

3. Votes previously taken by a community planning group that do not meet the requirements of the Council Policy because of an insufficient number of affirmative votes are failed votes. To the extent that the matter being voted upon is still pending, the community planning group may take another vote at a future hearing.

ANALYSIS

I. A TWO-THIRDS VOTE OF THE ENTIRE COMMUNITY PLANNING GROUP IS REQUIRED TO REMOVE A COMMUNITY PLANNING GROUP MEMBER

The Council Policy requires the removal of a community planning group member to be "by a two-thirds vote of the planning group." Council Policy 600-24, Article IX, Section 3. Additionally, the Bylaws Shell attached to the Council Policy, similarly provides:

If corrective action or measures are not feasible, the planning group may remove a member by a *two-thirds vote of the planning group*

...

- At the end of the discussion, the planning group may, by a 2/3 vote, choose to remove the member.

Recourse for expelled member:

- There is no appeal available to an elected planning group member removed by a *2/3 vote of their recognized community planning group*.

...

- The removal of a planning group member by a *2/3 vote of their recognized community planning group* will not prohibit the member from running for a planning group seat in future scheduled elections.²

Council Policy 600-24 at 45-48 (emphasis added).

² The Rancho Bernardo Community Planning Board Bylaws also include these Council Policy provisions. Rancho Bernardo Community Planning Board Bylaws at 22 (2008).

It has been asserted that where the Council Policy and community planning group bylaws refer to a two-thirds vote “of their recognized community planning group,” rather than “of the elected membership,” a two-thirds vote of the members present and voting is all that is required. However, Council Policy, Article III, Section 1 specifically provides that once recognized by the City Council, “the members of the planning groups shall constitute the official planning group” This means that the elected members of the planning group *are* the planning group, and thus, we read the term “of their recognized community planning group” as used in the Council Policy, to be synonymous with the term “of the elected membership” or other similar terms. Therefore, a two-thirds vote of the entire community planning group is required to remove a community planning group member.

Moreover, the Council Policy provides that Robert’s Rules of Order should be used when the Council Policy, the Administrative Guidelines for Implementation of Council Policy 600-24 (Administrative Guidelines), and planning group bylaws do not address an area of concern or interest. Council Policy 600-24 at 3. Although addressed in the Council Policy, Robert’s Rules of Order further supports the interpretation that the two-thirds vote requirement refers to the entire membership of the group.

Specifically, Robert’s Rules of Order provides that a two-thirds vote “**when the term is unqualified** [,] means at least two-thirds of the votes cast by persons entitled to vote, excluding blanks or abstentions” Robert’s Rules of Order Newly Revised § 44 at 401 (11th ed.) (emphasis added). Robert’s Rules of Order then provides that “other bases for determining a voting result can be defined and are sometimes prescribed by rule . . . [including] the set of members to which the proportion applies—which (a) when not stated, is always the number of members *present and voting*, but (b) can be specified by rule as the number of members present, **the total membership**, or some other grouping.”³ Robert’s Rules of Order § 44 at 402 (bold emphasis added). In general, “[v]oting requirements based on the number of members present . . . are generally undesirable.” Robert’s Rule of Order § 44 at 403. Therefore, because the two-thirds voting requirement in the Council Policy is qualified by the terms “of the planning group” and “of their recognized community planning group,” the two-thirds voting requirement refers to the entire membership of the community planning group.⁴

II. A MAJORITY OR TWO-THIRDS VOTE OF THE ENTIRE COMMUNITY PLANNING GROUP IS REQUIRED FOR ALL OTHER ACTIONS AS SPECIFIED IN THE COUNCIL POLICY

In various instances, to take action, the Council Policy refers to “a majority vote of the elected membership of a community planning group,” “a majority vote of the elected members of the

³ A “majority of the entire membership is a majority of the total number of those who are members of the voting body at the time of the vote.” Robert’s Rule of Order § 44 at 403.

⁴ Legislative intent should be gathered from the whole act rather than from isolated parts or words; courts should thus construe all provisions of a statute together. 58 Cal. Jur. 3d *Statutes* § 113 (2013). Accordingly, although the discussion in the Council Policy regarding the removal of a community planning group member refers only to a “2/3 vote” in one instance, the remaining references are to a “two-thirds vote of the planning group” and a “2/3 vote of their recognized community planning group.” Read as a whole, the references to the requirement for a “2/3 vote of their recognized community planning group” and to “a two-third vote of the planning group” are similar to the requirement for a vote of two-thirds “of the entire membership” discussed in Robert’s Rules of Order section 44.

group,” “a majority vote of the planning group,” a vote of “two-thirds of the entire elected membership,” or “two-third vote of the planning group.” Just as Robert’s Rules of Order distinguishes between an unqualified two-thirds vote and a qualified two-thirds vote, with respect to a majority vote, Robert’s Rules of Order section 44 similarly provides:

[W]hen the term *majority vote* is used **without qualification** . . . it means more than half of the votes cast by persons entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting.

Robert’s Rules of Order § 44 at 400 (bold emphasis added). The Council Policy does not refer to a “majority vote” or a “2/3 vote” without qualification; it refers variously to a vote “of the elected membership of the community planning group,” “of the elected members of the group,” “of the entire elected membership,” or “of the planning group.” Furthermore, with respect to actions on agenda items, the Council Policy states that “[v]otes taken on agenda items shall reflect the positions taken by the elected or appointed positions on the planning group identified in Article III, Section 1” Council Policy 600-24, Article VI, Section 2(a)(8). As discussed above in Section I, Council Policy, Article III, Section 1 provides that “the members of the planning groups shall constitute the official planning group” Because the Council Policy specifically provides that votes taken on agenda items must reflect the positions of the community planning group, a majority or two-thirds vote of merely the members present and voting is insufficient. Rather, a majority or two-thirds vote of the entire community planning group membership is required.⁵

III. VOTES PREVIOUSLY TAKEN BY A COMMUNITY PLANNING GROUP THAT RESULTED IN AN INSUFFICIENT NUMBER OF AFFIRMATIVE VOTES ARE FAILED VOTES

Votes previously taken by a community planning group that do not meet the requirements of the Council Policy because of an insufficient number of affirmative votes are failed votes because the requisite amount of votes to pass the motion did not exist. In other words, no action was taken. To the extent that the matter being voted upon is still pending, the community planning group may take another vote at a future hearing. If the matter that was voted upon has already been decided by the decision maker to which the community planning group provided a recommendation, the community planning group’s recommendation is moot.

CONCLUSION

A two-thirds vote of the entire community planning group is required to remove a community planning group member. Similarly, two-thirds votes of the entire community planning group and majority votes of the entire community planning group are required by other actions as stated in the Council Policy. Votes previously taken by a community planning group that do not meet

⁵ This position is also consistent with the Council’s affirmative voting requirements as San Diego Charter section 15 requires “the affirmative vote of a majority of the members elected to the Council . . . to adopt any ordinance, resolution, order or vote.”

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these requirements because of an insufficient number of affirmative votes are failed votes. To the extent such matters are still pending, the communityplanning group may take another vote at a future hearing. The Council may amend the Council Policy if a different voting requirement is desired.

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By /s/ Heidi K. Vonblum
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