THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: April 18, 2007 REPORT NO. 07-066

ATTENTION: Council President and City Council
Docket of April 24, 2007

SUBJECT: Remove Recognition of the La Jolla Community Planning Association as the Official Planning Group for the La Jolla Community Planning Area

REQUESTED ACTION:

Remove recognition of the La Jolla Community Planning Association (LJCPA) as the official planning group representing the La Jolla Community Plan area.

CONTEXT:

A request to remove recognition of a community planning group is a serious matter. Staff is unaware of any previous request for decertification. This request would not be before you unless staff believed the issue is important to the City's entire Community Planning Group system, and, very importantly, the subject group had not rejected a number of easily doable options that would have kept the integrity of the overall system in place, while giving them the key governance elements being requested.

This request is not about:

- The LJCPA's bylaws.
- The LJCPA's corporate status.
- The validity under state law of the LJCPA's March elections.

The question is whether the City of San Diego will require that a group receiving the benefits and privileges of being a recognized community planning group, including the promise of indemnity by the citizens of the City of San Diego, follow the provisions of Council Policies adopted by former and current City Councils.

SUMMARY:

In October, 2005, Council Policy 600-24 (Attachment 1 - Council Policy 600-24, "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups") was amended and community planning groups were directed to update their bylaws within 18 months to comply with the policy changes. City Planning & Community Investment (CPCI) staff had been working on a uniform bylaws shell that incorporated the policy changes. In addition, an approach to standardization that would allow for options or exceptions was discussed with the Land Use and Housing Committee on October 25, 2006.

On October 27, 2006, in a Memorandum of Law, the City Attorney concluded that recognized community planning groups, created by the Council Policy, are governed by the Brown Act and must comply with its provisions. As a result, CPCI advised all recognized community planning groups to stop their bylaw update efforts pending revisions to the Council Policy that would further standardize operating procedures and incorporate revisions to implement the Brown Act. Planning groups were advised to operate under their adopted bylaws until that time and that they would not be found out of compliance with the revised policy.

On February 1, 2007, the LJCPA ratified bylaw changes that had been initially voted on by the membership at a special meeting on January 18, 2007. A provision in these bylaws states that the bylaws or amendments to the bylaws shall become effective upon adoption by the members, (Attachment 2 - La Jolla Community Planning Association Bylaws, Article VIII, Section 5, Amendments). In a letter dated January 29, 2007, subsequent to the special meeting in January and prior to the ratification by the LJCPA membership of its bylaws in February, the LJCPA was notified by James Waring, Deputy Chief Operating Officer for Land Use and Economic Development that, in accordance with Council Policy 600-24, bylaw changes adopted by a planning group are not in effect for City of San Diego purposes until they have been approved by the City, and that operation under unapproved bylaws is a violation of Council Policy 600-24. (Attachment 3 - Letter to LJCPA, c/o Tim Golba, Chair, dated January 29, 2007)

In the above referenced January 29th letter, the LJCPA was advised against wholesale bylaw amendments given that Council Policy 600-24 was being revised to incorporate provisions to implement the Brown Act. However, CPCI staff recognized the importance of remedying some provisions of the LJCPA bylaws, near-term, to ensure greater voter participation in the March 2007 elections. Staff recommended that the membership consider two limited amendments that could be approved administratively by CPCI and the City Attorney's office. These selective amendments included removing the proxy voting provisions of the current City-approved bylaws and the need for changes to the membership and voting requirements, with the goal of allowing greater voter participation in the March 2007 elections. The LJCPA was also advised at that time that the remedial actions for bylaw changes represented only an interim step, and that the LJCPA bylaws would need to be fully amended to incorporate provisions of the Brown Act and Council Policy 600-24 changes that are being drafted.

These suggestions were not accepted, and at the February 1, 2007 meeting of the LJCPA, the LJCPA voted to adopt changes to their bylaws, effective immediately and prior to City Council consideration of exceptions to the Council Policy.

Procedurally, proposed bylaw amendments are reviewed by the CPCI Director and City Attorney for conformance with Council Policy 600-24. If proposed bylaw changes are not consistent with the Policy, and the planning group and City staff cannot develop provisions that suit the needs of the planning group and meet the requirements of the Policy, the proposed bylaw amendments require the vote of the City Council to be effective. Only the City Council may waive provisions of the Policy and approve amendments that are exceptions to the Policy. A preliminary review of the LJCPA Corporate Bylaws in January identified provisions that are exceptions to the Council Policy, such as exceeding the number of planning group members, member terms, and a provision that would make the bylaws effective upon adoption by the members, which require City Council approval.

The City Attorney's office, in a letter dated January 16, 2007, stated that pursuant to Council Policy 600-24, LJCPA bylaws would not immediately be effective upon approval by the membership. (Attachment 4 - Letter from City Attorney's Office dated January 16, 2007) This correspondence emphasized that the bylaws would not become effective until approved by the City Council. Subsequently, the situation became confused when in an appearance before the LJCPA on February 1, 2007, City Attorney Mike Aguirre stated that the LJCPA could utilize the bylaws that had not yet been approved by the City.

On February 2, 2007, the City Attorney's office requested that the LJCPA's newly adopted bylaws be docketed on a City Council agenda for a vote. (Attachment 5 - Docketing Request: Approval of Newly Adopted Bylaws for the La Jolla Community Planning Association, Inc. per Council Policy 600-24) The docketing request acknowledges that the LJCPA bylaws contain provisions that can only be approved by the City Council. In an email to Karen Heumann, Deputy City Attorney, the staff attempted to clear up the some of the confusion in the community for the benefit of the public that had sought our direction. (Attachment 6 - Email to Karen Heumann, dated February 27, 2007). The goal was to identify and implement a plan that would expand the democracy rights for the March election. Rather than take forward a re-write of the LJCPA bylaws, in this email request, staff included a draft resolution prepared for the CPCI Director's signature and the City Attorney's signature that would have administratively approved the two selective amendments identified previously related to proxy voting and membership and voting requirements. However, staff received no response from the City Attorney's office on this issue.

As to the docketing request, staff advised the City Council against authorizing bylaw amendments for the LJCPA, since a procedure was available to expand the democracy rights, or any recognized community planning groups, in advance of revisions to Council Policy 600-24 that are in process, and expected to be before City Council within a month. Many of the city's 42 recognized groups are interested in modifying their bylaws. Staff believed it would be fundamentally unfair to treat La Jolla differently than any other group making a similar request. The Council President stated that the review of the LJCPA bylaws before the City Council would be ill-timed and the item was not docketed. (Attachment 7 - Memo to Jim Waring and Mike Aguirre, dated February 15, 2007)

Discussion

The purpose of Council Policy 600-24 is to identify responsibilities and to establish minimum operating procedures governing the conduct of planning groups when they operate in their official recognized capacity. The Council Policy states that planning groups must utilize the policy to guide their operations. Arguably, if the City of San Diego did not extend indemnification to its planning groups, or if a given group voted to not be indemnified, the City would not have an interest in the bylaws. For example, the County of San Diego also extends indemnification to its recognized groups, but only if the criteria in the Board Policy governing planning groups are met. The Mayor's office and the City Council have made clear their intent to extend a broad indemnity to recognized groups. The City Attorney also supports indemnity, but to a somewhat more limited extent. Regardless of the distinctions, the City of San Diego has chosen to indemnify its recognized groups.

The LJCPA has put forth that their status as a California Non-Profit Corporation, registered with the Secretary of State of California in its Article of Incorporation allows them to undertake certain action without regard to the City's requirements. Staff has repeatedly told the LJCPA that any group may adopt rules of operation that they so choose. The issue is whether they will be recognized as an official planning group. Official planning groups receive indemnification from and representation for the City. The Council Policy establishes the procedural rules for how planning groups operate in order to be indemnified by the City at taxpayer's expense. The issue today isn't LJCPA, it is the standards the City imposes for the extension of indemnity.

Since February 1, 2007, the LJCPA has been out of compliance with Council Policy 600-24 by operating under bylaws that have not been approved by CPCI, the City Attorney's office or the City Council. In addition, an election was conducted on March 1, 2007 in accordance with the unapproved bylaws. This has called into question the validity of the recent election, which is now the subject of a formal complaint and challenge.

On March 28, 2007, the LJCPA was notified by Mr. Waring that the group was operating in violation of Council Policy 600-24, regarding the utilization of bylaws not approved by the City, (Attachment 8 - Letter to LJCPA, c/o Tim Golba, Chair, dated March 28, 2007). Since no one wanted to have to bring a decertification item before this Council, the LJCPA was advised in that letter how decertification as the officially recognized planning group for La Jolla could be avoided. Subsequently, an even easier procedure to recognize the validity of the March election was put forth by Group Chair Tim Golba. This suggestion was immediately accepted, and avoided the need for a new election in La Jolla. The LJCPA membership chose not to follow any of the suggested alternatives to avoid today's request. Due to the LJCPA's clear and knowing violation of the Council Policy, staff is recommending that recognition of the LJCPA as the officially recognized community planning group under Council Policy 600-24 be removed.

Why Does the City Care?

In a large, diverse city such as San Diego, community groups play an important role in balancing local needs and concerns with city-wide needs and concerns. In San Diego this role is officially served by the 42 recognized groups. The groups are made up of volunteers that contribute hundreds of hours to the work. In the same way our city is diverse, the groups and the groups' members are diverse.

Some level of uniform procedures and practices is essential for City staff to mange and support the overall system. If City staff had to spend a fraction of the time that has been spent as a result of the LJCPA situation on a fraction of the other 41 groups, the real work of CPCI and the planning groups themselves would come to a halt. Yet, if the City allows La Jolla to ignore the Council's policies, the City will, as a matter of fairness, have to permit the ignoring of Council policies by other groups.

The work of the groups is not about bylaws, it is about planning. It is staff's goal to put this distraction behind the City and move forward with the other groups on the bylaw shell project and the performance of their advisory role to the Council.

Status of Revisions to Council Policy 600-24

Council Policy revisions are expected to go to City Council within a month. The proposed revisions attempt to establish a standard operational foundation for planning groups and bring planning groups into compliance with the Brown Act. The compliance period for the 2007 revisions to the Policy will be extended six months upon City Council adoption. At that time, staff will work with the planning groups to revise bylaws and approve those that are in compliance with the Policy. Community planning groups operating in compliance with their approved bylaws are not out of compliance with Council Policy 600-24.

CPCI has consistently recommended the standardization of planning group operating procedures. The City does not have the staff necessary to individualize planning group operations. More importantly, individualization is not necessary for the groups to do the real work. In addition, given the City Attorney's recent opinion on the applicability of the Brown Act to recognized planning groups, the administrative burden on individual groups will only increase as they work to comply with noticing and record-keeping requirements.

The City recognizes the important role of planning groups. CPCI is working to create a procedural foundation for planning group operations so that planning group operations are not called into question, and planning groups can focus on their role as land use advisory bodies, (Attachment 9 - Email to Tim Golba, LJCPA Chair, dated April 5, 2007). To that end, it is the CPCI's intent to establish a bylaws shell with a few selected, predetermined options on specific issues to reflect desired community modifications, but that do not deviate from the Council Policy in order to establish and administer planning groups operations in a uniform manner, with a procedure for planning groups to request exceptions with City Council approval.

FISCAL CONSIDERATION:

None with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

- On October 17, 2005, the City Council approved changes to Council Policy 600-24.
- On June 20, 2006, while discussing whether to provide legal indemnification and representation for the La Jolla Community Planning Association, the City Council discussed Council Policy 600-24 and the community planning group bylaw revision process. Council members clearly stated their support for and reliance upon, planning groups. However, several Council members expressed a desire for more standardized operations among groups. The legal challenge facing the LJCPA at that time was based on planning groups operating procedures. The City Council suggested that the issue of the bylaw revisions and any exceptions to the Council Policy put forth by planning groups be addressed by Land Use & Housing Committee (LU&H) in the Fall of 2006. The City Council also questioned whether more changes were needed to Council Policy 600-24.
- On October 25, 2006, LU&H addressed the issues related to the bylaw update process, including standardization of planning group operating procedures through the use of a bylaws shell. LU&H reiterated the importance of a consistent process for planning group operations, but also acknowledged the need in some communities to provide for additional flexibility in planning group operating procedures based on individual community needs. LU&H discussed the draft bylaws shell before them and requested

that Council Policy 600-24 be amended to reflect the proposed shell, and requested that community planning groups still be allowed to make exceptions to the shell with approval by LU&H.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:
La Jolla Community Planning Association, a California Corporation

KEY STAKEHOLDERS and PROJECTED IMPACTS:
Key Stakeholders - La Jolla Community Planning Association
Projected Impacts - The removal of official recognition of the La Jolla Community Planning Association as the recognized planning group for La Jolla will result in no group to advise the City in any official capacity on land use related matters, until a new planning board is recognized.

Respectfully submitted,

William Anderson, FAICP, Director City Planning and Community Investment Development	James T. Waring, Deputy Chief Land Use and Economic

WARING/ANDERSON/CGW

Attachments:
1. Council Policy 600-24/Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups
2. La Jolla Community Planning Association Bylaws - Article VIII, Section 5, Amendments
3. Letter to LJCPA, c/o Tim Golba, Chair, dated January 29, 2007
4. Letter from City Attorney's Office dated January 16, 2007
5. Docketing Request: Approval of Newly Adopted Bylaws for the La Jolla Community Planning Association, Inc. Per Council Policy 600-24
6. Email to Karen Heumann, dated February 27, 2007
7. Memo to Jim Waring and Mike Aguirre, dated February 15, 2007
8. Letter to LJCPA, c/o Tim Golba, Chair, dated March 28, 2007
9. Email to Tim Golba, LJCPA Chair, dated April 5, 2007