



THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: November 18, 2008 REPORT NO. 08-177

ATTENTION: Council President and City Council
Docket of November 24, 2008

SUBJECT: Community planning group bylaws updates inconsistent with
Council Policy 600-24

REFERENCE: Council Policy 600-24 Titled "Standard Operating Procedures and
Responsibilities of Recognized Community Planning Groups."

REQUESTED ACTION:

Approve, deny or approve with modifications the updated bylaws for twelve community planning groups that require City Council approval because their bylaws deviate from Council Policy 600-24 titled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups."

STAFF RECOMMENDATION:

Review deviations from Council Policy 600-24 on a case-by-case basis. The staff analysis indicates whether a deviation is potentially erosive to the Council Policy or unique to the circumstances of the particular community planning group. Deny the two Council Policy deviations that conflict with state law (Ralph M. Brown Act). Staff does not have a recommendation for the twenty-four deviations that do not conflict with state law.

SUMMARY:

I. Background

An update to Council Policy 600-24 Council Policy 600-24 titled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups" was approved by the City Council on May 22, 2008 (Resolution R-302671). The update revised the previous Council Policy to incorporate additional operating procedures as well as provisions for compliance with California's Open Meeting Law, the Ralph M. Brown Act. Approval of the Council Policy update required each community planning group to update its bylaws. A bylaws shell was included with the new Council Policy in order to facilitate this process as well as to standardize preparation of bylaws for the forty-one individual Council-recognized community planning groups. Standardization is important to assure equity among groups, reduce potential conflicts over important topics and for administration of the community planning program.

Council Policy 600-24 specifies that bylaws will be reviewed and approved by the offices of the Mayor and City Attorney unless there are inconsistencies with the Council Policy. In such cases, the bylaws will be forwarded to the City Council President who shall docket the matter for Council consideration. Bylaws are not valid until approved by the City.

II. Review Status

Staff from the City Planning & Community Investment Department and Office of the City Attorney has reviewed the forty-one community planning group bylaws submitted between August 2007 and September 2008. One group has not yet provided updated bylaws (Peninsula Community Planning Board). Of the forty-one bylaws submitted, twenty-nine are consistent with Council Policy 600-24 and have been approved, or are pending approval with minor corrections. Twelve groups' bylaws contain inconsistencies with the Council Policy and require City Council review.

During the course of the review process, staff provided an individual summary to each community planning group chair for guidance on how to bring bylaws into conformance with the Council Policy. Many of the groups have worked with staff to eliminate inconsistencies between their bylaws and the Council Policy. As a result, the number of bylaws receiving administrative approval increased and, for bylaws requiring City Council approval, the number of specific inconsistencies with Council Policy 600-24, has been reduced.

For the bylaws that require City Council approval, staff has provided a summary and analysis of each deviation from the Council Policy (Attachment 1). The deviations are numbered and identified by the numbering system in the bylaws shell adopted with Council Policy 600-24 (with a couple of exceptions). The corresponding explanation cites the specific deviation by Council Policy section, and the Brown Act section, where applicable. Considerations are provided to evaluate potential ramifications of approving the deviations. Each deviation is classified as either erosive to the Council Policy or unique to circumstances experienced by the particular community or planning group. The two Council Policy deviations that also conflict with the Brown Act are highlighted; staff is not supporting these deviations as they conflict with state law. The summary also quantifies deviations by topic and groups each deviation by Council Policy article number and includes the name of each community planning group proposing deviations within that article. Deviations can be compared cumulatively by topic and any issues related to magnitude or equity assessed.

III. Previous City Council Discussion

The bylaws item was previously docketed for City Council action on July 22, 2008. In order to make the review of numerous deviations to the Council Policy more manageable, the Council directed staff to provide additional analysis as recommended by the Independent Budget Analyst (reference IBA Report Number 08-82). In light of this, staff strongly encouraged the planning groups to reconsider their bylaws deviations, particularly those that also conflict with the Brown Act, and to take any formal action during the month of September after the recess. As a result, the number of bylaws currently with deviations has been reduced from 19 to 12; the total number of deviations is reduced from 50 to 24; and the number with Brown Act conflicts reduced from 6 to 2. The specific information requests from the IBA are discussed below:

A. Memorandum to the City Council from either City staff or the planning groups outlining the reasons for requesting deviations from Council Policy 600-24.

A request was made August 1st to each community planning group to provide justification in writing for any proposed deviations to be included in a staff memorandum. CPC was advised

of the request at their July and September meetings. Staff received one written response, therefore a comprehensive memorandum cannot be prepared and each community planning group will have to respond separately. The one response received from the La Jolla Community Planning Association is included as Attachment 2.

B. Policy analysis from City staff on the ramifications of approving the deviations.

The previous staff analysis has been updated to include considerations for the City Council to review in order to understand potential ramifications of each bylaws deviation to the Council Policy. The deviations have been categorized as either unique to the respective community (or planning group), or as erosive to the Council Policy as a whole.

C. Legal analysis by the City Attorney's office on the legality of the deviations.

Deviations that violate the Brown Act violate state law, and approving such deviations would be tantamount to approving a violation of state law. Deviations that do not violate the Brown Act, but deviate from Council Policy 600-24, do not violate any laws. Such deviations are a matter of policy only, and may be approved or denied, or conditionally approved by Council.

IV. Conflicts with the Brown Act

Staff recommends that deviations to Council Policy 600-24 that also conflict with the Ralph M. Brown Act be denied because the Council Policy requires compliance with state law. The Council Policy update added provisions related to the Brown Act to facilitate open meetings and be consistent with state law. Bylaw provisions for two community planning groups conflict with the Brown Act Section 54956 by modifying the trigger to convene a special meeting. The bylaws for both the City Heights Area Planning Committee and the La Jolla Community Planning Association allow a minority of committee members to convene a special meeting where the Brown Act allows either a simple majority of members or the committee chair to convene a meeting. Exemptions for meeting practices of individual planning groups question universal application of the Brown Act and have repercussions on the community planning program as a whole.

The IBA report also recommended "that bylaws that are in clear violation of State law should not be considered by the City Council and should be addressed through appropriate channels." The update to the Council Policy required compliance with state law, specifically the Brown Act, establishing shared content linking the Council Policy and the Brown Act. This is a result of the determination by the City Attorney that community planning groups are a type of legislative body subject to the Brown Act rather than private organizations advising on legislative activity. The Council Policy also provides a review process for bylaws amendments (Article II, Section 7). Although the process allows for review and approval by the offices of the Mayor and City Attorney, the Council Policy states that proposed bylaws amendments inconsistent with the Council Policy (and the standardized bylaws shell) *shall not be approved by the Mayor and City Attorney and shall be forwarded to the City Council President who shall docket the matter for Council Consideration.* Because the Council Policy places this responsibility with the City Council, staff believes that City Council review is the appropriate channel to approve or deny bylaws that deviate from the Council Policy, including those that also conflict with state law.

FISCAL CONSIDERATION:

None with this action; ongoing costs associated with providing administrative assistance to all recognized community planning groups are funded as part of the CPCI Department work program.

PREVIOUS COUNCIL ACTION:

At the July 22, 2008 meeting, the City Council returned to staff for additional information as recommended by the Independent Budget Analyst (reference IBA Report Number 08-82). The IBA request is discussed in the *Summary* of this report.

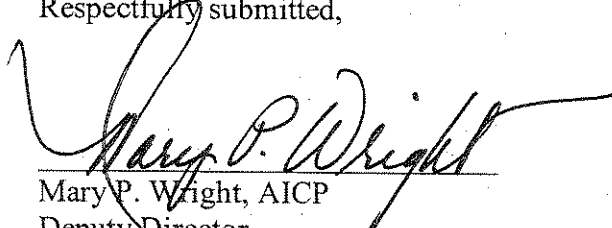
COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:


Staff has worked with individual planning groups during their bylaws update process and provided updates to the Community Planners Committee (CPC). The three year process to update Council Policy 600-24 involved the full participation of CPC and other stakeholders.

KEY STAKEHOLDERS and PROJECTED IMPACTS (if applicable):

Key stakeholders are existing and prospective community planning group members whose bylaws contain inconsistencies with Council Policy 600-24 and require City Council review. Approval of certain deviations could set a precedent for all community planning groups on standard policy and could impact the community planning program as a whole.

Respectfully submitted,


Mary P. Wright, AICP
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City Planning & Community Investment


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Deputy Chief Operating Officer: Executive Director
City Planning and Development

ANDERSON/WRIGHT/BWT

- Attachment(s):
1. Summary and analysis of bylaws deviations to CP 600-24
 2. Response letter from the La Jolla Community Planning Association
 3. CP 600-24 titled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups"