

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

ORDINANCES TO BE INTRODUCED:

ITEM-200: Community Planning Groups Indemnification Ordinance.

▶ [View referenced exhibit back-up material.](#)

(Continued from the meeting of December 9, 2008, Item 50, at the request of the City Attorney, for further review.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 11/24/2008, Item 200, Version B. (Council voted 6-1. Councilmember Madaffer voted nay. Councilmember Maienschein not present):

(O-2009-22 Cor. Copy 9) Version B

Declaring by the Council of the City of San Diego as follows:

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;

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

- 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 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.

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;

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.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

- 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.

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;

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;

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

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;

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;

In no event shall representation or indemnification be provided against a judgment for punitive damages;

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.