

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

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** April 24, 2013

**TO:** Kelly Broughton, Director, Development Services

**FROM:** City Attorney

**SUBJECT:** Retention of Community Planning Group Records

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**INTRODUCTION**

The City of San Diego recognizes forty-two community planning groups (CPGs). CPGs are private organizations comprised of volunteers that, pursuant to Council Policy 600-24, make recommendations to the City Council, Planning Commission, Hearing Officers, City staff, and other governmental agencies on land use matters such as the preparation of, adoption of, implementation of, or amendment to, the General Plan or a land use plan when a plan relates to each recognized CPG's planning area boundaries. CPGs also advise on other land use matters as requested by the City or other governmental agencies.

The City officially recognizes the CPGs and defends and indemnifies CPGs for acts performed within the scope of their responsibilities, provides training, and approves their bylaws. Council Policy 600-24 requires the CPGs to submit some records, such as rosters, to the City. In addition, Council Policy 600-24 states that in accordance with the Ralph M. Brown Act (Cal. Gov't Code §§ 54950-54963), the CPG's records shall be retained for public review, pursuant to a records retention schedule established. The method of collection and storage of the records are also to be established by the City staff. The Planning Division of Development Services has asked this Office to provide it with guidance concerning the retention, storage and disposition of CPG's records.

**QUESTION PRESENTED**

Which CPG records are subject to City records retention policies and procedures?

## SHORT ANSWER

Those CPG records that are either created or received by the City and are evidence of the City's operations and have administrative, legal, operational, fiscal, or historical value are subject to the City's records retention laws and procedures. CPG records that the City does not possess, either because the City did not create or did not receive the records, are not subject to the City's records retention laws and procedures. However, the City has, as a condition of recognition and indemnification pursuant to Council Policy 600-24 required that CPG records be retained for public review. Council Policy 600-24 directs City staff to also establish retention policies and procedures for the CPGs.

## ANALYSIS

### I. ONLY RECORDS IN THE POSSESSION OF THE CITY OR USED BY THE CITY ARE SUBJECT TO RECORDS RETENTION LAWS

The California Government Code generally prohibits any officer who has custody of any records from destroying those records. Cal. Gov't Code §§ 6200; 6201. However, exceptions to this rule are codified in California Government Code sections 34090 through 34095. 64 Op. Cal. Att'y Gen. 317, 326 (1981). California Government Code section 34090 allows the head of any city department to destroy records "under his charge," pursuant to the approval of the legislative body and the city attorney. It is under this authority that the City develops its records disposition schedules.<sup>1</sup>

The City of San Diego's records retention policy is codified in Chapter 2, Article 2, Division 26 of the San Diego Municipal Code. Records are defined therein as "recorded information of any kind and in any form, created or received by the City that is evidence of its operations. *Records* include paper and electronic documents, electronic databases, electronic mail, correspondence, forms, photographs, film, sound recordings, maps, and other documents that have administrative, legal, operational, fiscal, or historical value requiring retention of the *record* for a specific period of time." San Diego Municipal Code § 22.2602.<sup>2</sup>

Department directors are responsible for appointing a records coordinator for their department, records retention, inventorying records, archiving historical records, preserving vital records, and approving the destruction of department records. San Diego Municipal Code § 22.2604.<sup>3</sup> A department director may destroy any record under his or her charge in accordance with the adopted records disposition schedule. San Diego Municipal Code § 22.2605(a).

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<sup>1</sup> California Government Code section 34090.5 addresses additional circumstances under which the City official "having custody" of public records may destroy the records.

<sup>2</sup> Council Policy 000-25 and San Diego Administrative Regulation 85.10 also provide guidance on records retention.

<sup>3</sup> San Diego Administrative Regulation 85.10 describes a department head's responsibilities with regard to records entrusted to his or her department.

Recorded information created or received by a CPG, but not created or received by City are not City records that must be retained in accordance with the City's record retention ordinance. Conversely, those records that are received or used by a City department are City records subject to the City's records retention ordinance. For example, pursuant to Council Policy 600-24, the CPGs must submit their roster to the City. Once in the custody of the City, the roster may be a City record as defined by San Diego Municipal Code section 22.2602. The general records disposition schedule (GRDS), available on the City Clerk's intranet site, already lists records retention requirements for various types of records and should be consulted.

## **II. PURSUANT TO COUNCIL POLICY 600-24, THE CITY IS TO ESTABLISH RETENTION REQUIREMENTS FOR SOME RECORDS HELD BY THE CPGS**

Although the records retention laws do not extend to recorded information that the City does not create or receive, Council Policy 600-24, Article VI, section 2(d)(4) states that in "accordance with the Brown Act [section] 54957.5, planning group records must be retained for public review. City staff will establish a records retention schedule and method for collection and storage of materials that will be utilized by all planning groups."<sup>4</sup> Brown Act section 54957.5 provides that meeting agendas and any other writing that is distributed to at least a majority of the legislative body in connection with a matter subject to consideration by that body at an open meeting are subject to the California Public Records Act, and shall be made available upon request without delay. Cal. Gov't Code § 54957.5(a). Therefore, the Council Policy places the responsibility on City staff to establish a records retention schedule, as well as collection and storage methods for those CPG records that are public records pursuant to Brown Act section 54957.5. The Council Policy does not require the City to retain the CPG records. The City may choose to retain the records or may require the CPGs to retain the records. Whichever body retains the records, those records that are subject to the California Public Records Act must be made available to the public.

The types of records that CPGs may commonly have include written documentation prepared or provided by City staff, applicants, or planning group members that is distributed at planning group meetings; attendance reports; copies of approved minutes; audios or videotapes of meetings; a membership roster; and annual accomplishment reports. However, Council Policy 600-24 only contemplates the retention of those records that are subject to Brown Act section 54957.5. Some of the types of records above may not fall within this category, if they are not distributed to a majority of the CPG members, such as an audiotape of a meeting, or are not related to a matter subject to the CPGs consideration, such as a flyer providing notice of an upcoming community social event. While records subject to the GRDS must be kept for at least two years, the City may create a retention schedule for the CPGs that is the same as that for the City records, or it may differ. Neither the Brown Act nor the California Public Records Act addresses how long public records must be retained. However, the Brown Act requires the records subject to Brown Act section 54957.5 to be available upon request without delay.

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<sup>4</sup> Despite their status as private organizations, CPGs are legislative bodies under California law and therefore subject to the Brown Act. City Att'y MOL 2006-26 (Oct. 27, 2006).

Therefore, when developing the records retention schedule and method of collection and storage, the City should also consider how any retained records would be made available to the public during the period of retention.

Official recognition by the City as a CPG and representation by the City's legal counsel is conditional. If a CPG properly performs its responsibilities under Council Policy 600-24, the CPG is officially recognized by the City, and the group or group member is entitled to legal representation and indemnification. City Att'y MOL 2006-26 (Oct. 27, 2006). One such responsibility is record retention. Council Policy 600-24, Art. VI, § 2(d)(4). Thus, once the Planning Division establishes a retention schedule, as well as collection and storage methods and notifies community planning groups of the method and their responsibilities, the groups must comply or risk loss of representation and indemnification.

### CONCLUSION

The records produced, received, owned, or used by the City are records subject to the records retention schedule. If the records retention schedule does not already address the disposition of those records submitted to the City by CPGs or used by the City, the records disposition schedule should be updated as necessary. Although records held by the CPGs are not subject to records retention laws, Council Policy 600-24 requires City staff to develop a retention schedule, as well as a collection and storage method for those CPG records that are subject to public review pursuant to the California Public Records Act. The City is not required to retain the records for the CPGs. City staff should either implement the terms of Council Policy 600-24, or consider requesting an amendment to the policy.

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