

STRIKEOUT ORDINANCE

OLD LANGUAGE: STRIKEOUT

NEW LANGUAGE: UNDERLINE

(O-2007-113)
Corr. Copy 3

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING COMMITTEES GROUPS. ~~AGAINST CLAIMS FOR DAMAGES.~~

WHEREAS, the successful implementation of the Progress Guide and General Plan of the City of San Diego requires the thoughtful and deliberate development and implementation of community plans; and

WHEREAS, the development of community plans requires the cooperation and dedicated participation of citizens who have the personal knowledge of the needs and aspirations of their respective communities; and

WHEREAS, the City Council has adopted Council Policy 600-5 entitled "Community Plans" which provides, in part,

- ~~1. That in urbanized areas the citizens' group has established, to a reasonable degree, a formal organization structure which is capable of providing proper coordination and communications with City staff forces. In nonurbanized areas the Planning Commission will serve as the citizens' group unless and until a citizens' group is~~

~~recognized by the City Council; and for whatever period the Commission performs this function, it shall do so with the invited participation of the chairmen of existing citizens' groups representing areas contiguous to that which is the subject of a proposed development plan.~~

- ~~2. That said citizens' organization contains as broad a base of local representation as is feasible and practical, and it is expected that community real property owners will be active in the leadership and the formation of any such programs.~~
- ~~3. That said citizens' organization has an awareness of its duties and responsibilities in participating in the planning process and acknowledges a willingness to accept these responsibilities.~~
- ~~4. That said citizens' organization shall, in collaboration with City staff, select appropriate study area boundaries and present a tentative outline of objectives and its work program.~~
- ~~5. That during an early stage of the work program the citizen planning group shall, in consultation with property owners and City staff, establish and submit reasonable time schedules for the various phases of the program to the Planning Commission.~~

that citizen's groups be established for the purpose of providing a formal organizational structure for coordination and communication with City Planning staff; that said citizen's organizations shall contain as broad a base of local representation as is feasible and practical; and that groups be aware of their duties and responsibilities in the planning process and express a willingness to accept such responsibilities; and

WHEREAS, the City Council has adopted Council Policy 600-9 entitled "Community Planners Committee" which provides, in part,

- ~~1. This citizens' organization shall be composed of the chairman, or officially designated representative, or alternate of each of the community planning committees as recognized under Council Policy 600-5, and shall be known as the "Community Planners Committee."~~
- ~~2. In its advisory capacity, this citizens' organization shall participate in reviewing and recommending to appropriate bodies actions deemed necessary and desirable for the timely and continued effectuation of goals, objectives and proposals contained in the General Plan.~~
- ~~3. This citizens' organization shall be responsible for participating in an advisory capacity in the comprehensive review of the General Plan as prescribed in Council Policy 600-7.~~
- ~~4. In the discharge of its responsibility in the five-year comprehensive review of the General Plan, this citizens' organization shall function as a nucleus committee to which augmentation may be necessary and desirable to insure maximum utilization of local citizen resources. Selection of such augmentation shall be the responsibility of the Mayor and City Council and shall be only of such duration as is necessary to complete the preparation of General Plan revisions for recommendation to the Planning Commission and City Council for adoption.~~
- ~~5. This citizens' organization shall undertake such other studies or make such recommendations on citywide issues related to the General Plan as may be~~

~~requested by the City Council, Planning Commission and Planning Department,
City Manager or other official City agency.~~

~~6. This citizens' organization shall serve in an advisory capacity to the community
planning committees officially recognized under Council Policy 600-5 primarily
to achieve the desired objective of insuring maximum coordination on a
comprehensive or citywide basis and promotion of solutions of matters of mutual
concern shared among the communities of San Diego.~~

that, in an advisory capacity, the Community Planners Committee shall participate in reviewing
and recommending to appropriate bodies actions deemed necessary and desirable for the timely
and continued effectuation of goals, objectives and proposals contained in the General Plan and
that it shall serve in an advisory capacity to the community planning groups with a primary goal
of achieving maximum coordination of planning matters on a comprehensive or citywide basis,
and promotion of solutions of matters of mutual concern shared among the communities of San
Diego.; and.

WHEREAS, the City Council has adopted Council Policy 600-24 which provides a
procedure under which citizens who are interested in participating in the planning process in an
advisory capacity may form organizations and request recognition, in their advisory capacity, by
the City Council as community planning ~~committees~~ groups; and

WHEREAS, community planning ~~committees~~ groups devote countless hours of their
time and substantial private resources in assisting the City of San Diego in the development and
implementation of community plans and the Progress Guide and General Plan; and

WHEREAS, the voluntary efforts of community planning ~~committees~~ groups are of
inestimable value to the citizens of the City of San Diego; and

WHEREAS, recent developments have caused community planning ~~committees~~ groups to become concerned about possible exposure to litigation arising from participation in the planning process; and

WHEREAS, the community planning groups have determined that there is a need to update and revise Ordinance Number 0-17086, adopted on April 25, 1988, in order to provide greater clarity on the scope of the City's indemnification of community planning groups; and

WHEREAS, the concerns about personal exposure to litigation ~~have~~ continue to jeopardized the vitality of the planning process and, unless eliminated, may cause the collapse of the process that provides essential citizen participation; and

WHEREAS, Section 40 of the Charter of the City of San Diego provides, ~~inter alia~~, that the City Attorney shall perform such other duties of a legal nature as the City Council may by ordinance require; and

WHEREAS, the Council of the City of San Diego finds and declares that the provision of legal services and representation by the City Attorney and the indemnification against any and all claims, damages resulting from a judgment against any community planning ~~committee~~ group, or the elected or appointed member thereof, ~~serving and acting in such capacity~~ so long as they are engaged in activities properly specified under Council Policy 600-24, would constitute an expenditure of public funds which serves the highest public interest and purpose; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Except as hereinafter provided, the ~~e~~Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee established by Council Policy 600-9, and any community planning ~~committee~~ group

established pursuant to Council Policy 600-24, hereafter collectively referred to as "Committee group," and the duly elected or appointed members thereof against any claim or action against such ~~committee group~~ or member if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a ~~committee group~~ recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24₂; 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 Planning Department of the City of San Diego ~~prior to participating in the activity which gave rise to the claim or action against the committee group or member;~~ and
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the ~~committee group~~ or subcommittee thereof;
- 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 600-24₂, and was not in violation of any of those Council Policies, or any provision of the bylaws adopted by the ~~committee group~~ and approved by the Planning Department and City Attorney, or by the City Council;
- D. The member or ~~committee group~~ has made a request in writing to the City for defense and indemnification no later than ~~within~~ five (5) working days of having been served such legal papers; and

E. The member or ~~committee~~ group has performed ~~his, her~~ or 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.

Section 2. 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.

Section ~~23~~. The City of San Diego ~~may decline to represent a member or a committee~~ shall defend each member or group until a thorough investigation of the facts surrounding the allegations, transaction or incident clearly demonstrates that ~~that would otherwise be entitled to defense and indemnification under this ordinance if either any~~ one of the following circumstances exist:

- A. The member or ~~committee~~ group does not reasonably cooperate with the City Attorney in the defense of the claim or action; or
- B. The member or ~~committee~~ group acted or failed to act because of fraud, corruption, conflict-of-interest, or actual malice or bad faith;
or
- C. The member or group's action was a purposeful violation of group bylaws or policies and/or Council Policy 600-24, the Council Policy's Administrative Guidelines, and other City rules regarding

planning groups, and the legal claim or action arises out of said purposeful violation.

Section ~~34~~. In the event that the Office of the City Attorney determines that a member or a ~~committee group~~ is not entitled to or should not receive a defense and indemnification under this ordinance, the ~~City Attorney Office~~ shall promptly advise the City Council and the member or ~~committee group~~.

Section ~~45~~. The provisions of this ordinance apply only to members of ~~committees 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.

Section ~~56~~. Representation and indemnification shall not be provided by ~~the City of San Diego~~ in any administrative or judicial proceeding initiated by a ~~committee 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 ~~committee 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 ~~committee group~~ or its members.

Section ~~67~~. In no event shall representation or indemnification be provided against a claim or judgment for punitive damages.

Section ~~78~~. This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that ~~committees groups~~ are not official advisory boards of the City of San Diego and the members thereof are not officers, employees or servants of the City of San Diego.

Section 89. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

AWS:mm
03/15/07
06/04/07 Corr.Copy
07/10/07 Corr.Copy 2
09/19/07 Corr.Copy 3
Or.Dept:Planning
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