

Dear Community Planning Chairs:

As you are all aware, a motion was proposed at the February CPC meeting requesting the City Council to revise the current indemnity ordinance for community planning committees. The purpose of the revision is to ensure that community planning committee members are provided full and immediate legal representation in the event of a legal action against them.

Prior to the March meeting, chairs were encouraged to discuss the proposed motion at their February board meetings, and also to possibly contact their respective City Council Members to discuss the need for revisions to the indemnification ordinance.

Attached are representative letters sent by the chairs of the Tierrasanta and Mission Beach community planning committees.

Leo Wilson
Acting Chair

Eric Germain (Tierrasanta chair)

29 January 2007

Dear Councilman Madaffer,

At the meeting of the Community Planners Committee last Tuesday we were given a briefing on the existing 1988 Indemnification Ordinance (O-17086) relating to Community Planning Groups (CPGs). The briefing was given by Abbe Stutz of the City Attorney's office.

She explained that indemnification only is offered when all the listed findings are satisfied, findings all CPG members well understand thanks to CPCI's Community Orientation Workshop (COW) training:

- CPG members are duly elected per 600-24 and all have attended COW training,
- the alleged act or omission occurred during a lawful meeting of the CPG,
- the act or omission resulted from work that was within the scope of duties of 600-24,
- the CPG (or CPG member) requests indemnification within 5 days of being served,
- the CPG's (or CPG member's) duties were performed in good faith.

But what she told us next was both troubling and confusing. According to her interpretation, the ordinance requires that the city will defend a Planning Group only after these three additional circumstances are met:

1. A lawsuit against has been filed against a CPG (or CPG member)
2. The lawsuit has been resolved by a verdict against the CPG (or CPG member)
3. The CPG (or CPG member) has been fined a monetary sum as penalty for having lost the court case.

According to her interpretation, only after all these conditions are met will the city “indemnify” the CPG or CPG member, and only to the extent that the city will pay the imposed fine.

So according to this interpretation, there is no requirement for the city to participate in defense of the CPG or member during the lawsuit: the CPG or member must weather the lawsuit (and its expenses) alone. And only once found guilty would the city come to assist the CPG or member, and then only to pay the fine. According to this interpretation there is neither a promise to cover the lawsuit’s costs nor to assist in the CPG’s or member’s defense. This, of course, is not at all what community volunteers such as myself understood to be the case.

I would say if this interpretation holds true then no member of a Planning Group will feel in any way protected by the city for actions they perform in good faith and in accordance with all city requirements. I predict many members would resign their seats rather than risk their personal finances because the city’s offer of indemnification is totally hollow and meaningless.

Respectfully request immediate city council action to draft a new ordinance that removes the existing cloud of doubt created by this interpretation of the City Attorney’s office. The new ordinance should explicitly provide for full representation during a lawsuit -- and full indemnification of all associated expenses -- for CPGs and individual CPG members who perform their permitted duties in good faith and in accordance with all city requirements. Additionally, request similar clarification on the status of Recreation Councils and other citizen-based organizations that exist to assist the city in serving the public good.

Sincerely,

Eric Germain, Citizen volunteer. (Chair, Tierrasanta Community Council)

Susan Thorning (Mission Beach chair)

Dear Councilmember Faulconer:

I attended the CPC meeting last night where the issue of board indemnification was raised. It appears that we are vulnerable as board members under this regulation to personal lawsuits individually and collectively. As the current law reads, it appears that we would have to defend ourselves without the support of council from the city and would only be repaid legal costs after the fact if we are deemed to have been acting rightfully within the guidelines of our bylaws.

The CPC will be considering a motion next month that will be requesting the City Council to authorize the legal department to redraft this policy to provide council to us as long as we have followed our bylaws and have acted in good faith. Based upon the active discussion which has occurred for the past two meetings, it appears clear that this motion will be approved by the CPC.

It will be difficult to recruit and retain good board members if the threat of a suit is over their heads. In our case (modify to suit your situation), problems often stem from the fact

that our formal request for diminimous changes to the PDO have not been addressed causing conflict between what builders know is law and what we want to see in our community. Eliminating this problem would greatly diminish the potential for conflict in our community. It is important for us to work in tandem as much as possible.

We work hard to be civil and professional in our dealings with our community and feel that we deserve to be assured of the availability of legal council. Please let me know what additional feedback would be helpful from our board to encourage you and the rest of the council to back up the community volunteers serving this need for the community.

Susan Thorning
Chair
Mission Beach Precise Planning Board