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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** July 2, 2009

**IBA Report Number:** 09-60

**City Council Meeting Date:** July 7, 2009

**Item Number:** 54

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# **An Ordinance Providing for Defense and Indemnification of Subcommittee members of Community Planning Groups**

On Tuesday, July 7, 2009, the City Council will be asked to consider an Ordinance providing for the defense and indemnification of subcommittee members of Community Planning Committee and Group members. This item is a result of a March 23, 2009 direction from the City Council to the City Attorney, Risk Management, and the Independent Budget Analyst to look at issues regarding extending indemnification to subcommittee and ad-hoc members and report to the Land Use & Housing (LU&H) Committee. At the May 20, 2009 LU&H meeting, the committee members directed the City Attorney to prepare and bring forward to the City Council an amendment to the Community Planning Group Indemnification Ordinance requiring subcommittee members to meet the same requirements for indemnification as elected planning group members. This is to include completion of a Community Orientation Workshop and identification of subcommittee members in the planning group's minutes. The revised ordinance presented to the City Council includes the requirement to complete the Community Orientation Workshop but not the identification of subcommittee members in the planning group's minutes.

Under the proposed modifications to the Indemnification Ordinance, the City would provide for the defense and indemnity of subcommittee members of Community Planning Groups against claims or actions resulting from their duties. The City's responsibility to provide for the defense and indemnity is contingent on the subcommittee members following criteria established in the Indemnification Ordinance.

Similar to Community Planning Group members, if the City of San Diego were required to provide for the defense of subcommittee members, the fiscal impact to the City would depend on how the legal representation is provided. The following is the most likely options for funding legal representation of subcommittee members, if required:

- If the City Attorney elected to provide a legal defense using a staff attorney, then the personnel and non-personnel expenses would be covered by the department's annual operating budget which is included in the City's General Fund.
- If the City Attorney recommended the use of outside legal counsel, which would require City Council approval, then the funding could come from the City's Public Liability Fund.

It should be noted that if the legal defense of either Community Planning Group members or subcommittee members were to exceed \$5.0 million the City's excess layer policies that are provided by outside insurance companies would presumably pick up the difference. The Risk Management Department has contacted our outside insurance provider and they have confirmed that members of subcommittees would be covered under the policies.

**[SIGNED]**

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