(O-2007-113)
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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING GROUPS.

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, 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, 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 groups; and

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

WHEREAS, recent developments have caused community planning 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 continue to jeopardize 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, 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, against any community planning group, or the elected or appointed member thereof, 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 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 group established pursuant to Council Policy 600-24, hereafter collectively referred to as "group," and the duly elected or appointed members thereof against any claim or action against such group or 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 Planning Department of the City of San Diego.

B. The alleged act or omission occurred or was authorized during a lawful meeting of the 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 600-24, and was not in violation of any of those Council Policies, or any provision of the bylaws adopted by the group and approved by the Planning Department and City Attorney, or by the City Council;

D. The member or group has made a request in writing to the City for defense and indemnification no later than five (5) working days of having been served 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.

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 3. The City of San Diego shall defend each member or group until a thorough investigation of the facts surrounding the allegations, transaction or incident clearly demonstrates that any one of the following circumstances exist:

A. The member or group does not reasonably cooperate with the City Attorney in the defense of the claim or action; or

B. The member or 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 4. 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.

Section 5. 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.

Section 6. 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.

Section 7. In no event shall representation or indemnification be provided against a claim or judgment for punitive damages.

Section 8. This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that 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 9. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Alex W. Sachs
Deputy City Attorney

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
O-2007-113
MMS#4532

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

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