January 8, 2008

Leo Wilson
Chair, Community Planners Committee
536 Maple Street, No. 202
San Diego, CA 92103

Re: Indemnification Ordinance for Community Planning Groups
CPC Indemnification Subcommittee

Dear Chair Wilson:

Please accept this letter as part of my continuing effort to assist the Community Planners Committee ("CPC") in drafting language for the Proposed Ordinance known as and entitled AN ORDINANCE PROVIDING FOR LEGAL REPRESENTATION TO AND DEFENSE AND INDEMNIFICATION OF COMMUNITY PLANNING GROUPS.

This letter contains the updated language for the CPC's proposed version of 'Section 3' and the updated language for the City Attorney's proposed version of 'Section 3.'

City Attorney version of 'Section 3'

"Section 3. Upon the request of a member or group, the City of San Diego shall provide for the defense of any civil action or proceeding brought against the member or group on account of an alleged act or omission within the scope of the member or group's official duties as described in Council Policies 600-5, 600-6, 600-9 and 600-24. This duty shall apply unless it is determined, after a thorough investigation by the City of the facts surrounding the allegations, transaction or incident, that:

A. The act or omission by the member or group was not undertaken within the scope of the official duties of recognized groups or their members; or

B. The member or group acted or failed to act because of actual fraud, corruption, direct economic interest in the matter before it, or actual malice; or

C. The defense of the action or proceeding by the City would create a conflict of interest between the City and the member or group; or

D. The request for defense is determined, after a thorough investigation, to be a request for the defense of a criminal action or proceeding, including a criminal proceeding for the removal of a member or members."

CPC version of 'Section 3'

"Section 3. The City of San Diego shall defend and indemnify each and every member and/or group through and until final adjudication in the court, tribunal, or administrative body of proper jurisdiction for any and all claims, actions, litigation and/or lawsuits arising from the member's or group's official capacity and duties, regardless of whether the claim, action, litigation, and/or lawsuit may plead and/or allege claims including but not limited to actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith.

A. In the event that actual fraud, corruption, direct economic interest, actual malice, and/or bad faith is/are alleged in any pleading and/or document in the claim, action, litigation, and/or lawsuit, the City Council may in writing reserve a right of reimbursement from the member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for actual fraud, corruption, direct economic interest, actual malice, and/or bad faith has been made.

B. In the event that a claim, action, litigation, and/or lawsuit arises from the member's or group's intentional violation of group bylaws or policies and either Council Policy 600-24, the Council Policy's Administrative Guidelines, or other City rules regarding planning groups, the City Council may in writing reserve a right of reimbursement from said member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for the intentional violation has been made.

C. In the event that a member and/or group demonstrates a pattern and practice of refusal to cooperate with the City Attorney in the defense of the claim, action, litigation, and/or lawsuit, the City Attorney may, with written approval from the City Council, withdraw from defending and/or indemnifying the member and/or group."

Very truly yours,

John P. Fiske
Indemnification Subcommittee Chair, CPC