SAN YSIDRO COMMUNITY PLANNING GROUP

NOTICE OF ADJOURNED MEETING

The JANUARY 27, 2021 is ADJOURNED

There are several informational documents and presentations distributed with this adjourned agenda for your examination.

The next regular meeting is February 22, 2021

All 13 current boardmembers will continue to serve until the Governor's executive orders have been removed, in-person regular meetings can be resumed and an in-person election by the membership is able to be held. Likewise, officers will continue in their current office. Upon the completion of the election process, 8 newly elected boardmembers and 3 officers will serve out the remainder of a normal term (i.e., Officers to April 2022, Boardmembers to April 2024). Then the next scheduled election for the remaining 7 seats will be in March 2022.

TERMS EXPIRED MARCH 2020	TERMS EXPIRING MARCH 2022
Miguel AGUIRRE	Cinnamon CLARK
Maritza CHAVARIN	Michael FREEDMAN
Rodolfo LOPEZ, JR.	Jennifer GOUDEAU
Gregorio ORTIZ	Ben MEZA
Adriana ORENDAIN	Alberto PEREZ
Alfonso REYNOSO	Jason M-b WELLS
Vacancy *[Candidate Edgar Alaniz]*	Alfonso ZERMENO
Vacancy *[Candidate Paul Arredondo]*	

Chairman: Michael Freedman (619) 690-3833
michaelf@cox.net

City Planner: Michael Prinz (619) 533-5931
MPrinz@sandiego.gov

SAN YSIDRO COMMUNITY PLANNING GROUP

ATTENDANCE RECORD

APRIL 2020 - MARCH 2021

	APR 2020	MAY 2020	JUN 2020	JUL 2020	AUG 2020	SEP 2020	OCT 2020	NOV 2020	DEC 2020	JAN 2021	FEB 2021	MAR 2021	MEETINGS MISSED
AGUIRRE													NONE
CHAVARIN													NONE
CLARK													NONE
FREEDMAN													NONE
GOUDEAU													NONE
LOPEZ													NONE
MEZA													NONE
ORENDAIN													NONE
ORTIZ													NONE
PEREZ													NONE
REYNOSO													NONE
WELLS													NONE
ZERMENO													NONE
VACANT													VACANT
VACANT													VACANT

COVID-19 ADJOURNMENTS

CITY COUNCIL POLICY 600-24 & SYCPG BYLAWS REQUIRE THAT A SEAT MUST BE DECLARED VACATED WHEN THERE ARE:

3 CONSECUTIVE ABSENCES, OR
4 TOTAL ABSENCES BETWEEN APRIL 2019 AND MARCH 2020

Note: Adjourned Meetings and Special Meetings are not counted for attendance purposes.

VIVIAN MORENO

SAN DIEGO CITY COUNCIL

San Ysidro Dumpster Drop-Off

Free opportunity to dispose of large unwanted items

Saturday, January 23, 2021
9AM-11AM
3986 Camino De La Plaza
92173

ITEMS NOT ACCEPTED: electronics, light bulbs, batteries, tires, motor and cooking oil, dirt and construction rubble

For questions, contact Councilmember Moreno's office: (619) 236-6688 | VivianMoreno@SanDiego.gov

San Ysidro School District
4350 Otay Mesa Road
San Ysidro, CA 92173

San Ysidro School District

Measure T & Measure U
Long Range Master Facility Plan

~ BEYER SITE ~

Your opinion counts and is important to us!

The District is seeking the input or suggestions of the San Ysidro community, parents, students and staff, to determine the future plans for the Beyer Site (previously known as Beyer School). We hope you can join us:

VIRTUAL TOWN HALL MEETING

Tuesday, January 26, 2021

5:00 - 6:00 pm

Login Information :

https://www.youtube.com/channel/UCGyF01068pwbhe-B5xnyl-A/videos

Spanish Translation :

Telephone line (862) 246-7734 Access code 771 278 277#

Please submit your input via email by 6:00 p.m. on or before Tuesday, January 26, 2021 at publiccomment@sysdschools.org

Distrito Escolar de San Ysidro

Medida T y Medida U

Plan Maestro de Instalaciones a Largo Plazo

~ TERRENO BEYER ~

¡Su opinión cuenta y es importante para nosotros!

El Distrito está buscando la opinión y/o sugerencias de la comunidad de San Ysidro, los padres, estudiantes y del personal, para determinar los planes futuros para el terreno de Beyer (anteriormente conocido como la escuela Beyer). Esperamos que nos pueda acompañar:

JUNTA VIRTUAL PÚBLICA

martes, 26 de enero, 2021

5:00 - 6:00 pm

Información de Enlace :

https://www.youtube.com/channel/UCGyF01068pwbhe-B5xnyl-A/videos

Traducción en Español :

Línea Telefónica (862) 246-7734 Código de Acceso 771 278 277#

Favor de enviarnos su opinión por correo electrónico a más tardar a las 6:00 p.m. del martes, 26 de enero del 2021 a publiccomment@sysdschools.org

VIVIAN MORENO

SAN DIEGO CITY COUNCIL

HELP SHAPE THE FUTURE OF BEYER PARK

Saturday, January 30th, 2021 | 10AM-11AM

Join Councilmember Moreno and the City's Parks and Recreation Department for a conversation on Beyer Park and other exciting projects in the community.
We are particularly interested in your ideas about improving public safety and features to reflect community identity, including public art.

Meeting will be held over Zoom. Register at https://www.shorturl.at/hnDG4

Future location of Beyer Park will be at the eastern end of Beyer Boulevard in San Ysidro.

The City of SAN DIEGO
Parks and Recreation Department

VIVIAN MORENO
SAN DIEGO CITY COUNCIL

FOR IMMEDIATE RELEASE
Thursday, January 7, 2021

CONTACT: Lisa Schmidt 619-210-9499
lmschmidt@sandiego.gov

SANDAG'S Regional Plan Working Group Prioritizes Equity for Transportation Planning

SAN DIEGO – Today, the newly named Social Equity Working Group, formerly known as the Community-Based Organization Working Group, discussed drafts of the first equity statement for the San Diego Association of Governments (SANDAG) and the first equity framework for inclusion in the new regional transportation plan.

"Transportation is a gateway to opportunity, education and jobs; and this new social equity statement and framework are excellent first steps in centering equity in transportation planning in our region," said Councilmember Vivian Moreno, Chair of SANDAG's Social Equity Working Group. "In the past, transportation planners ignored the needs and quality of life of low-income neighborhoods and people of color. With these actions, SANDAG has demonstrated its commitment to inclusion and accessibility for all our communities."

SANDAG will be the first regional planning agency to formally adopt an equity statement and include an equity framework as part of its regional transportation plan. The equity statement will be presented to the SANDAG Board on January 22, 2021. The 2021 Regional Plan continues to be developed and is expected to be released in the Spring with continuous outreach to the state and regional stakeholders.

The Working Group provides a collaborative open and public forum for the various community-based organizations in the County and SANDAG to provide ongoing public input from disadvantaged or underrepresented communities in the region into key activities associated with developing San Diego Forward: the 2021 Regional Plan and related planning activities with a focus on the social equity perspective.

Additional information on the Working Group and today's actions can be found here.

Councilmember Vivian Moreno represents the Eighth Council District of the City of San Diego, which includes the communities of Barrio Logan, Egger Highlands, Grant Hill, Logan Heights, Memorial, Nestor, Ocean View Hills, Otay Mesa, San Ysidro, Shelltown, Sherman Heights, Stockton and the Tijuana River Valley.

MEDIA RELEASE

The City of SAN DIEGO

FOR IMMEDIATE RELEASE
Tuesday, Jan. 12, 2021

New City of San Diego Code Updates Will Facilitate Faster Housing and Streamline Permitting Process

CITY COUNCIL APPROVES 2020 LAND DEVELOPMENT CODE UPDATES

SAN DIEGO – To keep up with the ever-changing needs of the City of San Diego's land uses, today the City Council unanimously approved an update to the code that regulates the development and use of properties. Among the 44 items in this Land Development Code Update, applicants can now turn ground floor commercial spaces into residential uses more quickly.

Additionally, recreational amenities in the public right of way will no longer need a development permit, and adult day care facility regulations will now be defined in the City's Municipal Code.

"Each component of this update is a step toward fulfilling the City's goals of creating more dynamic neighborhoods that are more inclusive and sustainable," said Mayor Todd Gloria. "These updates are also about adapting to the challenges we face during this time. We are enduring a housing crisis and it's important we make it easier to build more homes for San Diegans. In the midst of the COVID-19 pandemic, it's also critical that we support local businesses and help them get through this."

The City makes updates to the Land Development Code yearly and this update included corrections, regulatory reform and a new regulation. Several of the updates came as a result of the COVID-19 pandemic.

"Land Development Code Updates are crucial to keeping the City progressing in a positive direction, adapting to new trends such as an aging population, and anticipating for what is expected to come," said Planning Department Director Mike Hansen. "These updates remove unnecessary barriers to ensure our City's needs, like making it easier to create housing, are met."

Here are some highlights from the update:

Downtown Parking: Eliminates minimum parking limits in the Gaslamp Quarter and instead establishes a maximum parking limit. Further, it creates design standards for above-grade parking levels throughout Downtown to allow these structures to be converted to residential, office and other uses in the future if parking demands change.

Temporary Storage in the Public Right of Way: Requires moving storage companies to have a temporary use permit if storage containers are placed within the public right of way. Currently, storage containers in the public right of way are not allowed at all. This change will help people who need to use temporary storage containers, but do not have a place to put them on private property.

Converting Ground Floor Commercial Space to Temporary Housing More Quickly: Currently, an applicant wanting to convert ground floor commercial space to temporary residential uses must provide evidence the commercial space has been vacant for six months. This will eliminate that requirement and, in a time where commercial space may be oversupplied due to a potential recession, it allows for space to be more quickly turned into much needed housing units.

Adding a Recreational Amenity Within Public Right of Way: A recreational amenity, which is any improvement that provides recreational value to residents or visitors and that enhances pedestrian or bicycle travel experience, will be defined and will no longer require a development permit within the public right of way. Instead, applicants will be able simply apply for a public right of way permit. This will make it easier to add much needed recreational amenities such as linear parks and bike racks.

Development Impact Fee Deferral: This will allow for anyone issued a construction permit between March 2020 and March 2022 to defer their development impact fees (DIF) for three years instead of two years. DIFs are one-time fees to help pay for public facilities. This change was made to provide relief for those impacted by COVID-19.

Outdoor Dining on Private Property: This will allow businesses, located near public transportation, to use their land more efficiently by permitting the use of their private parking lots for outdoor dining. The City has allowed businesses to do this temporarily due to the COVID-19 pandemic. This will allow outdoor dining on parking lots into the future, after the end of the COVID-19 pandemic. In another update, businesses in the Downtown area, including the Gaslamp Quarter, will be allowed to have outdoor dining on their property, with some restrictions, without obtaining a discretionary permit.

Adult Day Care Facilities: Due to San Diego's growing aging population, City planners have identified a need for places where seniors can safely go for the day to access resources and companionship. Currently, adult day care facilities are not a defined use in the City's Municipal Code. This will provide regulations for these facilities, similar to regulations in place for child care centers.

The City is taking requests from the public until March for the 2021 Land Development Code Update.

###

PARC
Parks and Recreation Coalition

Parks for All

presented by

PARC
(Parks and Recreation Coalition)

- Let’s talk about parks! My name is <> and I’m <add relationship here>.

- PARC is work-in-progress made up of volunteers who signed a coalition letter and testified requesting improvements to the Plan and the process at the Nov City Council hearing. PARC includes professional city planners, landscape architects, architects, and community planners.

PARC
Parks and Recreation Coalition

“Park improvement is among the most important undertakings before the city. It should have the cordial cooperation of all.”

San Diego Union Editorial 1910

Why are we here? WE LOVE PARKS! WE NEED PARKS! Parks are VITAL to everyone and this has been especially illustrated during the pandemic. The city proposing a new Parks Master Plan - the first in 50 years

This one will have to last a long time!

PARC
Parks and Recreation Coalition

THE GOOD: Admirable Goals

- Promotes a parks system that is relevant, accessible, iconic, sustainable and equitable
- Meets the changing needs and priorities of current and future residents
- Addresses long-standing inequities in the City's park system

We appreciate the efforts to make equitable investments into our park system. PARC supports addressing inequities in the parks planning and allocation processes, including the Citywide Park fee.

What needs to be improved and how?

We appreciate the amount of time and commitment that staff was able to put into the Plan. The artificial deadline of the election did not provide enough time to address significant concerns that can be addressed now. Also, I'm going to be covered a dense amount of material, so please take notes along the way with any questions you have.

Issues with the Parks Master Plan

- Limited vision: Less parkland for our growing city
- Limited resident participation after release of Draft
- Equity, Funding & Prioritization Framework for Citywide Park Fee
- Untested: Points system and park standards
- Commercialization, MSCP, Historic Resources, Design Review, Implementation issues

- One of the biggest issues is the elimination the land standard just when we're increasing housing density and incentivizing smaller units. We support the need for flexibility for communities to choose infill into parks but there should still be a land standard. **More people need more parks**, not just more stuff into existing parks. As with Affordable Housing, just because you don't meet the goals doesn't mean you shouldn't have it.

- While the city held many meetings for input into the Plan, after the Draft Plan was released, the prior administration invested most of the time in the Housing and Mobility portions and we feel pushed it forward on the artificial deadline of the election. Presentations were not made to Community Planning Groups or Rec Advisory Groups. Since this Plan will be the basis for any bond measures on future ballots, it's critical is that public support is built now. We need to love this Plan as much as we love our parks!

- Funding - we all know there's not enough and we are suggesting ways to help. The Prioritization Framework refers to how the new Citywide Park Fee will be allocated. This should be released as soon as possible or at least concurrent with the Plan.

- The points system is complicated and as the first such approach being tried by any City, needs more discussion and changes.

- Other issues we've identified will be addressed in this presentation.

Public Engagement

The first step in equitable park planning is to *"be in conversation with communities to get their vision for what they want parks to be, whether that's building new parks or reimagining existing spaces."* Room to Roam, Lincoln Institute of Land Policy, October 2020

REQUEST: Consult with Community Planning Groups & Recreation Advisory Groups

- Due to the time crunch from the outgoing administration, the Planning Department did not involve individual Community Planning Groups or Recreation Advisory Groups after draft Plan was released. We feel it's Inadequate to only make presentations to the Community Planners Committee. CPC representatives can only take positions on items where their groups have taken a position. And in the Zoom era it's cheaper and easier to engage with groups.

- It also appears that more time was spent working with the development community than citizen groups. Since this is likely to be the Plan for the next 50 years and the basis for any park bond, the plan needs to be easy to understand to be able to gain the support for voters for future funding approvals.

Limited Vision: Less parkland for our growing city

PARC
Parks and Recreation Coalition

Higher density housing, smaller-sized units and more people increases the need for more parkland. More housing without more parkland will not create a world-class parks and recreation system. Parkland is significantly devalued; policy is only "continue to pursue."

REQUESTS:

- Retain the park acreage standard
- Include minimum protections for passive recreation in parks
- Increase minimum % funding for parkland acquisition

- The problems with the existing system are not related to the standard of more land for parks - the **need** for additional park land remains the same yet Plan & Recreation Element devalue & reduce standards for more parkland. Higher density housing, smaller-sized units and more people increases the need for more parkland, not only adding "amenities" in existing parks. Having no benchmark for new parkland means there's no standard to weigh it against as communities and the Mayor & Council make choices.

- We understand that "limited open land and rising acquisition costs make it increasingly difficult to meet the acreage-based standard" but should we give up? NO! The land standard is not the problem. With a projected population increase of 350,000 people during the next 30 years, it would be harmful to adopt a policy which aims to primarily use existing parks to satisfy the residents' park and recreation needs. More people need more parks.

- Existing passive park lands are put at risk due to the incentives in the points system. Protections for open park land for passive recreation need to be improved.

- The only way to really ensure more parkland is to set-aside a fund for it. This was added into the Resolution and we'd like to see the percentage increased.

Funding for parks

The Development Impact Fee (DIF) system is not a sufficient source of funding to meet the city's park needs nor can it be used for operations and maintenance.

REQUESTS:

- Build support for other significant funding sources
- Retain policy in Recreation Element to do nexus study to establish fees for non-residential uses (RE-A-2 d)
- Require Community Benefit Zoning analyses in community plan updates and upzones for parkland acquisition
- Disclose and review assumptions and rationale for 60% discount for land costs in the DIF formula

- Plans sit on the shelf unless we know how to fund them and this Plan will be the basis for any future park bond measures so the details and engagement with the public matters for when they are asked to vote for new funding.
- The Development Impact Fee - known as a DIF system - both existing and proposed - is **not** a sufficient source of funding to meet the city's park needs. Other sources are critical but with estimates for DIFs exceeding $1 Billion, significant changes to the DIF merit scrutiny and transparency.
- First, commit to other funding sources and build support for them beginning with this Plan.
- Second: The existing Recreation Element contains policies for the City to determine to correct level of fees for non-residential uses. Current DIFs are only paid for residential uses. The city should retain these policies and not delete them.
- Third: Community Benefit Zoning is a method for the city to share in the increased value associated with upzoning properties rather than giving property owners increased density for free. Downtown currently had a CBZ program that has raised millions for urban improvements. CBZ should be analyzed as a way to fund public benefits such as parks in Community Plan Updates.
- Fourth, The formula that establishes DIFs consists of: construction costs, contingency costs, admin overhead and a land component that is called Right-of-Way costs. Land costs, based on a set of 24 parks recently completed or under construction inform the land component. But this component is then discounted by 60% - is this a fair discount? We've been unable to see the justifications for this discount. Transparency is critical when you make such a significant change impacting more than a billion dollars.

Complicated Points System

PARC
Parks and Recreation Coalition

- Creates untested & confusing points-based system as new standard for park land and amenities
- Combined system pits land vs. amenities
- 10 sq. ft. interpretive sign has same point value as 1 acre park!

REQUESTS:

- Simplify by separating Land from Recreational Amenity points
- Clarify how point system will be used
- Separate Community Planning usage from DIF calculation usage of points
- Establish review process and refine over time

- The Plan needs to be straightforward for staff and the public to understand. Volunteers in Pacific Beach took the points charts to all their parks to seek to determine whether they'd be more, or less park-deficient under the new plan - and also to get experience with it. It's confusing and complicated. Examples of where points don't make sense are many, just one: A sign and a 1-acre park each have the same point "value."
- This combined system of land and amenities using the same points scale creates bad incentives. It could lead to developers providing smaller parks filled with less important items by using items with the cheapest points to meet their requirements. The Points system does not adequately protect our habitat lands or coastal-based parks or protect passive park lands from the "play everywhere" emphasis. We have developed a more detailed background paper about points and parks standards.
- After a lot of thinking about the system, our Recommendations are to: Simplify by separating Land from Recreational Amenity points; Better define the application of the points system. Separate Community Planning usage from DIF calculation usage and Establish specific review process of the application of the points system for refinement over time.
- Regarding the separation of Community Planning usage from DIF usage: The major use of the points system is for developers to use it to calculate their DIF fees and make decisions about what to build on-site instead of paying DIFs. The other usage would be for Community Planning. But this usage is insufficiently documented and in trying to work with the system, we believe the CP usage should be separated from the DIF usage. There appears to be no reason why communities should use points to determine their recreational and park needs. If they want a skatepark or pocket park, it should be theirs to define through a public process and then to seek funding, not to be concerned about arbitrary points.

Commercialization of Public Parks

- Language deleted from Recreation Element: “Protect parks from commercialization and privatization.”
- Language added in Draft Recreation Element: “Policy A.3: Where appropriate, accommodate and design for temporary or permanent commercial uses in parks to increase public use of the park’s space. Examples of commercial uses may include, but are not limited to, restaurants and cafes, food trucks, carts and kiosks, youth-oriented facilities, bike rental and repair, museums, cultural centers, other retail uses, and other similar uses.”

REQUESTS:

- Retain language proposed for deletion: “Protect parks from commercialization and privatization.”
- Fix language: “Protect parks from commercialization and privatization. Ensure that commercial uses within parks contribute to the recreational use and value of the park and are sufficiently limited.”

- These commercialization Changes were never presented or highlighted in reports or public presentations to the Council. They are removing important protective language and and replacing it to encourage commercialization without sufficient limits.

- The Draft language is repetitive and subjective and is poor English, but the items in red (not limited to, other retails use and other similar uses” each and together support beyond what is a reasonable list of uses - too much more. Here is our suggestion for how to FIX it and note that the language Ensure that commercial uses within parks contribute to the recreational use and value of the park is from the proposed Plan and we are open to ways to set the limits.

Historic Resources

Historic resources, including cultural landscapes, are barely mentioned and not discussed

REQUESTS:

- List Historic Resources in parks
- Assess their condition
- Preserve using applicable standards
- Add qualified staff
- Train existing staff

Parks have many Historic Resources but they are not even discussed in the Plan and barely mentioned. What we have should be documented in the Plan. More staffing and training is needed.

Multiple Species Conservation Plan

- MSCP lands are legally protected habitat reserves and should be managed as such. Trails and other impacts must be addressed in a manner consistent with criteria set forth in the MSCP.

- REQUEST: To ensure consistency with City of San Diego MSCP obligations and to avoid future project by project conflict, MSCP Consistency Findings should be confirmed prior to identification of trails or other public use areas with potential MSCP impacts.



Many groups are concerned about encroachments into habitat reserves and we need to ensure they are adequately protected and a robust public review process is needed for the trails that can be allowed.

Park Quality / Design Review

Design Matters: One Size Does Not Fit All

REQUESTS:

- Re-build the Parks and Recreation Department Park Planning and Development Division
- Re-establish the citywide park Design Review Committee
- Add policies and criteria for the planning and design of parks with community input

- Design and Design Review is not adequately addressed in the Plan. Standards alone will not provide the high quality parks and facilities that will meet the needs of individual community.

- To implement the Guiding principles the City needs to rebuild the Parks & Rec Planning and Development division to include landscape architects and urban design professionals who are working on behalf of the public interest. Re-establish the Design Review Committee and Add design policies to the Plan.

- “Get out and take a walk in a ‘good’ park. Look at the elements that cause it to work well. Talk to the people who use it and find out what features they value most. -Peter Katz. “What makes a good urban park” Congress for New Urbanism, Public Square, 1 March 2017

Implementation

Implementation of the PMP and Recreation Element requires internal and external oversight to ensure goals and policies are met

REQUESTS:

- Implement Citywide DIF via Municipal Ordinance and not just a Resolution
- Bring Prioritization Framework (CP 800-14 (Prioritizing Capital Improvement Program Projects) forward as soon as possible
- Update CP 600-33 (Public Notification and Input for City-Wide Park Development Projects) via public review process
- Require Annual Report on implementation of the PMP, Recreation Element, and Citywide Park DIF for public review beginning with Community Planning Groups

- Resolutions do not have the legal force that Municipal Ordinances have and are much easier to change and harder to enforce.

- Council Policy 800-14 PRIORITIZING CAPITAL IMPROVEMENT PROGRAM PROJECTS was already coming forward in early 2021 and should be publicly released ASAP

- Council Policy 600-33 - the process for park projects needs revisions to become consistent with goals

- Just as they are requiring annual reports for the Housing and Mobility components, require for Parks

Timely Completion

- Improvements/requests can be accomplished in reasonable timeframe
- Changes being requested are specific

There hasn’t been a Parks Master Plan for 50 years and this is likely to be the Plan for the next 50. We can take the time to make improvements. The changes we are requesting are doable and it is vital that the Parks Plan is loved by all just as our parks are, so that voters will support more funding.

Parks for All

- Local parks and green spaces play a crucial role in maintaining physical and mental health and helping communities navigate toward recovery. (National survey conducted in May 2020 for the 10 Minute Walk coalition by The Trust for Public Land, Urban Land Institute, and National Recreation and Park Association)
- “Proximity to parks increased property values as much as 20 percent, which in turn increases local tax revenues. High-quality public parks and open space also draw new businesses and visitors to cities.”

Quotes from “Room to Roam: The pandemic has underscored the need for more urban parks: So what comes next?” Land Lines October 2020, Lincoln Land Institute of Land Policy

The pandemic has underscored the need for more urban parks for everyone for our physical, mental, and emotional health. And please note, that in the fight for needed funds, proximity to parks increases property values and high-quality parks draw new businesses and visitors. More people not only need more parks, the city and property owners gain from them financially as well.

MORE details (probably not time to include):
- Inner city homes within a quarter mile of a park have an increase value of 10% on average
- A home near just a cleaned-up vacant lot will have an increased value of 17% on average
- Residences next to a larger and longer “greenbelt” area which is great for hiking or biking saw a increase of 32% in home value on average
    ref: The Park Catalog, Oct 2018

“High-quality public parks and open space draws new businesses and visitors to cities.” Room to Roam, Lincoln Institute of Land Policy, Oct 2020

What we would like you to do

Suggested MOTION:

Support the improvements to the Parks Master Plan and Recreation Element recommended by PARC and send letter of support to the Mayor and City Council requesting they work with Planning Groups and Recreational Advisory Groups for input

Thank you!

"A park is unlike any other asset in the city. It is not a building, not a production line, nor a warm breeze. A park is a living, growing thing that will die if the will of the people dies, or it will flourish as much as they want it to."

San Diego Union, January 1969

Email questions/comments: planning@icontactweb.com

Thanks to contributors: Susan Baldwin, Nico Calavita, Carolyn Chase, Julie Corrales, Howard Greenstein, Diane Kane, Debby Knight, Stacey LoMedico, Tom Mullaney, Deborah Sharpe, Rene Smith, Mike Stepner, Andy Wiese, Wally Wulfeck

Our request is for the City to work with us to address these issues and for groups to ask the City to do so, and endorse this presentation, Parks for All.

THANKS for your time and consideration and we're happy to answer questions or get back to you if we don't know the answers right now. The email address is on the slide for anything that come up after this presentation.

Summary of Improvements Needed

- Public Transparency: Involve Recreation Advisory Groups and Community Planning Groups
- Funding:
  - Bring forward funding, prioritization framework, and other implementing mechanisms (Council Policies) concurrently with PMP/RE
  - What is correct DIF discount on the land component (in the Nexus study)?
  - Retain Recreation Element policy to do nexus study for non-residential park DIFs
  - Require Community Benefit Zoning analyses in future community plan updates and upzones
  - Require minimum payment into Citywide Park Fee for on-site developments (codify ad hoc Park Fee)
  - Increase % set-aside for park land acquisition
- Standards:
  - Retain acreage standard
  - Separate land metrics from amenity metrics
  - Separate DIF usage from Community Planning usage
- Control commercialization: Retain protective language
- Other: Equity, Historic Resources, MSCP, Design Review, Disclosure of data and assumptions, Reporting/Oversight

Discussion slide

What we would like you to do

- Help get answers to our questions and seek improvements
- Support having Park planners work with PARC on addressing the issues we have identified.

November 5, 2020 (Rev. 11/9/20 with additional names and organizations)

Mayor Kevin Faulconer
Council President Georgette Gomez
Members of the City Council
Planning Director Mike Hansen
City of San Diego
202 C Street
San Diego, CA 92101

Re: **Complete Communities: Parks Master Plan and Recreation Element**

Dear Mayor Faulconer, Council President Gomez, City Councilmembers, and Planning Director Hansen:

We are community activists, planners, landscape architects, and architects who have analyzed and discussed the Complete Communities proposal. This comment letter concerns the Parks component.

Complete Communities consists of three components: Mobility, Housing and Parks. The adequacy of the three components is quite different:

1. The Mobility component meets a state mandate to shift to a Vehicle Miles Traveled analysis, and is based on appropriate methodologies and studies.
2. The Housing component has been changed significantly in positive ways due to public input to provide for more affordable housing and protections against displacement and gentrification.
3. Although its goals are laudable and the Parks Master Plan and Recreation Element contain valuable information, we believe the Parks component has major shortcomings and fatal flaws, a situation not remedied by the recent revisions.

We feel – strongly – that the Parks Master Plan and Recreation Element amendments should not be adopted. Instead, a new approach is needed.

While other people and organizations have made a great variety of comments and recommendations for revisions to the plan, our concern is fundamental. In a context in which Housing Solutions opens the door to significant increases in density, and the city has added 74,000 units of housing capacity since 2014 through community plan updates in neighborhoods already lacking in parkland, it would be fundamentally wrong to adopt an approach that values adding amenities to existing parks over obtaining more park acreage.

The City of San Diego is projected to add 357,000 residents by 2050. We believe the park and recreation needs of these future residents cannot be met primarily by using existing parks, which is the thrust of the proposed program.

Denser urban living must be balanced with appropriate amounts of parkland. Additional parks will be needed for active and passive recreation. We understand that in urbanized areas, it will be difficult to assemble land for parks. But if developers can find opportunities, why not the city? Difficult does not mean impossible.

We need to create America's finest parks and recreation system, not accept a system of overburdened parks. Tweaking the current proposal won't work. The city needs to take a new approach.

The key issue we've identified with the Parks Master Plan is the points system. The draft points system includes both acreage and amenities, with a target of 14 points per 1,000 population. This is a "closed system" which pits parkland against recreational amenities. All parks need land and appropriate amenities. The public should not be asked to accept "either-or." This approach will not provide an adequate system.

The proposed scoring system is faulty. It does not assign value equally for each acre of land. Acreage values cannot be compared to recreational amenities using the same metrics. The values assigned to amenities are arbitrary and subjective.

The following examples illustrate fundamental problems with the points system:

- a 3.1-acre park is equal to an 8-acre park (both 6 points)
- a 1,500 sq. ft. play area is equal to a 3-acre park (both 2 points), even though the 3-acre park (130,680 sq. ft.) is 87 times larger
- a 10 sq. ft. interpretive/educational sign or display is equal to a Pocket Park of up to 1-acre (1 point).

In addition to discounting the importance of land needed to support our growing population, the City proposes changes to commercialize parks without adequate controls by removing the following language: "Protect parks from commercialization and privatization" and adding language opening parks to a long list of commercial and "other retail uses." This would be a step backwards.

We support the goal of improved equity. If the aim is to make the park-deficient communities equal to the park-sufficient communities, this cannot be achieved in a system which greatly discounts the value of parkland. A small, poorly equipped park with some amenities added, is still a small park, not adequate to serve existing and future residents. We are concerned that the proposed plan will perpetuate inequities rather than rectify them.

The Parks Master Plan and Recreation Element amendments should not be adopted. To do so would be to condemn residents, both existing and new, to increasingly crowded and inadequate parks.

When the next Mayor and City Councilmembers are seated, the Planning Department and Park and Recreation Department should develop an alternative approach that would encourage the acquisition of parkland to keep pace with increasing population and density, and provide a variety of additional amenities that meet the needs of the diverse, growing population.

Finally, the City Council should recommend that in preparing the revised plan, the city staff engage in a robust participatory process, including the established community planning groups and recreation advisory groups. This effort should be focused in the urbanized communities of the city—where growth is being directed—communities that already suffer from a lack of parkland and recreational facilities.

Sincerely,

League of Women Voters of San Diego

City Heights Community Development Corporation

Citizens Coordinate for Century 3

Sierra Club San Diego

Pacific Beach Community Planning Group

Bird Rock Community Council

University Heights Community Association

University Heights Park & Recreation Advisory Group

Susan Baldwin, AICP
Retired SANDAG planner

Richard and Jane Bentley

Philip J. Bona
Former President of San Diego AIA
Founder of Housing the Next 1 Million

Nico Calavita
Professor Emeritus, Graduate Program in City Planning
San Diego State University

Cathy O'Leary Carey

Jack Carpenter, FAIA
Former President of San Diego AIA
Founder of Environment + Design Council

Carolyn Chase
San Diego Earth Day

Diane Coombs
Former Executive Director of the San Dieguito River Valley Joint Powers Authority

Norma Damashek
Commentator on policymaking in city government

Ann Feeney

Howard Greenstein
ASLA, Landscape Architect (CA #2845)
Retired City of San Diego park planner

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University Heights Community & Parks Advocate

Tommy Hough
Vice President for Policy
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Diane Kane, PhD, AICP
Retired Senior Planner, City of San Diego Planning Department

Deborah Knight
Friends of Rose Canyon

Joyce Lane

Stacey LoMedico
Retired City of San Diego employee
Park and Recreation Director (2007-2013)

Bee Mittermiller

Tom Mullaney
Uptown United

Patricia Murphy

John M. Newsam, President
Bird Rock Community Council

Ed Nodland
Member HN1M (Housing the Next 1 Million)
Environment + Design Council

Cody Petterson, Ph.D
President, San Diego County Democrats for Environmental Action

Myles Pomeroy
Retired Senior Planner, City of San Diego Planning Department

Philip R. Pryde, PhD
Past Chair, San Diego County Planning Commission

Deborah Sharpe, ASLA
Landscape Architect (CA #3085)
Retired Supervisor, City of San Diego Park Planning

Rene Smith
Parks Advocate

Harrison Sweet

Judy Swink
Parks Advocate

Michael Stepner FAIA FAICP
Professor Emeritus of Architecture and Urban Design
NewSchool of Architecture & Design

Kristen Victor, LEED AP Legacy, EcoDistricts AP
Sustainability Matters, SLBE City of San Diego

Organizations included for affiliation purposes only.

General Plan
Environmental Justice Element

Planning Department – January 2021
Vickie White, Senior Planner

What is the Environmental Justice Element project?

- The City will be updating the General Plan's environmental justice policies and creating a new Environmental Justice Element of the General Plan
- State law, adopted through Senate Bill 1000, and state guidelines set a flexible framework to follow
- Purpose: To address unique or compounded health risks in "disadvantaged communities" (focus areas) by decreasing pollution exposure, increasing community assets, and improving overall health.
- Focus areas will be identified, looking at a combination of the following factors:
  - Areas identified by the CalEnviroScreen 3.0 tool as being disproportionately burdened by pollution and other hazards
  - Low-income areas
  - Community input

What will the Environmental Justice Element address?

- State law requires that the Element include objectives and policies, at a minimum, to:
  - Reduce pollution exposure, including improving air quality
  - Promote public facilities, including parks and infrastructure
  - Promote food access
  - Promote safe and sanitary homes
  - Promote physical activity
  - Reduce any unique or compound health risks not addressed by the above topics
  - Promote civic engagement in the public decision-making process
  - Prioritize improvements and programs that address the needs of focus areas

What is the plan do to this?

- Timeframe: 18-24 months (mid- to late 2022)
- Phase 1
  - Community online survey (available in 7 languages) to find out about residents' top priorities and the Environmental Justice issues/concerns they experience in their neighborhood
    - Open through February 28th, and potentially longer
    - Will help inform focus area identification and existing conditions/issues review
  - Getting the word out to our communities
  - Stakeholder interviews
  - Community introduction and input meeting - mid-February
  - Focus areas identification (collaborative process with community)
  - Existing conditions/issues review

What is the plan do to this?

- Phase 2
  - Develop in collaborative process with community:
    - Objectives and policies to address focus areas' Environmental Justice issues and concerns (collaborative process with community)
    - Recommendations for how to prioritize improvements and programs to address focus areas' needs
    - Recommendations to promote civic engagement
    - If desired: next steps action plan
- Phase 3
  - Present draft to Planning Commission and City Council Committees for recommendations
  - Make revisions if needed
  - Present draft to City Council for approval

We would like your help!

- You are trusted partners with community relationships
  - Help us let the community know about this project and the kickoff survey
  - Participate in the project and share your insights and ideas

How to connect with this project:

- Web page (includes survey links): https://www.sandiego.gov/planning/genplan/environmentjustice
- Email me with additional questions or thoughts: vwhite@sandiego.gov
- Join our email contact list (via the project web page)

ENVIRONMENTAL JUSTICE ELEMENT
Políticas de Justicia Ambiental

Your VOICE Matters!

SURVEY

The City of SAN DIEGO

Tell the City of San Diego about your environmental justice priorities by visiting

bit.ly/EJESurvey

Reduced exposure to air pollution

Access to safe spaces to exercise

Access to health care

Access to healthy food

The survey will be open until February 28, 2021.

SD Planning

This information is available in alternative formats upon request.

Printed on recycled paper

POLÍTICAS DE JUSTICIA AMBIENTAL

The City of SAN DIEGO

¡Tu VOZ Importa!

ENCUESTA

Díganos cuáles son los temas de justicia ambiental más importantes para su vecindario. Visite este sitio web:

bit.ly/EJAencuesta

La reducción de exposición a la contaminación del aire

El acceso a espacios seguros para la actividad física

El acceso a atención médica

El acceso a los alimentos saludables

La encuesta estará abierta hasta el 28 de febrero de 2021.

SD Planning

Esta información se encuentra disponible en otros medios.

Impreso en papel reciclado

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ASSISTANT CITY ATTORNEY

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OFFICE OF

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CITY OF SAN DIEGO

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November 9, 2020

REPORT TO HONORABLE COUNCILMEMBERS

FOLLOW-UP LEGAL ANALYSIS REGARDING COUNCIL POLICY 600-24: COMMUNITY PLANNING GROUPS

INTRODUCTION

This Report to Council follows up on direction received from the Land Use and Housing Committee (LU&H or Committee) at its December 5, 2019, meeting regarding amendments to City Council Policy 600-24 (CP 600-24), which is presently titled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups." At the Committee's direction, our Office prepared a draft of amended Council Policy, which is attached to this memorandum as Attachment A.

If the City Council determines that it wishes to exercise a greater degree of control over the internal operations of CPGs, it may repeal the Council Policy and pursue a Charter section 43(a) model for CPGs, or seek a Charter amendment, as discussed in more detail in our City Attorney Report 2019-9.

BACKGROUND

At its December 5, 2019, meeting, the Committee worked from a "Menu of Options," which set forth recommendations for reform of CPGs from the Community Planners Committee (Group A recommendations); an ad hoc Community Planning Group Reform Taskforce (Group B recommendations); and from the San Diego County Grand Jury, San Diego City Auditor, and community-based organization Circulate San Diego's Democracy in Planning report (Group C recommendations). The recommendations focused on six broad categories: conduct of CPG meetings (recommendations 1-8), the project development review process (recommendations 9-12), CPG elections (recommendations 13-18), CPG membership (recommendations 19-22), CPG training (recommendations 23-26), and CPG oversight (recommendations 27-33).

The Committee voted to move forward with specific recommendations taken from the Menu of Options[1] and requested that this Office incorporate those recommendations into a draft, revised policy and provide additional legal review. The Committee recommended retaining the current

[1] The Committee moved recommendations numbered: 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 10 B, 11B, 12A, 13B, 14A, 15C, 16B, 17A, 18A, 20B, 22A, 23B, 24A, 25B, 28A, 29B, 30B, 31A, 32A, 33A, 19B, and 21B with some modifications to the language. Recommendation number 27 was continued to a future discussion.

independent status of CPGs. Our Office prepared the draft amended Council Policy (Attachment A) to reflect the Committee's motion and other suggested changes based on our review and legal analysis.

RECOMMENDATIONS

As explained in City Attorney Report 2019-9 (Attachment B), this Office provided preliminary analysis of the Council Policy, noting in part that it is important to establish clear boundaries between the City and CPGs and their members to ensure that the City does not unlawfully create an employment, agency, or servant relationship with CPG members, or create liability for the City. We explained:

> We find some ambiguity in certain language of CP 600-24 that may create confusion as to the City's legal relationship with CPGs, and we recommend that this relationship be clarified. Where the Council Policy currently describes CPGs as being "formed" or "created by an action of the City Council," we read this language to mean the process the Council uses to "recognize" a CPG. We recommend amending this language to make it clear that CPGs are not City-created bodies, but independent legal entities.

We recommended that the status of CPGs as independent legal entities be clarified by amending CP 600-24 to address the ambiguity in the existing language, modifying the structure of CPGs so they are City advisory boards, consistent with San Diego Charter section 43, or seeking a Charter amendment to adopt a new framework.

In the attached draft, we have added the Committee's requested provisions to the extent legally permissible. Where we have incorporated the Committee's requested provisions, we have shown that language in red and included a citation to the recommendation number in the draft Council Policy. In some cases, we modified the language in the recommendation so as to not infringe on the independence of the CPGs.

We have also created a chart (Attachment C) that shows the placement of the Committee recommendations in the draft, along with explanatory comments for those recommendation we did not include.

In addition, we have significantly truncated and simplified the policy; added and clarified language to properly describe the CPGs as independent; removed legalese, outdated language, and duplicative sections; and reorganized existing provisions for ease of review. We have also made the following changes:

- We have modified the elections provisions to remove City control over the selection of CPG members.

- We have made clear that although CPGs control their own internal operations, they must adhere to certain principles and expectations in order to achieve and maintain official recognition by the City;

- We have defined the scope of indemnity and defense and clarified when City Attorney representation is available as recommended in our City Attorney Report 2019-9; and

- We have modified language regarding the prohibition on political activities consistent with current law.

At a future date, we recommend that the Council consider revisiting its ordinance providing defense and indemnification for CPGs and Council Policy 600-09 governing the Community Planners Committee, which has not been updated since 1975, to ensure consistency with any changes to Council Policy 600-24.

CONCLUSION

The City Council may adopt our draft amended policy as presented, or provide additional feedback and direction which we will use to create an updated draft that will be presented to the City Council at a future meeting. If the City Council wishes to exercise greater control over CPGs, it may repeal the Council Policy and either pursue a Charter section 43(a) model for CPGs or seek a Charter amendment to adopt a new framework.

MARA W. ELLIOTT, CITY ATTORNEY

By */s/Noah J. Brazier*
Noah J. Brazier
Deputy City Attorney

NJB:jvg
RC-2020-7
Doc. No. 2521006_2
Attachments: A - Draft Council Policy
B - December 2019 Report
C - Chart

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

CURRENT

SUBJECT: NEW PROPOSED TITLE: "CITY COUNCIL RECOGNITION OF INDEPENDENT COMMUNITY PLANNING GROUPS"

POLICY NO.: 600-24

EFFECTIVE DATE: _____, 2020

BACKGROUND:

The City Council recognizes the importance of receiving community input into land use decisions. This Policy sets forth the process by which the City Council exercises its sole and exclusive discretion to formally recognize "Community Planning Groups," or CPGs, as advisory bodies to the City of San Diego (City), and its ability to revoke recognition of any CPG.

CPGs are independent organizations voluntarily created and operated by City community members who are not City employees or City agents. They are not City-controlled or managed organizations. The City does not direct or recommend the election or appointment of members to CPGs, recommend removal of CPG members, or delegate authority to CPGs to act on behalf of the City.

PURPOSE:

The City Council intends to establish a process to formally recognize CPGs by establishing the requirements, referred to as the "Terms and Conditions," of recognition, which each recognized CPG must follow. These Terms and Conditions are intended to ensure that CPGs operate in a manner that is transparent to the public, accessible to and inclusive of all community members, and reflects the diversity of the communities where they operate. The City Council may recognize by resolution a CPG that meets all Terms and Conditions of this Policy to serve in an advisory capacity to the City.

A recognized CPG may make advisory recommendations to the City Council, Planning Commission, City staff, and other governmental agencies on land use matters within the CPG's planning area boundaries, including the preparation of, adoption of, implementation of, or amendment to, the General Plan or a land use plan when a plan relates to its boundaries. Recognized CPGs may also advise on associated matters as described in this Policy, and on other land use matters as requested by the City or other governmental agencies. However, the City is not bound to follow the advice or recommendations of the CPGs.

[8A] It is the policy of the City Council, on behalf of the City, that City representatives consistently inform and educate project applicants of the role of CPGs in the City's project review process.

POLICY:

I. DETERMINATION OF BOUNDARIES AND RECOGNITION OF CPGS.

When the City Council recognizes a CPG, it will adopt a resolution setting forth the CPG's jurisdiction based on the boundary of the applicable adopted community plan. In some cases, the City Council may determine that a boundary other than that of an adopted plan is the appropriate boundary for a CPG, and may identify an area either smaller than, or more encompassing than, an adopted community plan.

The City Council may, by resolution, change the boundaries of a CPG's area of influence. In considering a change, the Council will consider whether a community plan amendment or update is being processed that changes the community plan boundaries.

The City Council may, by resolution, revoke recognition of a CPG if the CPG does not comply with the Terms and Conditions set forth in this Policy. The City Council may subsequently recognize a successor CPG, or re-instate recognition of the previous CPG, by resolution.

II. TERMS AND CONDITIONS OF RECOGNITION.

It is the policy of the City Council to require each CPG, as a condition of official recognition, to agree to incorporate into their operating procedures the Terms and Conditions that meet the requirements of this Policy. Individual CPGs may expand on provisions in this Policy to better meet the needs of their communities. CPGs that wish to be recognized must submit the Terms and Conditions to the City prior to the City Council approving a resolution to recognize the CPG. [**1A**] The City will regularly monitor the compliance of CPGs with this Policy.

Each recognized CPG must make the Terms and Conditions available to any member of the public upon request. CPGs should timely submit to the City any updates to its operating procedures, including its Terms and Conditions. As this Policy may be amended from time to time, the City Council will inform recognized CPGs if they must amend their Terms and Conditions to conform to the amended Council Policy.

CPGs incorporated under the laws of the State of California must maintain corporate documents, including articles of incorporation and corporate bylaws, separate from the Terms and Conditions set forth here. The City plays no role in matters related to incorporation of CPGs.

A. Compliance with the Ralph M. Brown Act.

Recognized CPGs must comply with California's Open Meeting Law, the Ralph M. Brown Act, set forth at California Government Code sections 54950 through 54963 (Brown Act), as may be amended from time to time, by conducting meetings that are open to the public, properly noticed, and in compliance with each of the Brown Act provisions. Meeting agendas, minutes, rosters, and annual reports are disclosable public records under the Brown Act and must be retained as described in C, below.

B. Rules of Parliamentary Procedure.

The City expects CPGs to adopt rules of procedure, such as Robert's Rules of Order or Rosenberg's Rules of Order, that may be used as a guide when this Policy and CPG Terms and Conditions do not address an area of concern or interest. These rules of procedure provide a uniform means to facilitate public meetings, conduct public business, and resolve disputes.

[7A] The City encourages CPGs to follow the Robert's Rules of Order procedures for setting times for agenda items to be considered.

[11B, 12A] The City encourages CPGs to prioritize items in their agendas that inform City decision making as a courtesy to City staff that are attending the CPG hearing.

C. Open and Public Records.

[17A] The City encourages recognized CPGs to use websites and social media accessible to the general public to post meeting agendas, minutes, reports, and general and contact information, provided such use is consistent with the Brown Act.

A recognized CPG must maintain its official records, including its rosters, annual reports, meeting agendas, and meeting minutes, for a minimum of five years from the date each record is created, and must make all official records available to the City and to any member of the public upon request. An official record is any writing distributed to all CPG members in connection with a matter that is subject to consideration at an open meeting of a recognized CPG.

[**5A, 6A]** Written applications submitted to the CPG by individuals wishing to serve as members, and election results, are considered official records and must be maintained in accordance with this Policy. Each recognized CPG must submit to the Office of the City Clerk the rosters of CPG members by January 15 of each year, and must also submit to the Office of the City Clerk any changes to rosters as a result of CPG elections.

[1A, 32A] The City, acting through the Mayor or designee will monitor a CPG's records related to this Policy, including its rosters, meeting minutes, and annual reports, to ensure compliance with this Policy. The City Auditor may also conduct a review of all City-retained CPG records related to this Policy, in accordance with policies of the Office of the City Auditor and in consultation with the City's Audit Committee. The City Auditor is encouraged to conduct such audits every five years.

[4A] In addition, each recognized CPG must submit its official advisory recommendations and any other records requested by the City to the City's Planning Department within ten days of preparation so that the Planning Department may post the record online to ensure that the information is available to the public in a centralized location.

D. Community Representation.

The City Council intends that voting members of recognized CPGs, to the greatest extent possible, be representative of the various geographic sections of the community and diversified community interests. Recognized CPG members must be elected by and from members of the community. To be recognized as a CPG, the organization must demonstrate to the City that it represents all members of the community.

The City will only recognize a CPG with a minimum of 12 voting members, representing the various community interests set forth in this Policy. The City recommends no more than 20 voting members to allow for effective operations. However, the City Council may recognize a CPG with more than 20 voting members if the larger membership is necessary to give better representation to a community.

In addition, for the purpose of ensuring better representation of unique, geographic, or diverse community interests, a CPG may create separate "appointed seats." Where appointed seats are created, a CPG's Terms and Conditions must specify the rights and duties of those appointed members, such as whether the appointed members may vote and count toward a quorum of the group. Elected CPG members, plus those appointed members who the CPGs authorize to vote, together constitute the "voting members" of the CPG.

To be recognized, a CPG must ensure that voting members meet the following minimum qualifications to serve: the voting member must be at least 18 years of age, and must be affiliated with the community as a: (1) property owner, who is an individual identified as the sole or partial owner of record, or their designee, of a real property (either developed or undeveloped), within the community planning area; (2) resident, who is an individual whose primary address of residence is an address in the community planning area; or (3) local business person, who is a local business owner, operator, or designee at a non-residential real property address in the community planning area. Only one representative of a particular business establishment may hold a seat on the community planning group at one time. **[15C] "**Residents" includes renters, who should be given a pro-rata share of seats to fairly reflect the community. To ensure renters are sufficiently represented, CPGs may create seats designated for renters within their communities.

Eligibility (and demonstration of eligibility) to vote may be further defined in the CPG's Terms and Conditions. This may include minimum attendance requirements, **[13B]** but should not require attendance at more than one meeting in the previous 12-month period. Once eligibility to vote in an election is established, an individual remains eligible until he or she does not meet the eligibility requirements.

A voting member of a CPG must retain eligibility during the entire term of service. A CPG must include in their Terms and Conditions procedures for removal of members for failure to retain eligibility, which should provide affected members with fair notice and require ineligibility determinations to be supported by documentation.

[20B] Each recognized CPG must gather certain demographic data of existing and new CPG voting members, at the time of elections or other regular periods such as annually, to ensure inclusion and diversity on the CPG. However, participation in any survey of demographic data must be voluntary, and must be conducted in a manner to ensure the privacy of responses and respondents. The CPG may not request this information as part of an application with personal identifying information.

The demographic data gathered should include age range, nature of relationship to community (home owner, renter, or business owner), duration of relationship to community, ethnicity, race, gender, professional background or expertise, and length of service or involvement with the CPG. [**22A]** The City will assist with this data gathering and with outreach efforts to broaden the scope of diversity and inclusion in participation on CPGs to the extent possible.

E. Open and Public Elections.

CPGs must develop election procedures to ensure equal participation by all members of a community, including limiting the time that members of a recognized CPG can serve. [14A] All members of the community within the boundary of a CPG are allowed to vote in CPG elections, and no additional qualifications, such as attendance requirements, may disqualify someone from voting. No voting requirement can be stricter than allowed by California law.

[18A] Each recognized CPG must adopt provisions within its operating procedures that will govern the election or appointment of voting members of the CPG, their removal if necessary, and the process to fill vacancies. These provisions should provide for a fair and transparent process, intended to ensure broad outreach to the community and the principles of inclusion and diversity in CPG operations.

[16B] When elections for CPG members take place in person, CPGs should adopt procedures to ensure a fair and open process; for example, making voting available for at least two hours at the time and place of the CPG's regularly scheduled meeting.

Recognized CPGs must establish term limits to ensure that the organization is not dominated over time by individual members or groups within the community. Recognized CPGs must implement term limits, using the following guidelines: no person should serve on a CPG for more than eight consecutive years if members are elected to two- or four-year terms, or nine consecutive years if members are elected to three-year terms. The eight- or nine-year limit refers to total service time, not to individual seats held. After a one-year break in service as a CPG member, an individual who had served for eight or nine consecutive years should again be eligible for election to the group.

CPGs may develop procedures for waiving this limitation in service by vote of a recognized CPG if the CPG cannot find sufficient new members to fill all vacant seats after a good faith effort to do so. If a CPG exercises this waiver, the City recommends that it use the following guidelines: (1) a member may serve in excess of eight or nine consecutive years (as specified above) if there are fewer candidates than vacant seats and the member is reelected to a remaining open seat by at least a two-thirds majority of the votes cast by eligible community

members participating in the regular election; (2) the number of individuals on a CPG serving more than eight or nine consecutive years should not exceed twenty five percent of the elected members of the group; and (3) the term of a member elected by a two-thirds vote serving beyond eight or nine years should count as time served beyond the required break in service as required by this section.

F. Established Policies and Procedures.

Each CPG must establish operating procedures that include the Terms and Conditions set forth in this Policy. The operating procedures for each recognized CPG must ensure that the public has notice of the operations and activities of the CPG that includes the following topic areas:

1. Community Participation, suggested but not limited to: community outreach and recruitment of diverse representation on the CPG.

2. CPG Composition, suggested but not limited to: methods for anticipated conversion of planning group seats, such as developer seats or appointed seats, as applicable; general membership eligibility; recordkeeping, as applicable; and mechanisms to involve the community-at-large.

3. Conduct of Meetings, suggested but not limited to: meeting noticing, including subcommittees; meeting operations such as time limits on speakers and maintaining a civil meeting environment; subcommittee operations such as a process for project reviews and bylaw amendments; the role of the chair in
4. voting; and the role of the general membership, if any, or the public, in discussing agenda items.

5. Member and CPG Responsibilities, suggested but not limited to: filling vacant seats either during a term or following an election; how CPG positions will be reported to the City; and discipline or removal of an individual member.

III. TERMS AND CONDITIONS FOR RECOGNIZED CPGS.

A. Recognized CPGs must work with City staff throughout the planning process, including during the formation of long-range community goals, objectives, and proposals or revisions for inclusion in a General or Community Plan. **[24A]** The City will provide ongoing training on decision-making processes and planning.

B. A recognized CPG and its members must conduct themselves professionally and refrain from disrupting the public process as set forth on the CPG's agenda. Per the Brown Act, members of the CPG or members of the public may be asked to the leave the meeting if their disruptive conduct inhibits the progress of the meeting.

C. Recognized CPGs and their members must periodically seek community participation in the planning and implementation process to serve the best long-range interest of the community at large. **[28A]** CPGs are monitored by City staff, including the City's Planning Department, who will provide timely guidance to preclude requests for inappropriate project additions or modifications.

D. Recognized CPGs may develop a policy for financial contributions from the citizens of the community, in a manner that is consistent with the law and the CPG's corporate governance documents, if any, for the purposes of furthering the efforts of a group to promote understanding and participation in the planning process. However, no membership dues may be required, and no fee may be charged as a condition of attendance at any CPG meeting. All contributions must be voluntarily made, and no official CPG correspondence may be withheld based on any individual's desire to not make a voluntary contribution. Contributions must be maintained in an account at a recognized banking or financial institution and two signatures from different CPG-authorized individuals must be required for a transaction to occur. The City is not responsible in any manner for this account.

E. **[23B, 25B, 26A]** Recognized CPGs must develop a policy detailing the training requirements of all CPG voting members to complete the Community Orientation Workshop (COW) training, or eCOW, which is offered online, each year and each time they are elected, re-elected, appointed, or re-appointed. The training will include the Brown Act, project development review, and an advanced curriculum for returning members. The training should also include sessions for CPG members and the public to increase understanding of the review process and the roles and responsibilities of CPGs. Chairs and Vice-Chairs of CPGs and any CPG subcommittee or ad hoc committee should also attend advanced trainings in the development review process specific to CPG responsibilities and limits; CEQA review training; and an interactive component where new members can learn from experienced CPG members. These trainings will be provided by the City either online or in person. The training must meet the requirements of San Diego Ordinance O-19883. Newly seated CPG members must complete an orientation training session within 60 days of being elected or appointed to a CPG, or the member will become ineligible to serve.

F. Recognized CPGs must implement a policy that describes ethical standards for all CPG voting members and guards against CPG voting member conflicts of interest and undue influence.

IV. SCOPE OF ADVISORY RECOMMENDATIONS.

Recognized CPGs may make recommendations to the City Council, Planning Commission, City staff, and other governmental agencies on matters specifically concerning the preparation of,

adoption of, implementation of, or amendment to, the General Plan or a land use plan when a plan relates to each recognized CPG's planning area boundaries. Recognized CPGs may be called upon to advise on, or participate in, additional efforts such as identifying CIP infrastructure needs, as discussed in Council Policy 000-32. Pursuant to the provisions of Council Policy 600-33, a recognized CPG may be asked to review a park general development plan or capital improvements within the park if there is no City-recognized park advisory group. **[33A]** The Planning Department, in conjunction with the Development Services Department, must document CPG recommendations and post all CPG documents, including project review recommendations, on the City website. The City will provide clear and specific directions to locate all CPG documents.

Where the number of public hearings allowed for a development project is limited by law, the City may limit the number of public hearings a development project has before a CPG. This includes the ability of the City to bypass CPG hearings for a development project so as not to exceed the public hearing limit.

V. DEADLINES FOR RECEIPT OF RECOMMENDATIONS AND COMMENTS.

[2A] A CPG must submit an advisory recommendation on a development project to the City, via the Development Services Department Project Managers, within seven days of the CPG's approval of the recommendation. Any advisory recommendation submitted to the City eight or more days after the recommendation was approved by the CPG will not be considered by the City in its planning activities.

[3A] Each CPG must follow a uniform, mandatory process (mechanism) for recording and posting CPG project review recommendations. This process should either use a revised annual report that includes all project recommendations, or a Bulletin 620 Distribution Form revised to include the number of times the applicant presented to the CPG per project and any major conditions to the project proposed by the CPG.

[10B] For a development project that requires an Environmental Impact Report (EIR), a recognized CPG must submit its comments before the public review period closes. If a CPG does not provide its comments during the public review period, the comments or other recommendations will not be considered by the City.

The consistent failure of a recognized CPG to respond to the City's request for input on the preparation of, adoption of, implementation of, or amendment to, the General Plan or a community, precise, or specific plan, or failure to review and reply to the City in a timely manner on development projects may result in revocation of recognition under this Policy. Such a determination resulting in the forfeiture of rights to represent its community for these purposes must be made only by the City Council upon the recommendation of the Mayor.

VI. COLLECTIVE ACTION OF RECOGNIZED CPG.

The official positions and opinions of a CPG must not be established or determined by any organization other than the recognized CPG, nor by any individual member of the CPG.

VII. DISCRIMINATION PROHIBITED.

Recognized CPGs must not discriminate against any person or persons by reason of race, color, sex, gender, age, creed, national origin, ancestry, sexual orientation, marital status, military or veteran status, genetic information, medical condition, or physical or mental disability.

VIII. RIGHTS AND LIABILITIES OF RECOGNIZED CPGs.

A. Indemnification of CPGs.

It is the policy of the City Council that the City will indemnify, and the City Attorney will defend, a CPG or its individual members, acting in their advisory capacity to the City, under the specified terms set forth in San Diego Ordinance No. O-19883 NS, adopted July 28, 2009, titled "An Ordinance Providing for Defense and Indemnification of Community Planning Groups," (Ordinance), which may be amended from time to time. Defense and indemnification cover any claim or action of civil wrongdoing against a CPG or its duly elected or appointed members resulting from their obligations to advise and assist the City and its agencies with land use matters as specified in this Policy, so long as their conduct was in conformance with this Policy, all of the findings specified in the Ordinance can be made, and the rights to defense and indemnification are consistent with state law. The right to defense and indemnification do not apply to allegations of criminal wrongdoing, including alleged criminal violation of the Brown Act.

A CPG or individual member found to be out of compliance with the provisions of Council Policy 600-24, or with the group's adopted Terms and Conditions, risks loss of defense and indemnification pursuant to the Ordinance, and any future amendments.

B. Violations and Remedies Related to Provisions Citing the Brown Act.

Some provisions of this Policy are identified as requirements of the Brown Act, which include civil remedies (California Government Code sections 54960 through 54960.5) and criminal penalties (Government Code section 54959) for violation of its provisions. CPGs are expected to ensure good faith, voluntary compliance with the Brown Act and proactively cure violations themselves, to prevent legal actions that would void CPG actions. Individual members of a recognized CPG, as well as the group as a whole, could potentially be subject to civil remedies. Civil remedies may include relief to prevent or stop future or ongoing violations of the Brown Act, or to void past actions of a CPG, and may in some cases include payment of court costs and attorney's fees.

Individual CPG members may also potentially face criminal misdemeanor charges for attending a meeting where action is taken in violation of the Brown Act, if the member intended to deprive the public of information to which the member knew or had reason to know the public was entitled. Action taken includes collective decisions or promises, and also includes tentative decisions. Any CPG, or any of its individual members, may seek assistance, as well as training, from the City to better understand, implement, and comply with the Brown Act.

[**29B]** Any member of the public may refer alleged violations of the Brown Act by a recognized CPG to appropriate law enforcement agencies, including the California Attorney General, San Diego County District Attorney, or San Diego City Attorney's Criminal Division. Any CPG, or any of its individual members, accused of criminal violations of the Brown Act do not have the right to legal protection or representation under this Policy or San Diego Ordinance O-19883.

C. Council Policy 600-24 Violations and Remedies.

If a CPG violates this Policy, it may forfeit its status as a recognized CPG and lose its right to indemnification and defense by the City. A CPG member and the CPG itself risks loss of defense and indemnification pursuant to San Diego Ordinance No. O-19883 and any future amendments.

In the case of an alleged violation of Council Policy 600-24 or a CPG's adopted Terms and Conditions by a group member, the group must conduct an investigation consistent with the Policy.

In the case of an alleged violation of this Policy, the violation must be forwarded in writing to the City for review by the Mayor. The City will engage in a dialogue with the CPG to determine the validity of the complaint and to seek resolution of the issue or dispute.

If the Mayor is unable to resolve a dispute or determines that there has been a violation, the Mayor may seek to resolve the dispute or violation informally, with the cooperation of the CPG, or may recommend to the City Council that the CPG's recognition be revoked.

If the City Council determines through a recommendation from the Mayor that a CPG has violated this Policy and the CPG has failed to take corrective action deemed adequate in the sole discretion of the City Council, the City Council may revoke the CPG's recognition under this Policy. The City Council may also prescribe conditions under which official recognition may be reinstated.

D. Violations and Remedies for Quorum and Attendance Requirements

[**19B**] If a CPG is unable to meet quorum and attendance requirements for three consecutive months, then City staff may provide assistance to the community to place the CPG in a temporary inactive status, to allow the CPG to work through its membership issues to return to active status. If the CPG remains unable to meet quorum and attendance requirements for six consecutive months, then the Mayor may recommend to the City Council that the CPG's recognition be revoked.

ATTACHMENT B

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December 3, 2019

REPORT TO THE LAND USE AND HOUSING (LU&H) COMMITTEE

PRELIMINARY LEGAL ANALYSIS OF CITY COUNCIL POLICY 600-24 RELATED TO CITY OF SAN DIEGO COMMUNITY PLANNING GROUPS

INTRODUCTION

At its special meeting of December 5, 2019, the LU&H Committee (Committee) will discuss possible revisions to City Council (Council) Policy 600-24 (CP 600-24 or Council Policy) relating to the governance structure and functions of the City of San Diego (City)'s Community Planning Groups (CPGs). This Report is prepared to assist the Committee in its review.

The City presently recognizes 42 CPGs in accordance with CP 600-24, which was most recently amended by San Diego Resolution R-309298 (Nov. 14, 2014). CP 600-24 is titled "Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups." Council Policy 600-24. It defines CPGs as "private organizations," which may be "recognized by the City as the official voice of their community" in land use matters. *Id.* The City has recognized CPGs since 1966. *Id.*[1]

Once recognized, CPGs provide recommendations on the General Plan and other land use plans within the group's boundaries, as well as individual development projects. *Id.* City staff or other governmental agencies can request that CPGs provide recommendations on other matters, including infrastructure needs and park improvements. *Id.* If a CPG is not responsive to City requests, the CPG may lose its status as a City-recognized organization. *Id.*

On April 18, 2018, the San Diego County Grand Jury issued a report on CPGs, which was followed by the City Auditor's December 13, 2018 performance audit report on CPGs. Also, the City has received a report from "Circulate San Diego," a local organization. These reports raise questions about the governance, transparency, and functions of CPGs.

[1] This Office has issued several memoranda on CPGs in the past, explaining their distinct legal status from the City. *See, e.g.*, 1992 City Att'y MOL 366 (92-49; May 27, 1992) (explaining that "[t]here is no agency relationship established between the City and a particular community planning group by the City's mere recognition of a group. If anything, a community planning group is an agent of a particular community.").

Below, we provide an overview of legal issues associated with CPGs and general suggestions for either (1) amending CP 600-24 to better reflect the independent legal status of CPGs, or (2) other permissible options for restructuring CPGs consistent with the San Diego City Charter (Charter). If the LU&H Committee provides direction to move forward with amending CP 600-24, our Office will provide more specific, detailed recommendations for amending CP 600-24 consistent with the general legal principles outlined in this Report. In addition, we provide below our preliminary analysis regarding the applicability of conflict of interest laws to CPGs and options to ensure legal compliance.

DISCUSSION

I. CPGS MAY BE "RECOGNIZED" BY THE CITY IN A MANNER THAT DOES NOT CONFLICT WITH THE CITY CHARTER.

A. The Charter Establishes a Process to Create City-Operated Advisory Boards.

The Charter "represents the supreme law of the City, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law." *Domar Elec., Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 170 (1994). Generally, charter cities may engage in "self-governance" of "municipal affairs." *Johnson v. Bradley*, 4 Cal. 4th 389, 398 (1992).[2] Land use decisions are "municipal affairs." *DeVita v. County of Napa*, 9 Cal. 4th 763, 782 (1995) (stating that land use regulation is "a function of local government under the grant of police power contained in California Constitution, article XI, section 7"). *See* also Cal. Const. art. XVI, § 5(b).

Although the City has the power of "self-governance" of "municipal affairs," the City cannot violate its Charter. Any City action "that is violative of or not in compliance with the charter is void." *Domar Elec., Inc.*, 9 Cal. 4th at 171. But, any limitation or restriction of the exercise of the City's municipal power will not be implied; it must be "expressly stated in the charter." *Don't Cell Our Parks v. City of San Diego*, 21 Cal. App. 5th 338, 349 (2018); *City of Grass Valley v. Walkinshaw*, 34 Cal. 2d 595, 598-99 (1949). This means that, absent an express limitation or restriction in the Charter or one in governing state law, the City may act upon matters that are "municipal affairs."

Charter section 43 authorizes the Council to "create and establish" advisory boards, by ordinance, and to determine the advice the bodies will provide to the Mayor or Council. San Diego Charter § 43(a). The Charter provides that the Mayor will appoint and the Council will confirm the members of these advisory boards and commissions, and that such appointees are considered employees of the City who serve without compensation. San Diego Charter §§ 43(a), 117(a).

[2] A comprehensive discussion of the power of charter cities is beyond the scope of this Report. But we note that article 11, section 5 of the California Constitution sets forth the general principle of "self-governance" for charter cities. Cal. Const. art. XI, § 5(a). The principle of "self-governance" of "municipal affairs" is limited by state law that covers matters "of statewide concern," but only when there is "a genuine conflict" between the local measure and the state law. *Johnson,* 4 Cal. 4th at 398.

Members of these boards and commissions have a duty "to consult and advise the Mayor, Council or City Manager" [now, Strong Mayor under the Strong Mayor form of governance, in accordance with Charter sections 250, 260, and 265], but may not "direct the conduct of any Department or Division." San Diego Charter § 43(a). Members of these advisory bodies are limited to eight consecutive years in office, with four-year breaks before a member may be reappointed. *Id.*

Charter section 43(b) authorizes the Mayor or Council to "create and establish citizens' committees. . . . only for the purpose of advising on questions with clearly defined objectives." San Diego Charter § 43(b). These citizens' committees must be "temporary in nature" and must "be dissolved upon the completion of the objectives for which they were created." *Id.* The members of these citizen committees "serve without compensation." *Id.*

While the Charter sets forth the process to "create" City advisory boards and commissions, there is no provision in the Charter that limits or restricts the Council's authority to also "recognize" certain independent organizations, including CPGs.

B. The Charter Does Not Limit or Prohibit the "Recognition" of Independent Community Organizations That Also Perform an Advisory Role.

By their formation and structure, CPGs do not fall under Charter section 43. CPGs are not created by ordinance; their members are not City employees and are not appointed by the Mayor and confirmed the Council; and their members do not have express duties set forth in the Charter or by ordinance of the Council.

Rather, the Council expressly defines CPGs as independent "private organizations" that are "voluntarily created and maintained by members of communities within the City," meaning CPGs have legal status separate from the City. Council Policy 600-24. CPGs may be unincorporated associations, or may be incorporated under the laws of the State of California and required to maintain corporate governance documents, including corporate bylaws. *Id. See generally* Cal. Civ. Proc. Code § 369.5; Cal. Com. Code § 1201(b) (25)-(27); Cal. Corp. Code §§ 5140, 18105, 18115, 18120. CPGs may participate in more activities than the functions for CPGs set forth in CP 600-24, including serving as community town councils, hosting community events, and fundraising.

As discussed more fully below, the Council, by resolution, formally "recognizes" CPGs to make land use recommendations on behalf of their communities. "Recognition" means "[t]he formal admission that a person, entity, or thing has a particular status." *Recognition, Black's Law Dictionary*, 1463 (10th ed. 2014). CP 600-24 describes the relationship between the City and CPGs, as follows:

> The City does not direct or recommend the election of specific individual members following the initial recognition of the community planning group, nor does the City appoint members to groups, or recommend removal of individual members of a group. The City does not delegate legal authority to community planning

> groups to take actions on behalf of the City. Community planning groups are voluntarily created and maintained by members of communities within the City.

Council Policy 600-24, as amended by San Diego Resolution R-309298 (Nov. 14, 2014).

The Council only votes to recognize new CPGs after community members form the groups and adopt bylaws consistent with CP 600-24. As independent groups, CPGs can provide advice to a broader audience than what is permitted by Charter section 43(a) advisory boards, such as other governmental agencies. And while Charter section 43(a) boards and commissions are part of the structure of the City, as a municipal corporation, CPGs are not under the umbrella of the City.

In recognizing CPGs as "the official voice of the community," the Council must ensure compliance with applicable laws, such as equal access to the legislative process for all community organizations, consistent with the equal protection provisions of the federal and California constitutions. U.S. Const., amend. XIV; Cal. Const. art. I, § 7.[3] Any greater access to the legislative process or more preferential treatment of CPGs by the City, as compared with other independent community organizations, must be "rationally related to a legitimate governmental purpose." *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457-58 (1988). Under the "rational basis" test applied by reviewing courts in equal protection challenges to legislative enactments, the United States Supreme Court has explained that courts "will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

The City does not require CPGs to provide specific recommendations or approvals as part of the planning and development approval process, which is set forth in the San Diego Municipal Code (Municipal Code or SDMC), nor are CPGs decisionmakers in land use and planning matters. Rather, like any stakeholder may, they offer input, through a structured process, that is intended to reflect the views of the community members impacted by a proposed plan or project. City staff and policymakers are not required to act on such advice. Therefore, in this regard, CPGs are not treated differently from other community organizations and their involvement in the land development process does not create equal protection concerns.

[3]We also note that California Constitution, article I, section 7(b), prohibits the government from granting special treatment. It states: "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked."

However, the Municipal Code does require the City to provide notice of certain projects and applications to the CPGs, and it provides additional time for CPGs to make recommendations prior to decisions when requested by a CPG's chair or designee. *See* SDMC §§ 112.0302, 112.0503, 112.0602.[4] In addition, CPGs are permitted to appeal discretionary development decisions and environmental determinations without paying fees. SDMC § 112.0203.[5]

In adopting CP 600-24 and in authorizing the defense and indemnification of CPGs, the Council has expressly determined that "the development of community plans requires the cooperation and participation of citizens who have the personal knowledge of the needs and aspirations of their respective communities," and CPGs provide "a formal organizational structure for coordination and communication with City planning staff." San Diego Ordinance O-19883 (July 28, 2009) (Ordinance O-19883) (discussed more fully below). This is an articulated governmental purpose, providing a basis or reason to support the City's practice of providing CPGs with formal notice and a systematic means to be heard.

II. THE COUNCIL MAY REQUIRE CPGS TO COMPLY WITH CERTAIN OPERATING STANDARDS AND PROCEDURES, SO LONG AS THE INDEPENDENT LEGAL STATUS OF CPGS IS MAINTAINED.

As part of the Council's "recognition" of CPGs, CP 600-24 requires that they meet certain "minimum operating procedures governing the conduct of community planning groups when they operate in their official capacity." These "minimum standards" include adherence to specified bylaws or rules. Council Policy 600-24. Under the current policy, CPGs must submit bylaws conforming to the requirements of CP 600-24 for the Council to recognize a CPG group by resolution. *Id.* Subsequent amendments to a CPG's bylaws must also be approved by the Council by resolution. *Id.*

Members of City boards and commissions are defined as City employees under Charter section 117, but CPG members are not. Therefore, it is important to establish clear boundaries between the City and CPGs and their members to ensure that the City does not unwittingly create an employment, agency, or servant relationship with CPG members, where one cannot lawfully exist and that may create unwarranted liability for the City.

As a governmental entity, the City's potential liabilities, defenses, and immunities are determined by statutes. *See, e.g.,* Cal. Gov't Code § 814 (defining scope of liability based on contract); Cal. Gov't Code § 810, *et seq*. (California Government Claims Act). *See also Foster v. County of San Luis Obispo*, 14 Cal. App. 4th 668, 672 (1993); *McCarty v. State of California Dept. of Transp*., 164 Cal. App. 4th 955, 975 (2008); *Conway v. County of Tuolumne*, 231 Cal. App. 4th 1005, 1013-1014 (2014) (discussing governmental immunity for discretionary acts). As

[4] For example, on a Process Two application, staff usually must make a decision to approve, conditionally approve, or deny an application within 11 business days. SDMC § 112.0503. If a CPG requests to review the application, staff has an additional 20 days to make that decision. *Id.*

[5] The purpose of fees and deposits, under Municipal Code section 112.0201, is "to ensure full cost recovery for the services provided" by the City in processing applications for development in the City. SDMC § 112.0201.

a general rule, the City is not liable for the acts of independent contractors,[6] and, therefore, the City must clearly know where boundaries lie. As a general rule, whether an entity is clearly independent (and not responsible for the acts of others) or is an agent or servant of another depends on the level of control and direction asserted in the relationship. *See, e.g., Yucaipa Farmers Co-op. Ass'n v. Indus. Acc. Comm'n*, 55 Cal. App. 2d 234, 237–38 (1942); *McCarty*, 164 Cal. App. 4th at 976.

We find some ambiguity in certain language of CP 600-24 that may create confusion as to the City's legal relationship with CPGs, and we recommend that this relationship be clarified. Where the Council Policy currently describes CPGs as being "formed" or "created by an action of the City Council," we read this language to mean the process the Council uses to "recognize" a CPG. We recommend amending this language to make it clear that CPGs are not City-created bodies, but independent legal entities.

Although CPGs are independent organizations, the City may require them to comply with certain conditions as a condition of recognition, such as holding open, public meetings consistent with the Ralph M. Brown Act, or retaining and providing records.[7]

Further, the City should maintain a clear separation from the governance of CPGs, especially because CPGs may engage in activities that do not involve the City, such as community events and fundraising. CPGs must comply with state laws that govern associations and corporations, as applicable. As stated above, the Council may require compliance with additional rules, as long as those rules do not infringe upon the independence of CPGs to engage in their own governance and business activities.

If the Committee so directs, we are available to conduct a comprehensive review of the current provisions of CP 600-24 and any proposed amendments to ensure that provisions are consistent with our Charter and do not infringe upon the independence of CPGs.

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[6] See Cal. Gov't Code § 810.2 (excluding "independent contractor" from the definition of "employee" under the California Government Claims Act). The California Supreme Court has stated: "An independent contractor is one who renders service in the course of an independent employment or occupation, following his employer's desires only as to the results of the work, and not as to the means whereby it is to be accomplished." McDonald v. Shell Oil Co., 44 Cal. 2d 785, 788 (1955).

[7] This Office has previously opined that, for purposes of the Ralph M Brown Act (Brown Act), found at California Government Code sections 54950 through 54963, CPGs were created by the City because the act of recognizing them by Council Policy gave them the "legal breath of life," providing them with their "*raison d'etre*." 2006 City Att'y MOL 665, 668 (2006-26; Oct. 27, 2006). It is important to note that courts interpret "creation" broadly for purposes of determining applicability of the Brown Act. *See* City Att'y MS 2019-13 (May 8, 2019), "Potential Application of the Ralph M. Brown Act and Public Records Act to the Activities of the NTC Foundation," at 6.

III. THE CITY MAY DETERMINE THAT THERE IS A PUBLIC PURPOSE TO DEFEND AND INDEMNIFY CPGS IN THEIR INTERACTIONS WITH THE CITY.

Although CPGs are independent, private groups, the City has indemnified CPGs and their members from claims arising from specified activities since 1988. San Diego Ordinance O-17086 (Apr. 25, 1988). While Charter section 93 precludes the use of City funds for private purposes,[8] the Council may determine there is a public purpose for indemnification. Courts will rarely disturb a legislative determination that an expenditure serves a lawful public purpose if there is a reasonable basis for it. *Bd. of Sup'rs. of the City and County of San Francisco v. Dolan*, 45 Cal. App. 3d 237, 243 (1975). Whether a public purpose is served by providing resources to CPGs and indemnifying its members is a legislative determination made by the Council. *See* 2000 City Att'y MOL 151 (2000-1; Jan. 4, 2000).

Consistent with Charter section 93, Ordinance O-19883 sets forth a public purpose for providing indemnification of CPGs and their members, as follows:

> 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 General Plan; and
>
> WHEREAS, both community planning group members and non-members serve together on subcommittees of community planning groups and perform a necessary function in the planning process; and
>
> WHEREAS, the voluntary efforts of community planning groups and subcommittee members are of inestimable value to the citizens of the City of San Diego . . . .

San Diego Ordinance O-19883 (July 28, 2009).

Thus, the Council determined, by ordinance, that indemnifying CPGs and their members "would constitute expenditure of public funds which serves the highest public interest and purpose." *Id.*

[8] The pertinent provision in Charter section 93 is: "The credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor." Charter section 93 has been interpreted consistently with the prohibition on gifts of public funds found in article XVI, section 6 of the California Constitution, requiring a public purpose to be established by the legislative body to justify the use of public resources. *See Tevis v. City and County of San Francisco*, 43 Cal. 2d 190, 197 (1954), *City and County of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 103-04 (1988).

The Council may also determine that there is a public purpose to provide CPGs with legal defense in certain circumstances. We note, though, that the City Attorney's involvement in that defense must be consistent with the Charter section[9] and the California Rules of Professional Conduct. Representation of CPGs by the City Attorney is described in Ordinance O-19883, and only extends to defense of specific claims arising from an action at a meeting or authorized at a meeting for duties under CP 600-24 and not in violation of the group's bylaws. Some provisions of CP 600-24 and administrative guidelines suggest that the City Attorney is available to advise on issues beyond specific claims, such as advising on incorporation and other corporate governance issues. Such advice is presently beyond the scope of Ordinance O-19883.[10] In our view, CP 600-24 should be amended to accurately describe the scope of the City Attorney's defense of CPGs, in a manner consistent with the California Rules of Professional Conduct, including Rule 1.13 (covering attorneys and organizational clients).

Further, to ensure the independence of CPGs, we do not recommend that the Council expand the scope of defense and indemnification of CPGs beyond the specific claims as outlined in Ordinance O-19883. Indemnification should avoid City involvement in internal CPG disputes to preserve their independence. Although the City Attorney is available to assist City staff when legal issues arise with CPGs, providing legal advice directly to CPGs and their members on governance and operations could raise issues with the City Attorney's obligations under the California Rules of Professional Conduct.

IV. MEMBERS OF CPGS MAY BE REQUIRED TO COMPLY WITH STATE AND LOCAL LAWS RELATED TO CONFLICTS OF INTEREST.

Under the California Political Reform Act (Political Reform Act), which is set forth at California Government Code sections 81000 through 91014, "[n]o public official . . . shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Cal. Gov't Code § 87100. A "public official" is defined as "every member, officer, employee or consultant of a state or local government agency" Cal. Gov't Code § 82048(a). While CPG members are not City officers, employees, or paid consultants, they may still be covered under the Political Reform Act, based on guidance from the Fair Political Practices Commission (FPPC or Agency), the state agency that administratively enforces the Political Reform Act."

[9] The City Attorney is the chief legal adviser and attorney for the City. San Diego Charter § 40. By ordinance, the Council may require the City Attorney to perform other duties of a legal nature not enumerated in Charter section 40. *Id.*

[10] The City Attorney's Office has created a Brown Act training video that can be accessed by CPGs as needed. The California Attorney General also provides written Brown Act guidance.

In a February 8, 2013 "informal assistance" letter (Mehnert Advice Letter, No. I-12-102), the FPPC advised the County of San Diego that the members of its "Planning Groups," may be "public officials," requiring the County to include them in its conflict-of-interest code if the members have decision-making authority.[11] The FPPC explained that it is up to the code reviewing body, which is the Council for the City, to determine whether individual positions within the agency's structure must be included in the agency's conflict-of-interest code. It is a factual determination whether certain positions are covered.

The FPPC explained that it had previously advised that an advisory body does not have decision-making authority, under the Political Reform Act, where:

> [T]he enabling authority (such as charter, ordinance or policy) stated that the committee (a) could not contract for the services of a consultant unless directed to do so by city staff and the consultant had to be selected by staff; (b) only had authority to assist the various decision-makers; or (c) had no power to implement its own recommendations.

Id. (citations omitted).

Based on this standard, the FPPC explained that the members of the County's "Planning Groups" had no "authority to adopt rules, rates or regulations; enter into contracts; hire or fire personnel or consultants or make purchases without prior approval by staff or a decision-making body." But the FPPC noted an additional factual inquiry that should be addressed before concluding that the members of the "Planning Groups" were not covered. The Agency cited its regulation and explained that a local agency must assess:

> [T]he extent to which a Planning Group's recommendations have been followed in the past. We have advised that if there is a history or track record of the decision-maker "rubber stamping" an advisory body's recommendations, the advisory body will be considered to have decision-making authority. This test, even more than the others, is fact dependent.

Id. (citations omitted).

Because the FPPC advises that code reviewing bodies, which is the Council in this City, must make a factual determination of whether certain positions apply, we recommend that the City conduct this factual analysis.

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[11] In a 2010 Memorandum, this Office, this Office explained that the Political Reform Act applies to members of advisory boards with final decision-making authority. 2010 City Att'y MS 1030 (2010-12; Oct. 8, 2010). It also applies if an advisory body to a public agency makes substantive recommendations that are, and over an extended period have been, regularly approved by the public agency without significant amendment or modification by a public official or agency. *Id.* (citing Cal. Code Regs. Title 2,§ 18701(a)). The 2013 FPPC informal guidance may be found at http://www.fppc.ca.gov/content/dam/fppc/documents/advice-letters/1995-2015/2012/12102.pdf. 2010 City Att'y MS 1030 (2010-12; Oct. 8, 2010).

The Council may also consider adopting an ordinance expressly exempting the CPGs from conflict of interest codes, but only if consistent with the Political Reform Act. The Council must clearly remove CPGs from any decision-making activities, if any presently exist. The City of Los Angeles serves as an example to this approach. In 1999, the City of Los Angeles adopted an ordinance setting forth an exemption modeled on the FPPC exemption for its neighborhood councils (which are equivalent to CPGs). Los Angeles Admin. Code § 2.20.1.[12] In informal advice to the City of Los Angeles, the FPPC explained that the "City Council may enact and determine the applicability of similar exemption criteria for any entity for which the City Council is the code reviewing body." Los Angeles Ordinance No. 176477 (Feb. 15, 2005). Based on this advice, the Los Angeles City Council exempted its neighborhood councils from complying with conflict of interest codes and members from submitting financial disclosures. Los Angeles Admin. Code § 2.20.1.[13]

V. OPTIONS FOR AMENDING COUNCIL POLICY 600-24 AND ALTERNATIVES

Best practices indicate that the City's governing documents, including CP 600-24, should be reviewed periodically. To assist the Committee, we have identified the following legal options for updating the Council Policy:

A. Amend CP 600-24 to Ensure CPG Independence

If the Committee, or Council, wishes to continue to recognize CPGs as independent groups, the City should, at minimum, amend CP 600-24 to provide general guidelines for CPGs, rather than detailed operational requirements. The new guidelines should set forth broad requirements to allow for transparency and public participation in recognized groups. Amendments should also be made to the CPG Administrative Guidelines, Ordinance O-19883, and any other internal documents used by the Planning Department to communicate the role of CPGs to community stakeholders in the planning process. If the City wishes to proceed in this manner, we recommend amending the Council Policy to clarify that CPGs are not Charter "created" bodies, but independent organizations separate from the City. The Council should also address the issues we raise in this Report, such as the scope of defense and indemnity and the role of the City Attorney's Office.

[12] As explained in the ordinance approving the inclusion of the exemption in the Administrative Code, the City based its exemption on an FPPC exemption for groups that: (1) have no regulatory, quasi-regulatory, permit, licensing or planning authority or functions; (2) will not acquire real property in the foreseeable future; and (3) have an annual operating budget exclusive of salaries that is less than $70,000. Los Angeles Ordinance No. 176477 (Feb. 15, 2005); Cal. Code Regs. Title 2, §18751 (salary amount has since increased to $150,000 in FPPC Regulation).

[13] If the City were interested in such an ordinance, this Office is available to work with staff to complete the legal review necessary to develop a City exemption modeled after the FPPC exemption.

B. Repeal CP 600-24 and Create New Advisory Bodies by Ordinance

If the Council wishes to control CPG internal operations and appoint all CPG members, it should repeal CP 600-24 and create new advisory bodies by ordinance consistent with Charter section 43(a). The ordinance should outline the new boards' advisory role. Further, the ordinance should establish that these advisory bodies will be governed by the same standards as other Charter section 43(a) boards; like other City advisory boards, their members will be deemed City employees. This will require repeal or amendment of Ordinance O-19883, as the members of the new boards will be entitled to the same legal defense and indemnity as provided to other Charter section 43(a) boards and their members.

Neither the formation of new advisory bodies nor repeal of CP 600-24 would extinguish the existing CPGs. Due to their independent nature, unincorporated associations and incorporated CPGs could continue operating or cease operations pursuant to their governing documents. Further, CPGs would only receive notice of projects or fee-free appeals if otherwise provided in the Municipal Code.

C. Amend the Charter to Expressly Create CPGs as City-created Bodies and Define Their Organizational Structure and Governance.

If the Council wishes to control CPG internal operations, but not in the same manner as a Charter section 43 advisory board, then the Council must present a Charter amendment to City voters. By expressly authorizing CPGs in the Charter, the City could formalize their organizational structure and governance, including selection of members and express duties to advise the Planning Commission and other governmental entities. This Office is available to review the legal viability of City-controlled CPGs with community-elected members. Alternatively, the Council may consider a Charter amendment to set forth the parameters of a system of independent groups similar to the one that exists in the City of Los Angeles. We are available to assist in providing further advice and drafting a proposed Charter amendment, at the direction of the Committee or the full Council.

CONCLUSION

Although CP 600-24 provides community members with a voice in the planning process, the City does not take formal action to create CPGs and, other than providing requirements for recognition in CP 600-24, does not participate in their formation. Therefore, if the City chooses to proceed with amending CP 600-24, we recommend that the policy be clarified to better reflect CPGs' status as independent entities, consistent with the Charter. The Council Policy should also clarify the scope of the defense and indemnification of CPGs, which the City may provide in specific circumstances, upon a determination by the Council that these provisions serve a public purpose. In addition, the role of the City Attorney's Office should be clarified consistent with Charter section 40 and the City Attorney's duties under the California Rules of Professional Conduct.

If the Committee so directs, we can analyze all provisions of the Council Policy to ensure that the City's legal relationship with CPGs is clearly defined. Alternatively, the City has the option of dispensing with the Council Policy and either creating City-operated advisory boards consistent with Charter section 43 or amending the Charter to create some hybrid structure. Finally, we recommend that City staff review the history of each CPGs' recommendations to the City to determine whether conflict of interest codes must be adopted and whether members should be making financial disclosures. In the alternative, the City may consider adopting an ordinance in accordance with FPPC regulations.

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LAND USE AND HOUSING COMMITTEE MOTIONS FROM "MENU OF OPTIONS" (ALSO ATTACHED) WITH CITY ATTORNEY COMMENTS

RECOMMENDATION	LOCATION IN DRAFT	COMMENTS
1A	Section II	
2A	Section V	
3A	Section V	
4A	Section II	
5A	Section II	
6A	Section II	
7A	Section II	This recommendation is for each CPG to determine a maximum duration for each meeting, with the ability to extend the time by a majority vote of the CPG. This recommendation impermissibly intrudes on internal governance of an independent legal entity. Therefore, we modified the recommendation to encourage CPGs to follow certain rules and procedures in order to maximize community participation.
8A	"Purpose" Section	
10B, but replace the first two "recommendations" with "comments" so that it reads: "For a development project that requires an Environmental Impact Report (EIR), the CPG must submit their comments before the public review period closes. If a CPG doesn't provide comments during the public review period, their recommendations will not be considered for the project."	Section V	

RECOMMENDATION	LOCATION IN DRAFT	COMMENTS
11B	Section II	This recommendation is for each CPG to prioritize action items that inform City decision-making in the order of the agenda. While this recommendation may benefit project proponents and City staff by ensuring that their matters will be taken promptly during a meeting, this recommendation impermissibly intrudes on the internal governance of an independent legal entity. For example, there may be a non-City matter that the CPG wishes to take up first because of their own priorities, and CPGs should have the authority to set their own agendas. Thus, we modified the recommendation to encourage high placement on the agenda as a courtesy to City staff.
12A	NOT INCLUDED	This recommendation is for members of appropriate City staff to attend when a discretionary land use item is before a CPG. This is an issue for the administrative service of the City under the Mayor and should not be included in the Council Policy. The Mayor and his administrative staff can determine when appropriate for them to attend, and they can also develop administrative procedures to communicate with CPGs. Thus, this recommendation is beyond the scope of a Council Policy, and we did not include it.
13B	Section II	
14A	NOT INCLUDED	This recommendation states that community members should not be required to have attended previous CPG meetings to be eligible to vote to elect members. This recommendation impermissibly intrudes on the internal governance of an independent legal entity. Thus, we did not include it.
15C	Section II	This recommendation had to do with renters qualifying as "residents" for purposes of CPG membership. We modified the language to address renter representation, but not dictate a specific number of seats, consistent with the CPGs' independent status. We also included language allowing CPGs to create designated renter seats if desired.
16B	Section II	This recommendation stated that in-person voting "must" be held open for at least two hours. We modified the language to require a fair and open process generally, and suggested that voting "should" be held open for at least two hours, so as not to overly intrude on the internal operations of an independent legal entity.

RECOMMENDATION	LOCATION IN DRAFT	COMMENTS
17A	Section II	
18A	Section II	
19B, but to include language related to allowing a community planning group to be classified as inactive if it fails to meet for three consecutive months and a process for how a community planning group can be reactivated after being classified as inactive	Section VIII	
20B with the word religion deleted	Section II	
21B	NOT INCLUDED	This recommendation is to require a termed-out board member to wait two years until they can run for their CPG again without exceptions. This recommendation impermissibly intrudes on the internal operations and governance of an independent legal entity. Like other provisions related to elections of members, we have not included this recommendation.
22A	Section II	
23B	Section III	
24A	Section III	
25B, but add "eCOW" so it reads: "The COW or eCOW will include. . . ." and "There should be specific training at the COW or eCOW."	Section III	
26A, but add the word "Mandatory," so it reads: "Mandatory training segment focused entirely on project development reviews."	Section III	

RECOMMENDATION	LOCATION IN DRAFT	COMMENTS
28A	Section III	
29B, with clarification that disciplinary review would only take place after multiple violations	Section VIII, but without edit that impermissibly limits the authority of the City Council to engage in future discretionary decisions.	
30B	NOT INCLUDED	This recommendation is to revise the bylaws shell. This recommendation impermissibly intrudes on the internal governance of an independent legal entity. However, in lieu of bylaws, the City may provide CPGs a suggested/sample operational procedures document, which is meant to be a resource and not mandatory
31A	NOT INCLUDED	This recommendation is to require the CPC to approve a standardized annual report template. It also requires the City to make available software. The provisions involve CPC and its policy, which should be separately reviewed. In addition, the requirement of the City to provide software to a separate legal entity triggers the possibility of an impermissible gift of public funds. Further, this recommendation is better suited for a discussion of administrative support by the City's administrative departments. However, the City may provide CPGs a suggested/sample report that would be acceptable to the City.
32A	Section II	This recommendation is for the City Auditor to conduct a review of all City-retained CPG documents every five years. This presents a concern under the City Charter because the City Auditor is independent and does not take direction from the City Council. However, we were able to include this item as a recommendation that such periodic audits be conducted by the City Auditor.
33A	Section IV	