



March 5, 2020

Council President Georgette Gomez
City Administration Building
202 "C" Street, 10th Floor
San Diego, CA 92101

RE: Options for the City Council on Community Planning Group Reform

Dear Council President Georgette Gomez:

On behalf of Circulate San Diego, whose mission is to create excellent mobility choices and vibrant, healthy neighborhoods, I am writing to present options for how the City Council can reform Community Planning Groups (CPGs), to comply with advice from the City Attorney.

In December of 2019, the City Attorney issued a memorandum on CPGs and found that the City must institute reforms to comply with state and local laws.

Over the last few years, Circulate San Diego, the City Auditor, and the County Grand Jury have all argued for reforms to CPGs. In December, the City Council's Land Use and Housing Committee voted to move reforms forward.

Attached to this letter is a memorandum to clarify the choices before the City Council on the future of CPGs. Consistent with the advice of the City Attorney, the City Council has four main reform options:

- Option One: CPGs Remain Part of the City's Decisionmaking Process and Continue to be Elected (Requires Charter Amendment and Financial Disclosure Requirements).
- Option Two: CPGs to Become Independent and Removed from the City's Decisionmaking Process, and Continue to be Elected (Requires Council Policy and Municipal Code Amendments).
- Option Three: CPGs Remain Part of the City's Decisionmaking Process with CPG Members Appointed by the Mayor (Requires Ordinance Creating New Boards and Council Policy Amendment, and Financial Disclosure Requirements).
- Option Four: CPGs to be Removed from the City's Decisionmaking Process to Avoid Financial Disclosure Obligations, and Are Appointed by the Mayor (Requires Ordinance Creating New Boards and Council Policy Amendment).

While the Council has several options for how to proceed, the City Attorney has made clear that reform is required to meet the City's legal obligations, and to ensure fairness and equity in the City's decisionmaking. Not taking any action is not an option.

The City Council must take up CPG reform and provide direction for the City Attorney for which option the Council wishes to pursue.

Thank you for your efforts on this matter. Circulate San Diego remains committed to help the City move forward with this reform process.

Sincerely,

A handwritten signature in blue ink that reads "Colin Parent". The signature is written in a cursive, flowing style.

Colin Parent, Esq.
Circulate San Diego, Executive Director and General Counsel

cc:

Mayor Kevin Faulconer
City Attorney Mara Elliott
Council President Pro Tem Barbara Bry
Councilmember Jennifer Campbell
Councilmember Chris Ward
Councilmember Monica Montgomery
Councilmember Mark Kersey
Councilmember Chris Cate
Councilmember Scott Sherman
Councilmember Vivian Moreno
Planning Director Michael Hansen
Development Services Director Elyse Lowe

March 5, 2020

To: Council President Georgette Gomez
CC: Mayor Kevin Faulconer, City Attorney Mara Elliott, City Councilmembers
From: Circulate San Diego

Subject: Options for the City Council on Community Planning Group Reform

I. Introduction: Action must be taken to reform Community Planning Groups.

Over the past several years, calls for the City to consider reforms to Community Planning Groups (CPGs) have come from many sources, beginning with Circulate San Diego,¹ and including the San Diego County Grand Jury,² the City Auditor,³ and now the Land Use and Housing Committee of the San Diego City Council.⁴ A new analysis by the City Attorney⁵ establishes that reform is not only recommended; it is legally required.

The advice from the City Attorney clearly and unmistakably calls for action by the City Council: there is no option to maintain CPGs in their current form under the City Attorney's analysis.

As a longtime advocate for CPG reform, Circulate San Diego concurs with the City Attorney that action by the City Council is necessary and recommends the City Council follow the City Attorney's analysis. We continue to support the recommendations recently forwarded to the full Council by the Land Use and Housing Committee and ask the Council to consider all of these recommendations.

II. The City Council must answer two fundamental questions: (1) how CPG members should be selected, and (2) what role CPGs should play in the City's decisionmaking process.

As part of the CPG reform process, the City Council must consider two fundamental policy questions identified by the City Attorney. Stated generally, the City Attorney tasks the City Council with deciding two questions: (1) how CPG members are selected and (2) what role should the CPGs have in the City's decisionmaking process?

¹ Circulate San Diego, Democracy in Planning (February 12, 2018), available at <http://www.circulatesd.org/democracyinplanning>.

² County of San Diego Grand Jury, Report on Community Planning Groups (April 18, 2018), available at <https://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2017-2018/SanDiegoCommunityPlanningGroups.pdf>.

³ City Auditor of the City of San Diego, Performance Audit of Community Planning Groups (December 2018), available at https://www.sandiego.gov/sites/default/files/19-013_community_planning_groups.pdf.

⁴ City of San Diego Land Use and Housing Committee, Meeting Minutes for December 5, 2019, available at <https://onbase.sandiego.gov/OnBaseAgendaOnline/Meetings/ViewMeeting?id=1713&doctype=2>.

⁵ Office of the City Attorney of the City of San Diego, Preliminary Legal Analysis of City Council Policy 600-24 Related to City of San Diego Community Planning Groups (December 3, 2019), available at [https://d3n8a8pro7vhm.cloudfront.net/circulatesd/pages/211/attachments/original/1580656540/Response from City Attorney - 2019-12-10 - RC-2019-9.pdf?1580656540](https://d3n8a8pro7vhm.cloudfront.net/circulatesd/pages/211/attachments/original/1580656540/Response%20from%20City%20Attorney%20-%202019-12-10%20-%20RC-2019-9.pdf?1580656540), hereinafter referred to as the "Analysis."

First, the City Council must decide whether CPG members should continue to be elected by their communities or, instead, be appointed by the Mayor. If CPG members continue to be elected, CPGs must either be recast as independent but “recognized” entities, or changes to the City Charter will be required. In a previous memorandum, Circulate San Diego questioned whether City Charter section 43 applies to CPGs. As the City Attorney explains in their analysis, section 43 requires that members of an advisory body “created” by the City must be appointed by the Mayor. Policy 600-24 currently states that CPGs are “formed” and “created by an action” of the City Council, indicating that they fall within the definition of “advisory bodies” created by the City Council under Charter section 43 such that their members must be appointed by the Mayor. Changing to mayoral appointment of CPG members would place them on equal footing with the City’s other boards and commissions, but would undermine the ability of community members to select their own representatives and may prove to be politically untenable.

Second, the Council must decide what role CPGs should have. The City must decide whether CPGs should continue to be integrated into the City’s decisionmaking process or have their independence reestablished. Placing CPGs on equal footing with other organizations that provide advice to the City would mean that CPGs would have no formal role in the planning process. Currently, CPGs are required to provide formal recommendations to the City for a variety of planning decisions made by the City, have the ability to delay consideration of discretionary projects to permit such input, and receive specialized training and assistance from City staff. This level of involvement requires substantial control and oversight of CPGs by the City, limits the independence of CPGs, and triggers additional responsibilities under state and local law. The Council must decide whether these additional obligations and limitations should be embraced to maintain CPGs’ direct role in the decisionmaking process.

The answers to these two fundamental questions lead to four possible outcomes. Choosing between these options is no easy task, with conflicting interests and consequences. Regardless, a choice is necessary. Accordingly, Circulate San Diego recommends the City Council immediately undertake its review of CPGs to chart their future course. As part of this process, the City must also consider the role of the Community Planners Committee following CPG reform. Once a path forward is chosen by the Council, the Council should direct the City Attorney to craft a comprehensive reform package for CPGs. Circulate San Diego is committed to partner with the City to complete this process.

III. The City Council has four options to reform CPGs.

A. Option One: CPGs Remain Part of the City’s Decisionmaking Process and Continue to be Elected (Requires Charter Amendment and Potential Financial Disclosure Requirements).

At first glance, this option appears to allow CPGs to operate in their current form while allowing most, if not all, of the reforms approved by the Land Use and Housing Committee to be implemented. As recognized by the City Attorney, this option avoids the application of section 43 of the City Charter by submitting a Charter amendment to the voters that expressly establishes CPGs as advisory bodies distinct from other boards and commissions. This approach would formalize CPGs and provide the City Council with the ability to impose detailed operating guidelines for CPGs and also provide city resources and staff to assist in their mission. With this formal recognition, however, comes greater responsibility.

If CPGs are formally created by the City Charter, it is likely that the California Political Reform Act and local ethics rules would apply even if they do not currently apply.

Additionally, any potential elected position created by the City Charter may affect the manner in which CPG elections are conducted. It is likely that constitutional principles such as “one person, one vote,” would apply, potentially affecting the scope of eligible voters and the existing voting districts found in some CPGs. Similarly, state and local election laws may apply and the elections may have to be placed on the general election ballot. This approach would mirror the County of San Diego’s treatment of its community planning groups. These issues must be addressed by the City Attorney before any charter amendment is presented to the voters.

B. Option Two: CPGs to be Independent and Removed from the City’s Decisionmaking Process, and Continue to be Elected (Requires Council Policy and Municipal Code Amendments).

To maintain the ability of CPGs to elect their own members and avoid appointment by the Mayor without a Charter amendment, the City Attorney opines that, at most, the City may “recognize” CPGs as independent organizations. Thus, the City Council would have to reverse its current stance, as stated in Policy 600-24, that it “created” CPGs.

The City Attorney’s analysis clearly states that to reaffirm CPGs’ independence by only recognizing CPGs, amendments to Policy 600-24 are necessary. At most, the City may “provide general guidelines for CPGs, rather than detailed operational requirements.” (Analysis, p. 10.) These guidelines may “set forth broad requirements to allow for transparency and public participation in recognized groups.” (Analysis, p. 10.) Arguably, most if not all of the recommendations for amendments to Policy 600-24 recently approved by the Land Use and Housing Committee fall under the umbrella of “requirements to allow for transparency and public participation.” As the Land Use and Housing Committee already recognized the need for these reforms, the Council should consider whether they agree with the recommendations and ask the City Attorney to analyze each of the approved recommendations to determine whether they fall under the notion of permissible “broad” guidelines.

It is possible that the City Attorney may conclude that some of the recent reform recommendations that the Land Use and Housing Committee believed were necessary for the continued operation of CPGs may not be implemented under this option. As the City Attorney notes, to reestablish CPG independence, even the current version of Policy 600-24 must be amended to ensure it does not “infringe upon the independence of CPGs to engage in their own governance and business activities.” (Analysis, p. 6.) These amendments would be necessary to “maintain a clear separation from the governance of CPGs.” (Analysis, p. 6.)

The City Attorney’s opinion that CPGs may maintain elections by clarifying they are only recognized independent organizations is premised on the belief that the City “does not require CPGs to provide specific recommendations or approvals as part of the planning and development approval process,” and the City structures CPGs such that they are not “decisionmakers in land use and planning matters.” (Analysis, p. 4.) The goal, as the City Attorney explains, should be that CPGs “are not treated differently from other community organizations” and that CPGs are “independent organizations separate from the City.” (Analysis, pp. 4, 10.)

The suggestion by the City Attorney that these standards may already be met, appears to be made without knowledge of the many ways in which CPGs are given special treatment and official powers throughout City government. Meeting the standards articulated by the City Attorney will in fact require changes across the City.

Perhaps most importantly, current Information Bulletin 620, created by the San Diego Development Services Department, requires project applicants to seek the recommendation of CPGs as part of the project submittal and approval process.⁶ This requirement is reinforced by the Administrative Guidelines for Community Planning Groups, which explain in detail how a CPG is required to make a "formal recommendation" pursuant to Information Bulletin 620.⁷

If CPGs are to be merely "recognized" as independent organizations and not part of the formal City decisionmaking process, the City cannot require developers to present to CPGs and obtain a recommendation before obtaining City discretionary approval. Removing CPGs from the decisionmaking process may also avoid complications arising under recently-enacted California Senate Bill 330, which limits the number of hearings a city may hold on discretionary development decisions.⁸

Other documents reveal that CPGs are currently required to make recommendations to the City regarding specific types of projects, contradicting the City Attorney's stated goal of not requiring CPG recommendations if they are to be merely "recognized" independent organizations. A non-exhaustive list of formal powers granted to CPGs are presented below.

- As directed by the City, "a formal recommendation from the community planning group is needed following the completion of the final draft community plan."⁹
- Under the Municipal Code, all projects built using the Affordable Housing Fund must be reviewed by a CPG.¹⁰
- The City cannot install angled parking without City Council approval unless approved by a CPG.¹¹

⁶ City of San Diego, Information Bulletin 620, Coordination of Project Management With Community Planning Committees (August 2018), available at <https://www.sandiego.gov/sites/default/files/dsdib620.pdf>.

⁷ City of San Diego, Administrative Guidelines for Implementation of Council Policy 600-24 (Last Amended September 2015), available at <https://www.sandiego.gov/sites/default/files/legacy//planning/community/pdf/adminguidelinesfinal10sept2015.pdf>, pages 27-29 (section 7).

⁸ Senate Bill 330, 2019-2020 Reg. Sess., ch. 654, §65905.5 (a), 2019 Cal. Stat., available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330.

⁹ City of San Diego, Community Plan Preparation Manual (November 2009), available at <https://www.sandiego.gov/sites/default/files/legacy/planning/genplan/pdf/generalplan/cityofsandiegocppm.pdf>, p. 79.

¹⁰ City of San Diego Municipal Code section 98.0510(a), available at <http://docs.sandiego.gov/municode/MuniCodeChapter09/Ch09Art08Division05.pdf>.

¹¹ City of San Diego Municipal Code, section 86.0104(c)(3), available at <http://docs.sandiego.gov/municode/MuniCodeChapter08/Ch08Art06Division01.pdf>

- In specific geographic parts of the City, the Municipal Code expressly requires that projects be reviewed by the local CPG.¹²
- CPGs have control over an alternative process for installing stop signs, with a CPG hearing and recommendation being a prerequisite to a request for a stop sign from a City councilmember.¹³
- CPGs have an exclusive right to provide formal community input on infrastructure needs under the Capital Improvement Program.¹⁴ As part of this process, City staff must assist CPGs by providing training, submitting data, and attending CPG meetings regarding infrastructure projects. In turn, the City imposes strict requirements on CPGs for conducting the community input process.
- CPGs have the exclusive authority to delay a discretionary decision by City staff for up to 20 days.¹⁵
- CPGs have the authority to appeal development decisions without paying the fee required for all other organizations and individuals.¹⁶

Additionally, the City Attorney Analysis highlights concern with the City Attorney’s office providing legal advice to CPGs to resolve disputes and assist with “governance and operations.” (Analysis, p 8.)

The City provides many other resources exclusively to CPGs and not other stakeholders, such as highlighting the CPG’s recommendations as part of the staff reports to the Planning Commission and City Council, the provision of meeting space, website hosting for agendas, minutes, and other reports, extensive and exclusive training, and preferential treatment as part of any community plan update process. All of these aspects of the preferential treatment given to CPGs will likely have to be addressed and, ultimately, removed if CPGs are to be reestablished as independent entities.

The need to remove CPGs from the decisionmaking process is also required if the Council wants to exempt CPGs from the financial disclosure requirements of the Political Reform Act, as discussed in more depth below. Removing CPGs from the City’s decisionmaking process likely has other

¹² See City of San Diego Municipal Code section 156.0304(e)(1)(B)(ii) [Centre City], available at <https://docs.sandiego.gov/municode/MuniCodeChapter15/Ch15Art06Division03.pdf>; section 157.0203 [Gaslamp Quarter].

¹³ City of San Diego, Council Policy 200-08, Criteria for Installation of Stop Signs (December 2, 1997), available at https://docs.sandiego.gov/councilpolicies/cpd_200-08.pdf, p. 5.

¹⁴ City of San Diego, Council Policy 000-32, Neighborhood Input on Infrastructure Needs and Priorities (July 5, 2013) available at https://docs.sandiego.gov/councilpolicies/cpd_000-32.pdf.

¹⁵ City of San Diego Municipal Code Section 112.0503(b), available at <https://docs.sandiego.gov/municode/MuniCodeChapter11/Ch11Art02Division05.pdf>; and City of San Diego Municipal Code Section 112.0602(b), available at <https://docs.sandiego.gov/municode/MuniCodeChapter11/Ch11Art02Division06.pdf>

¹⁶ City of San Diego Municipal Code Section 112.0203, available at <https://docs.sandiego.gov/municode/MuniCodeChapter11/Ch11Art02Division02.pdf>

consequences relating to state law. In a prior analysis, the City Attorney opined that the Brown Act applied because the City “created” CPGs.¹⁷ If the City decides that it did not “create” CPGs under a future version of Policy 600-24, then the Brown Act would likely not apply to them. At most, the Analysis suggests, the City could ask that CPGs hold meetings “consistent with the Ralph M. Brown Act.” This may be an overly formalistic distinction, but it bears noting that the City Attorney suggests the Brown Act would not legally apply to CPGs and there would be no legal remedy for a Brown Act violation.

If this option is selected, the City will lose some control over CPGs, which will need to be treated in the same manner as other community organizations. In short, CPGs would lose their preferred status in many policy functions at the City. Even if CPGs are offered a formal sort of recognition, this must still be premised on the CPGs’ acceptance of additional guidelines regarding transparency and public participation. This option preserves CPG’s ability to structure their meetings as they choose, elect their own members, and to provide advice to the City in the same manner as any other outside entity. This option would also avoid the application of state law regarding strict meeting requirements and cumbersome financial disclosure under the Political Reform Act.

C. Option Three: CPGs Remain Part of the City’s Decisionmaking Process with CPG Members Appointed by the Mayor (Requires Ordinance Creating New Boards and Council Policy Amendment, and Financial Disclosure Requirements).

This option avoids the need for a Charter amendment and maintains CPGs’ current operations while allowing for adoption of many of the recommendations approved by the Land Use and Housing Committee. This would require passage of a new ordinance officially creating and establishing the CPGs as advisory bodies under section 43 of the City Charter. The result would be a form of CPGs substantively identical to the many existing boards and commissions operating under the City’s control. The recommendations for CPG reform involving elections would no longer be necessary.

To maintain CPGs’ role in the decisionmaking process, CPG members would have to comply with state law. In a previous memorandum, Circulate San Diego suggested the City Attorney consider whether the California Political Reform Act applies to CPG members. As the City Attorney now acknowledges in their Analysis, CPG members may be “public officials” under the Political Reform Act with decisionmaking authority if the CPG recommendations “have been regularly approved without significant amendment or modification” by the City. (Analysis, p. 9.) In their Analysis, the City Attorney finds that the City Council, as the designated code reviewing body, must conduct the required factual analysis to determine whether each CPG meets the standard.

Assuming this factual standard is met for at least some of the groups, CPG members would be considered “public officials” under the Political Reform Act. Like members of other city boards and commissions, this would require CPG members to submit financial disclosure forms annually and comply with conflict of interest rules. Given the City’s experience with other advisory boards, incorporating CPGs into this process would be a straightforward change. However, given the number of CPG members, the required oversight may require additional staff and resources.

¹⁷ Office of the San Diego City Attorney, Memorandum of Law on Application of the Brown Act to Meetings of Community Planning Groups and the Community Planners Committee (October 27, 2006), available at <https://docs.sandiego.gov/memooflaw/ML-2006-26.pdf>.

D. Option Four: CPGs to be Removed from the City’s Decisionmaking Process to Avoid Financial Disclosure Obligations, and Are Appointed by the Mayor (Requires Ordinance Creating New Boards and Council Policy Amendment).

This option is identical to the third option in regard to appointment, but would allow CPG members to avoid the application of the Political Reform Act and the need for financial disclosure. As the City Attorney suggests, the City may be able to exempt CPGs from the City conflict of interest codes by following a model adopted by the City of Los Angeles, but this option requires the City to “clearly remove CPGs from any decisionmaking activities.” (Analysis, p. 10.) As discussed in more depth above, this removal from the decisionmaking process likely mirrors the removal necessary to achieve “recognition” of CPGs to avoid appointment of members.

This option would likely result in the greatest disruption to CPGs, changing the manner in which members are selected and substantially changing their function. It is also unclear what role CPGs would play as official City advisory bodies with no formal role in the decisionmaking process.

III. The structure of the Community Planners Committee requires reform.

Although not addressed in the City Attorney’s analysis, the City must also consider the role of the Community Planners Committee (CPC). Currently, membership in CPC is dictated by selecting a member from each CPG, usually the chairperson. The City Charter, however, applies equally to CPC and is it much harder to say the City did not “create” the CPC. The role and function of the CPC is outlined in Council Policy 600-09, to “establish a citizens organization responsible in an advisory capacity to the City” (emphasis added) which “shall be composed of the chairman, or officially designated representative, or alternate of each of the community planning committees.”¹⁸ This is in direct conflict with the City Charter section 43 requirement that any advisory body “created” by the City be appointed by the Mayor.

In practice, policy issues are brought before the CPC by City staff, with the CPC’s recommendations presented by City staff to the Planning Commission and City Council. This is a level of special treatment not afforded to other groups and would seem to raise the same concerns as the City Attorney articulated about CPGs in general. It is unclear whether CPC can exist in its current form and this issue should be addressed by the City Attorney and City Council following its decisions regarding the future role of CPGs.

IV. Conclusion.

The City Attorney has made clear that some action by the City Council to reform CPGs is required to comply with state and local law. The City Attorney’s analysis outlines several options, and multiple legal considerations for each. The City Council must take up the issue of CPG reform, and direct the City Attorney to proceed with one of the four options outlined above.

¹⁸ City of San Diego, Council Policy 600-09 (February 20, 1975), available at https://docs.sandiego.gov/councilpolicies/cpd_600-09.pdf