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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.

³We 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.

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 section⁹ 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.

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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